

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

95-CVS-1158

2020 JAN 21 AM 11:19
2020 JAN 21 AM 11:19

JHE

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

Plaintiffs,

and

CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION,

Plaintiff-Intervenor,

and

RAFAEL PENN; CLIFTON JONES, individually
and as Guardian Ad Litem of CLIFTON
MATTHEW JONES; DONNA JENKINS
DAWSON, individually and as Guardian Ad Litem
of NEISHA SHEMAY DAWSON and TYLER
ANTHONY HOUGH-JENKINS, DENISE

HOLLIS JORDAN, individually and as guardian ad litem of SHAUNDRA DOROTHEA JORDAN and BURRELL JORDAN, V; TERRY DARNELL BELK, individually and as guardian ad litem of KIMBERLY SHANALLE SMITH; SUSAN JANNETTE STRONG, individually as guardian ad litem of TRACEY ANNETTE STRONG and ASHLEY CATHERINE STRONG; CHARLOTTE BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and the STATE BOARD OF EDUCATION,

Defendants,

and

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,

Realigned Defendant.

**CONSENT ORDER REGARDING NEED FOR REMEDIAL, SYSTEMIC ACTIONS
FOR THE ACHIEVEMENT OF *LEANDRO* COMPLIANCE**

At issue in this long-running matter is one of the most important rights enumerated in our State Constitution: the fundamental right of every child in North Carolina to have the opportunity to receive a sound basic education in a public school. As this Court has found, this constitutional right has been denied to many North Carolina children.

The State of North Carolina, North Carolina State Board of Education, and other actors have taken significant steps over time in an effort to improve student achievement and students' opportunity to access a sound basic education. Many of these efforts have made a positive impact on the lives of public school students and improved public schooling in the State.

However, historic and current data before the Court show that considerable, systemic work is necessary to deliver fully the *Leandro* right to all children in the State. In short, North Carolina's PreK-12 public education system leaves too many students behind — especially students of color and economically disadvantaged students. As a result, thousands of students are not being prepared for full participation in the global, interconnected economy and the society in which they will live, work, and engage as citizens. The costs to those students, individually, and to the State are considerable and if left unattended will result in a North Carolina that does not meet its vast potential.

The educational obstacles facing the State's at-risk students are real, steep, and require urgency. The Court is encouraged that the parties to this case — Defendants State of North Carolina ("State") and the State Board of Education ("State Board") (collectively, the "State Defendants"), as well as the Plaintiffs and Plaintiff-Intervenors (collectively, "Plaintiffs") — are in agreement that the time has come to take decisive and concrete action (*i.e.*, immediate, short term actions and the implementation of a mid-term and long-term remedial action plan) to bring North Carolina into constitutional compliance so that all students have access to the opportunity to a obtain a sound basic education.

The Court is also encouraged by Governor Cooper's creation of the Governor's Commission on Access to Sound Basic Education and the Commission's work thus far and is hopeful that the parties, with the help of the Governor, can obtain the support necessary from the General Assembly and other public institutions to implement and sustain the necessary changes to the State's educational system and deliver the constitutional guarantee of *Leandro* to every child in the State.

At this critical moment and in years ahead, the Parties and the Court shall proceed with benefit of the detailed findings, research, and recommendations of the Court's independent non-party consultant, WestEd. These findings are collected in WestEd's comprehensive report entitled, "*Sound Basic Education for All: An Action Plan for North Carolina*" and its underlying studies (collectively, the "WestEd Report"). The WestEd Report confirms what this Court has previously made clear: that the State Defendants have not yet ensured the provision of education that meets the required constitutional standard to all school children in North Carolina. *See* March 18, 2018 Order ("The court record is replete with evidence that the *Leandro* right continues to be denied to hundreds of thousands of North Carolina children [and that the actions the State has taken so far are] wholly inadequate to demonstrate substantial compliance with the constitutional mandate of *Leandro* measured by applicable educational standards.").

The WestEd Report offers detailed findings about the current state of *Leandro* compliance in North Carolina, as well as important, comprehensive short- and long-term recommendations for a path forward to achieve constitutional compliance. These findings and recommendations are rooted in an unprecedented body of research and analysis, which will inform decision-making and this Court's approach to this case.

Our Supreme Court recognized that a sound basic education is one that, among other things, "enable[s] the student to function in a complex and rapidly changing society . . . and compete on an equal basis with others in further formal education or gainful employment in contemporary society." North Carolina continuously changes and a *Leandro*-conforming educational system must take this into account. North Carolina continues to grow. Our student body is larger, more diverse, and more economically disadvantaged today than it was 25 years ago. Advances in science and technology have re-set expectations for the skills and competencies our students must have in order to be ready for the future. The Parties agree that brain science and research show that new approaches are required for the provision of early learning and pre-K education with broader access for young children's participation. Our education system must adjust to and keep pace with the major ongoing technological, social, and economic changes in our society.

To prepare its schoolchildren to compete in the future, the Parties have agreed that North Carolina must do more to meet these changes and challenges. As the original *Leandro* decision affirmed, “[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate” *Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 254 (1997).

In his final order issued on March 17, 2015 before retiring, The Honorable Howard Manning 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.” See 3/17/2015 Order (“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.”). That remains true today. As outlined in greater detail below and in accordance with the Court’s prior rulings, the Court orders the Defendants, in consultation with each other and the Plaintiffs, to work expeditiously and without delay to create and fully implement a definite plan of action to achieve *Leandro* compliance.

Based upon WestEd’s findings, research, and recommendations and the evidence of record in this case, the Court and the Parties conclude that a definite plan of action for the provision of the constitutional *Leandro* rights must ensure a system of education that at its base includes seven components as described below. The Parties stipulate that the following components are required to implement the *Leandro* tenants as set forth in prior holdings of the Supreme Court and this Court’s prior orders. The Parties further stipulate that these components are necessary to address critical needs in public education and to ensure that the State is providing the opportunity for a sound basic education to *each* North Carolina child, and further holds itself accountable for doing so:

1. A system of teacher development and recruitment that ensures each classroom is staffed with a high-quality teacher who is supported with early and ongoing professional learning and provided competitive pay;
2. A system of principal development and recruitment that ensures each school is led by a high-quality principal who is supported with early and ongoing professional learning and provided competitive pay;
3. A finance system that provides adequate, equitable, and predictable funding to school districts and, importantly, adequate resources to address the needs of all North Carolina schools and students, especially at-risk-students as defined by the *Leandro* decisions;
4. An assessment and accountability system that reliably assesses multiple measures of student performance against the *Leandro* standard and provides accountability consistent with the *Leandro* standard;
5. An assistance and turnaround function that provides necessary support to low-performing schools and districts;

6. A system of early education that provides access to high-quality pre-kindergarten and other early childhood learning opportunities to ensure that all students at-risk of educational failure, regardless of where they live in the State, enter kindergarten on track for school success; and
7. An alignment of high school to postsecondary and career expectations, as well as the provision of early postsecondary and workforce learning opportunities, to ensure student readiness to all students in the State.

It is the State's duty to implement the fiscal, programmatic, and strategic steps necessary to ensure these seven components are in place and, ultimately, to achieve the outcomes for students required by the Constitution.

The Parties agree that the constitutional rights at issue implicate the mission and require the work of the State's numerous institutions and agencies, which all share in the responsibility for ensuring that every child receives the opportunity for a sound basic education. As a constitutional actor, however, the State Board of Education must play a significant role in delivering the *Leandro* right to all students. N.C. Const. art. IX, § 5 ("The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.")

This Court will issue a subsequent order or orders regarding the definite plan of action and its critical components, including the identification of specific concrete, definitive actions (preliminary short-term actions and mid-term and long-term action plans) that will be taken to implement the above seven components and to correct the constitutional deficiencies, so that the State may finally meet its constitutional obligations to North Carolina's children.

At the outset, the Court reviews its previous rulings, the *Leandro* tenets and recent procedural history.

The Court's Rulings and *Leandro*'s Tenets

Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997) (*Leandro I*)

More than twenty-five (25) years ago, in May of 1994, Plaintiffs initiated this action and alleged that certain guaranteed educational rights conferred by the North Carolina Constitution were being denied to North Carolina's school-aged children. The Court denied the State Defendants' motion to dismiss and a unanimous Supreme Court affirmed these constitutional obligations. *Leandro I*, 346 N.C. 336, 488 S.E.2d 249 (1997).

Leandro I contained three principal holdings: (1) the State Constitution does not require equal funding of public school systems, and consequently the challenged system of funding was not unconstitutional, *id.* at 349, 488 S.E.2d at 256; (2) the State Constitution does not require students in every school system to receive the same educational opportunities, *id.* at 350, 488

S.E.2d at 256; but (3) the State Constitution does require that each student in all school systems have the “opportunity to receive a sound basic education in our public schools,” *id.* at 347, 488 S.E.2d at 255. The Supreme Court defined a sound basic education as:

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 or vocational training; and (4) sufficient academic or vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

346 N.C. at 347, 488 S.E.2d at 255 (internal citations omitted).

The Supreme Court also held that the Constitution requires the State to ensure that each and every child, regardless of age, need, or district, has access to a sound basic education in a public school. 346 N.C. at 345, 488 S.E.2d at 254 (holding that “an education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate”).

The Supreme Court indicated that there were at least three potentially relevant, but not dispositive, factors that may be weighed by a trial court in determining whether the opportunity offered students was constitutionally sufficient. These were: (1) educational goals and standards established by the General Assembly, *id.* at 355, 488 S.E.2d at 259, which were presumably sufficient to provide students an opportunity to obtain a sound basic education; (2) student performance on standardized achievement tests, *id.* at 355, 488 S.E.2d at 260; and (3) the level of State educational expenditures to support the public school system, *id.* at 355, 488 S.E.2d at 260. The Court recognized “that the value of standardized tests [was] the subject of much debate. Therefore, they may not be treated as absolutely authoritative” on the issue of the opportunity for a sound basic education. *Id.* at 355, 488 S.E.2d at 260. Stated differently, test scores are only one of several factors to be weighed in determining whether the State is meeting its constitutional obligations to North Carolina children.

Finally, the Supreme Court held that educational standards established by the State were presumptively sufficient to provide students the opportunity for a sound basic education and expressly imposed on plaintiffs the burden to prove their claims by “[a] clear showing,” *id.* at 357, 488 S.E.2d at 261, for only such a showing “will justify a judicial intrusion into an area so clearly the province . . . of the legislative and executive branches.” *Id.* The Supreme Court remanded the case for a determination as to whether the State was, in fact, denying this fundamental constitutional right to the children:

If on remand of this case to the trial court, that court makes findings and conclusions from competent evidence to the effect that [the State Defendants] are denying children of the state a sound basic education, a denial of a fundamental right will have been established. It will then become incumbent upon [the State] to establish that their actions denying this fundamental right are “necessary to promote a compelling governmental interest.” If [the State Defendants] are unable to do so, it will then be the duty 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.

346 N.C. at 357, 488 S.E.2d at 261 (internal citations omitted).

The Supreme Court recognized that, while making such determinations, “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 of the various school districts of the state a sound basic education.” *Id.*

Liability Judgment and *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) (*Leandro II*)

The trial proceedings continued for over a year, involved more than 40 witnesses, and included hundreds of exhibits. The trial court issued four memoranda of decision collectively totaling over 400 pages of findings of fact and conclusions of law.

On April 4, 2002, the trial court found that the Plaintiffs had met their burden of demonstrating constitutional non-compliance and entered a liability judgment against the State (incorporating the previous memoranda of decision) (collectively, the “Liability Judgment”) finding continuing constitutional violations. With some modifications, the Liability Judgment was unanimously affirmed by the Supreme Court in *Leandro II*.

The Court found, and the Supreme Court unanimously affirmed, that the State was constitutionally obligated to provide each and every child the opportunity to attend a public school with access to the following:

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 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.

Liability Judgment, pp. 109-10; *Leandro II*, 358 N.C. at 636, 599 S.E.2d at 389.

The trial court also found, and the Supreme Court unanimously affirmed, that the State had not provided, and was not providing, competent certified teachers, well-trained competent principals, and the resources necessary to afford all children, including those at-risk, an equal opportunity to obtain a sound basic education, and that State Defendants were responsible for these constitutional violations. See Liability Judgment, p. 110, *Leandro II*, 358 N.C. at 647-48, 599 S.E.2d at 396.

Further, the Court found, and the Supreme Court unanimously affirmed, that at-risk children¹ require more resources, time, and focused attention in order to receive a sound basic education. *Leandro II*, 358 N.C. 641, 599 S.E.2d at 392. Specifically,

- (a) "At-risk children need adequately targeted remediation services." Liability Judgment at p. 50.
- (b) "Enabling at-risk children to perform well in school requires more time and more resources." Memorandum of Decision, Sect. Two, p. 10.
- (c) "From this review, it became crystal clear to the Court that there are two distinct groups attending the public schools in North Carolina – those children at risk of academic failure that are not obtaining a sound basic education and those children who are not at risk of academic failure and who are obtaining a sound basic education. The major factors which can be used to identify ... those children at-risk and those not at-risk, are (1) socio-economic status (2) level of parental education and (3) free and reduced price lunch participation, all of which are inextricably intertwined with each other." Memorandum of Decision, Sect. Three, p. 64.
- (d) "[A]n 'at-risk' student is generally described as one who holds or demonstrates one or more of the following characteristics: (1) member of low-income family; (2) participate in free or reduced-cost lunch programs; (3) have parents with a low-level education; (4) show limited proficiency in English; (5) are a member of a racial or ethnic minority group; (6) live in a home headed by a single parent or guardian." *Leandro II*, 358 N.C. at 389, 599 S.E.2d at 635, n. 16.

Regarding early childhood education, the Supreme Court affirmed the trial court's findings that the "State was providing inadequate resources" to "'at-risk' prospective enrollees" ("pre-k" children), "that the State's failings were contributing to the 'at-risk' prospective enrollees'

¹ Children who are "at-risk" of academic failure are discussed at length in this Court's Memorandum of Decision, Sect. Two of October 26, 2000.

subsequent failure to avail themselves of the opportunity to obtain a sound basic education,” and that “State efforts towards providing remedial aid to ‘at-risk’ prospective enrollees were inadequate.” *Id.* at 641-42, 599 S.E.2d at 392-33. While the Supreme Court did not uphold the trial court’s specific remedy of pre-K at that time, the Court affirmed the findings that (i) “there was an inordinate number of ‘at-risk’ children who were entering the Hoke County school district” each year, (ii) “such ‘at-risk’ children were starting behind their non ‘at-risk’ counterparts,” and (iii) “such ‘at-risk’ children were likely to stay behind, or fall further behind, their non ‘at-risk’ counterparts as they continued their education.” *Id.* at 641, 599 S.E.2d at 392.

In addition, the trial court found, and the Supreme Court unanimously affirmed, that “the State of North Carolina is ultimately responsible for providing each child with access to a sound basic education and that this responsibility cannot be abdicated by transferring responsibility to local boards of education.” Liability Judgment, p. 110; *Leandro II*, 358 N.C. at 635, 599 S.E.2d at 389. It is ultimately the State’s responsibility to ensure that each child has the opportunity to a *Leandro*-conforming education.² The Supreme Court has held that the State may not shift responsibility for constitutional violations onto the local districts. *Id.*

The Supreme Court remanded the case for the trial court to oversee the implementation of a remedial framework to correct and address the constitutional deficiencies. From 2004-2015, more than 20 hearings were held on this issue, the nature and scope of which are set out in the previous orders of this Court, all of which are in the record.

In 2013, the Supreme Court confirmed that the Liability Judgment and the mandates of *Leandro I* and *Leandro II* remain “in full force and effect.” On November 8, 2013, the Supreme Court dismissed an appeal by the State concerning legislative enactments about pre-kindergarten programming on mootness grounds. In the dismissal order, the Supreme Court held, “Our mandates in *Leandro* and *Hoke County* [*Leandro II*] remain in full force and effect.” *Hoke County Bd. of Ed. v. State*, 367 N.C. 156, 160, 749 S.E.2d 451, 455 (2013).

Recent Procedural History and Appointment of the Court’s Non-party, Independent Consultant WestEd

In July 2017, the State Board filed a Motion for Relief pursuant to Rule 60 and Rule 12, requesting that the Court relinquish jurisdiction in this case. The State Board asserted that programs implemented in the State, changes in factual circumstances, and changes in state and federal law had resulted in an education system wholly different than the one that was the subject of the original action such that these circumstances support relief under Rule 60. The Court denied the State Board’s motion on March 7, 2018.

In its March 2018 Order, the Court reiterated the “evidence before this Court upon the SBE [State Board] Motion is wholly inadequate to demonstrate that [enactments by the State Defendants] translate into substantial compliance with the constitutional mandate of *Leandro* measured by applicable educational standards.” *See* Order, p. 5, ¶ 12.

² *See also Silver v. Halifax Cty. Bd. of Comm’rs*, 371 N.C. 855, 821 S.E.2d 755 (2018) (affirming that the constitutional responsibility of providing the opportunity to a sound basic education resides with the State – specifically the legislative and executive branches – rather than with a local governmental unit).

In January 2018, the State and the Plaintiffs filed a joint motion for case management and scheduling order in which the parties proposed to nominate, for this Court's consideration and appointment, an independent, non-party consultant to assess the current status of *Leandro* compliance in North Carolina for the Court and to make detailed, comprehensive, written recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates articulated in the *Leandro* case.

On February 1, 2018, the Court issued a *Case Management and Scheduling Order* setting forth, among other things, the parameters for the consultant's work and a detailed timeline for completion of such work should the Court choose to appoint the nominated non-party as the Court's consultant. In the *Case Management and Scheduling Order*, this Court took judicial notice of Executive Order No. 10 dated July 21, 2017, superseded and replaced by Executive Order No. 27 dated November 15, 2017, which created the Governor's Commission on Access to Sound Basic Education ("Commission").

Thereafter, on March 13, 2018, this Court issued an Order appointing WestEd to serve as the Court's independent, non-party consultant pursuant to the terms of the *Case Management Order* issued on February 1, 2018. Prior to the appointment, the Court thoroughly reviewed WestEd's extensive qualifications, experience, expertise, and background information (including the resumes of the WestEd team members to lead this project) regarding educational research and innovation, as well as WestEd's submission regarding their proposed scope of work.

The Court charged WestEd with submitting final recommendations to the Parties, the Commission, and the Court within twelve months from the date of appointment³. WestEd's recommendations were to "consist of the consultant's conclusions as to detailed and comprehensive actions that the State should take to achieve sustained compliance" with constitutional mandates to provide every child with an equal opportunity to a sound basic education in North Carolina.

All Parties agree that WestEd is, and was, qualified to serve in this capacity.

WestEd's Process and a *Sound Basic Education for All: An Action Plan for North Carolina*

WestEd is a non-profit, non-partisan, educational research, development, and service organization with more than 650 employees in 17 offices across the nation and more than 50 years of experience. WestEd's work centers around providing research, recommendations and sustained professional services to improve public education systems, student achievement, educator effectiveness, and educational leadership. WestEd has extensive experience in working with numerous states and state education agencies ("SEA") in multiple areas, including: developing and evaluating assessments and standards, development of educator evaluation systems, providing quality professional development to a wide range of education professionals, developing strong school turnaround leaders to close the achievement gap, and researching and advising on school finance policy. In addition, WestEd leads the U.S. Department of Education's National Center on

³ This deadline was subsequently extended for, among other reasons, the devastation wrought by Hurricanes Matthew and Florence, which delayed WestEd's data collection and visits to certain districts.

School Turnaround whose work addresses a number of factors relevant in this case, including: developing SEA staff capacity and SEA organizational structures, building school and district capacity by providing leadership training to ensure leaders have the skills to produce positive outcomes for all students, and creating policies and practices to ensure a pipeline of turnaround leaders.

In support of its work, WestEd also engaged the Friday Institute for Educational Innovation at North Carolina State University and the Learning Policy Institute (LPI), a national education policy and research organization with extensive experience in North Carolina.

Under WestEd's leadership, these three organizations also collaborated to conduct 13 studies⁴ to better identify, define, and understand key issues and challenges related to North Carolina's education system and to offer a framework of change for the State. The researchers developed and carried out a comprehensive research agenda to investigate the current state and major needs of North Carolina public education, including in the following overarching areas: (1) access to effective educators, (2) access to effective school leaders, (3) adequate and equitable school funding and other resources, and (4) adequate accountability and assessment systems.

After more than a year of extensive research, evaluation, and analysis, WestEd's work on behalf of the Court culminated in its submission of its draft report to the Court on June 18, 2019, and a final report on October 4, 2019 ("WestEd Report").

A detailed description of WestEd's work and analysis is set out in the WestEd Report. Among other things, WestEd:

- Analyzed educational data at the North Carolina Education Research Data Center at Duke University, which includes data on students, teachers, schools and districts in the state.
- Analyzed data from Education Policy Initiative at the University of North Carolina.

⁴ The study report titles are: (1) *Best Practices to Recruit and Retain Well-Prepared Teachers in All Classrooms* (Darling-Hammon et al., 2019); (2) *Developing and Supporting North Carolina's Teachers* (Minnici, Beatson, Berg-Jacobson, & Ennis, 2019); (3) *Educator Supply, Demand, and Quality in North Carolina: Current Status and Recommendations* (Darling-Hammond et al., 2019); (4) *How Teaching and Learning Conditions Affect Teacher Retention and School Performance in North Carolina* (Berry, Bastian, Darling-Hammond, & Kini, 2019); (5) *Retaining and Extending the Reach of Excellent Educators: Current Practices, Educator Perceptions, and Future Directions* (Smith & Hassel, 2019); (6) *Attracting, Preparing, Supporting, and Retaining Education Leaders in North Carolina* (Koehler, Peterson & Agnew, 2019); (7) *A Study of Cost Adequacy, Distribution, and Alignment of Funding for North Carolina's K-12 Public Education System* (Willis et al., 2019); (8) *Addressing Leandro: Supporting Student Learning by Mitigating Student Hunger* (Bowden & Davis, 2019); (9) *High-Quality Early Childhood Education in North Carolina: A Fundamental Step to Ensure a Sound Basic Education* (Agnew, Brooks, Browning, & Westervelt, 2019); (10) *Leandro Action Plan: Ensuring a Sound Basic Education for All North Carolina Students Success Factors Study* (Townsend, Mullennix, Tyrone, & Samberg, 2019); (11) *Providing an Equal Opportunity for a Sound Basic Education in North Carolina's High-Poverty Schools: Assessing Needs and Opportunities* (Oakes et al., 2019); (12) *North Carolina's Statewide Accountability System: How to Effectively Measure Progress Toward Meeting the Leandro Tenets* (Cardichon, Darling-Hammond, Espinoza, & Kostyo, 2019); and (13) *North Carolina's Statewide Assessment System: How Does the Statewide Assessment System Support Progress Toward Meeting the Leandro Tenets?* (Brunetti, Hemberg, Brandt, & McNeilly, 2019).

- Analyzed demographic, economic, social and other North Carolina data from the American Community Survey of the United States Census Bureau.
- Analyzed data regarding North Carolina principals obtained from surveys administered to all principals statewide in the fall of 2018.
- Analyzed data from the North Carolina Teacher Working Conditions Survey.
- Analyzed data on teacher effectiveness and experience from the National Center for Education Statistics.
- Analyzed the State's Every Student Succeeds (ESSA) Consolidated Plan.
- Conducted site visits across North Carolina.
- Conducted interviews and focus groups with teachers, principals, superintendents, other district and state professionals across North Carolina.
- Conducted interviews and focus groups with public-sector leaders, as well as interviews with and local school board members.
- Conducted interviews with several State Board of Education members and North Carolina Department of Public Instruction staff.
- Facilitated in-person professional judgment panels to collect data on the effective allocation of resources to meet student needs in North Carolina.
- Conducted a cost-function analysis using data housed at Duke University's NCERDC, National Center for Education Statistics, U.S. Bureau of Labor Statistics, U.S. Department of Housing and Urban Development, and the U.S. Census Bureau.
- Analyzed data from a variety of other sources, including: an independent operational assessment of NCDPI commissioned by the General Assembly; the North Carolina Plan to Ensure Equitable Access to Excellent Educators; Outcomes for Beginning Teachers in a University-Based Support Program in Low-Performing Schools; Race-to-the-Top Professional Development Evaluation Report; valuation reports on teacher and leader preparation programs and educational innovations; presentations made to the North Carolina Governor's Commission on Access to a Sound Basic Education; manuals and reports published by NCDPI; multi-year data from the NCDPI on district allotments, expenditures, student demographics, and school characteristics; and North Carolina education legislation.

Findings of Fact and Conclusions of Law: The Current State of *Leandro* Compliance

Based on a thorough review and consideration of WestEd's Report, of the evidence of record in this case, items for which the Court has properly taken judicial notice, and the consent of all Parties, this Court hereby makes the following findings of fact and conclusions of law regarding the current status of *Leandro* compliance and the challenges and barriers to the State Defendants achieving constitutional compliance.

A. North Carolina Has Substantial Assets To Draw Upon To Develop A Successful PreK-12 Education System That Meets The *Leandro* Tenets.

The State Defendants recognize there is a moral and constitutional imperative for North Carolina to fulfill the promise of its Constitution and provide a *Leandro*-compliant PreK-12 public education system that provides *every* child with the opportunity for a sound basic education.

Throughout the State's history, North Carolina leaders have recognized that a strong public education system serves both the economic and the social progress of the State. WestEd presented research studies supporting the wisdom of a commitment to and investment in public education. For each high school graduate, society gains a number of economic benefits, including higher tax revenue and lower government spending on health, crime, and welfare costs. For example, one cost analysis estimated that each new high school graduate yielded a public benefit of \$209,000 in higher government revenues and lower spending, compared with an investment of \$82,000 to help each student achieve graduation. According to this analysis, the net economic benefit is 2.5 times greater than the cost. [WestEd Report, p. 12 (citing Belfield & Levin, 2007)].

North Carolina has tremendous assets to draw upon in undertaking the systemic work of educating its school children, including a strong state economy, a deep and long-standing commitment to public education to support the social and economic welfare of its citizens, and an engaged business community that sees the value and economic benefits of the public education system. The State Defendants can leverage many of these assets and build on North Carolina's strong history of leadership for education to transform the public education system to ensure access to a sound basic education for all students. [WestEd Report, pp. 167-68].

Historically, the State and the State Board of Education have shown leadership in public education and made wise investments in strategies and initiatives. For example, during the 1980s and 1990s, North Carolina moved its education system forward in many ways. Advancements included establishing a new system of curriculum standards and assessments, strengthening the teaching profession, increasing funding for education, and implementing other initiatives that led to substantial increases in students' achievement. [WestEd Report, pp. 11-12].

During the 1990s, North Carolina posted the largest student achievement gains of any state in mathematics, and it realized substantial progress in reading, becoming the first southern state to score above the national average in fourth grade reading and math, although it had entered the decade near the bottom of the state rankings. [WestEd Report, pp. 12-13]. Of all states during the 1990s, it was also the most successful in narrowing the minority-White achievement gap. [*Id.* (citing National Education Goals Panel, 1999)]. As a result, North Carolina became widely recognized nationally as a leading state for educational innovation and effectiveness. [*Id.*]

In the early 2000s, North Carolina continued its efforts to improve educational outcomes after the *Leandro* rulings. [WestEd Report, pp. 14-15]. For example, the State launched a statewide expansion of its Pre-K program (More at Four) and reduced class sizes in grades K through 3. The State developed 125 Cooperative Innovative High Schools and numerous early college high schools, which were designed to make college possible for young adults who otherwise have few opportunities to continue with higher education. During this time, the State expanded the services of the North Carolina Teacher Academy and increased North Carolina Teaching Fellows from 400 to 500 students annually. The State also revised standards for reading and math to better align with college and career readiness on multiple occasions and implemented new statewide systems of teacher and principal evaluations to align with improving student outcomes in the classroom. [WestEd Report, p. 17]. Further, during that time, the Department of Public Instruction developed its Division of District and School Transformation and provided significant support and assistance in 135 school and six districts, including support in the State Board's intervention in Halifax County Schools within the context of this case. [WestEd Report, p. 16].

During this time, North Carolina implemented statewide efforts in an attempt to support the public education system. Those efforts included deployment of the "Home Base" and PowerSchool technology platforms; creation of the North Carolina Virtual Public School ("NCVPS"); implementation of the Read to Achieve program; implementation of the Race to the Top grant programs; and the Whole Child framework; and supporting the North Carolina Teacher Working Conditions Survey.

More recently, the State Board approved a new Strategic Plan setting forth the agency's mission "to use its constitutional authority to guard and maintain the right to a sound, basic education for every child in North Carolina Public Schools." The Strategic Plan describes three overarching goals that the State Board has determined will be its focus for the period August 8, 2019 through September 30, 2025. Those goals are: (1) eliminating opportunity gaps by 2025; (2) improving school and district performance by 2025; and (3) increasing educator preparedness to meet the needs of every student. For each of those goals, the State Board has developed strategies and initiatives to achieve success.

Although education improvement efforts have continued, resources committed to education decreased during the Great Recession and some valuable programs were discontinued. As a result, the challenges of providing every student with a sound basic education increased. Cutbacks that began during the recession after 2008, along with much deeper legislative cuts over the last few years, have eliminated or greatly reduced many of the programs that were put in place and have begun to undermine the quality and equity gains that were previously made. Declines in achievement have occurred since 2013 in mathematics and reading on the National Assessment of Educational Progress (NAEP), and achievement gaps have widened. [WestEd Report, pp. 12-14, 22-29].

As the WestEd Report discusses, other promising initiatives, along with many other statewide, regional, district, community, and school efforts, were put in place. Many of these efforts, however, were neither sustained nor scaled up to make a sustained impact. Accordingly, these efforts were insufficient to adequately address the *Leandro* requirements. [WestEd Report,

p. 17]. The Defendants have not yet met their constitutional duty to provide all North Carolina students with the opportunity to obtain a sound basic education.

B. Despite Numerous Initiatives, Many Children Are Not Receiving A *Leandro*-Conforming Education; Systemic Changes And Investments Are Required To Deliver the Constitutional Right To All Children.

As the WestEd Report and the record in this case demonstrate, the State Defendants have implemented numerous ambitious programs and initiatives over the last 20 years, but the *Leandro* mandate remains unmet. Many of these programs, however, have not endured or have not been expanded statewide as needs dictated. The Court finds and concludes that North Carolina faces greater challenges than ever in meeting its constitutional obligations, many children across North Carolina are still not receiving the constitutionally-required opportunity for a sound basic education, and systemic changes and investments are required for the State Defendants to deliver each of the *Leandro* tenets.

1. The State Defendants Face Greater Challenges Than Ever.

WestEd found, and the Parties do not dispute, that many children across North Carolina, especially at-risk and economically-disadvantaged students, are not now receiving a *Leandro*-conforming education.

The State faces greater challenges than ever in meeting its constitutional obligation to provide every student with the opportunity to obtain a sound basic education. [WestEd Report, p. 17].

In the last two decades, North Carolina's public school student population has grown by about 25% overall, and the number of children with higher needs, who require additional supports to meet high standards, has increased by 88% in the last 15 years. [WestEd Report, p. 20].

North Carolina has 807 high-poverty district schools and 36 high-poverty charter schools; this represents one third of all the State's districts and slightly more than 20% of the State's charter schools.⁵ [WestEd Report, p. 246]. More than 400,000 students—over a quarter of the students in North Carolina—attend a high-poverty school. [*Id.* at 245]. This is significant because, among other things:

- HPSs serve a disproportionate number of students with other academic risk factors, including students who have parents with low education levels, who have limited proficiency in English, who are members of a racial or ethnic minority group, and who have families headed by a single parent. [WestEd Report, pp. 96-97, 246].
- There is a strong negative relationship between at-risk students attending HPSs and the attainment of a sound basic education. [WestEd Report, p. 97, 247-48]. This is in large

⁵ High-poverty schools ("HPS") are schools in which 75% or more of the students are eligible for federally subsidized free or reduced-cost school meals because of their families' low income.

part due to less access to qualified teachers, qualified principals, and sufficient educational resources. [WestEd Report, pp. 98-100; 248-52].

- Students of color comprise 77% of students attending district HPSs and 93% of those attending charter HPSs – far greater percentages than their 52% representation statewide. White students – 49% of the student population statewide – comprise only 23% of students in district HPSs and 7% in charter HPSs. The communities in which HPSs and low-poverty schools (“LPSs”) are located display racial patterns with nearly all LPSs in majority-White communities and with HPSs in majority-minority communities at twice the rate one would expect given residential patterns. [WestEd Report, p. 246].
- Students’ opportunity for a sound basic education is limited in high-poverty schools by a lack of supports and services to help mitigate barriers to learning associated with adverse out-of-school conditions in communities of concentrated poverty. [WestEd Report, pp. 252-54].

The number of economically-disadvantaged students (those eligible for free or reduced-price lunch programs) in public schools has grown from 470,316 in 2000–01 to 885,934 in 2015–16, an 88% increase over 15 years. [WestEd Report, p. 20]. In fact, more than 475,000 children in North Carolina, or 21% of all the state’s children, are in families below the federal poverty level (*i.e.*, \$24,600 for a family of four). About one third of those families are at the deep poverty level, with family incomes of less than half of the poverty level. Child poverty is most concentrated in the counties in the northeast, north central, and Sandhills regions of the state. [WestEd Report, p. 96]. However, even in higher wealth counties, low-wealth students are concentrated in high poverty schools, and recommendations to address the challenges these students face must focus on high poverty schools, not only high poverty school districts. [WestEd Report pp. 103-106]. In 2016-17, approximately 60% of North Carolina’s public school students were eligible for free or reduced-price lunch. [WestEd Report, p. 96].

The proportion of economically-disadvantaged students is especially high in many of the economically-distressed rural districts. [WestEd Report, p. 20]. Over half of the high poverty schools in the state are in rural communities; the next highest concentration, nearly a third, are in urban communities. [WestEd Report p. 96]

Large achievement gaps between subgroups of students continue unabated, with, on average, the achievement of black, Hispanic, and Native American students lagging far behind that of white and Asian students and the achievement of economically-disadvantaged students lagging far behind that of their more advantaged peers. [WestEd Report, pp. 21-31].

The proficiency gap between black and white students was 29.9% in 2013, the first year the current standards were implemented, and was at 30.2% in 2018. The proficiency gap between Hispanic and white students has also increased (rather than decreased) during this period, from 22.8% in 2013 to 24.6% in 2018. [WestEd Report, p. 23].

Presently, only 32% of EDS students meet college-and-career-readiness benchmarks on North Carolina’s end-of-course tests, compared to 61% of non-EDS students. Similarly, only 39%

of EDS students meet the UNC system's minimal standard on the ACT college-readiness exam, compared to 69% of non-EDS students. [WestEd Report, pp. 27-28].

In addition, the number of students who are English learners more than doubled over 15 years, increasing from 44,165 (3% of all students) in 2000 to 102,090 (7% of all students) in 2015 [WestEd Report, p. 20 (National Center for Education Statistics, 2017)]. The increased diversity of the student population and the increased number of English learners drive the need to invest further in developing an educator workforce that is racially and ethnically diverse and employs culturally responsive teaching approaches in order to successfully educate all of the state's students. [WestEd Report, pp. 20, 64, 141, 203].

State funding for education has not kept pace with the growth and needs of the preK-12 student body. The State does not currently provide adequate resources to ensure that all students have the opportunity to obtain a sound basic education, as well as to meet higher standards and become college-and-career ready. [WestEd Report, p. 21]. There is inadequate funding to meet student needs, especially among economically-disadvantaged students and students in high-poverty schools. [WestEd Report, p. 41].

As of fiscal year (FY) 2016, the most recent year for which national rankings are available, North Carolina's per-pupil spending was the sixth lowest in the nation [WestEd Report, p. 21 (U.S. Census Bureau, 2018)]. When adjusted to 2018 dollars, per-pupil spending in North Carolina has *declined* by about 6% since 2009–10. [WestEd Report, p. 21].

The result confirmed by WestEd for each *Leandro* tenet (discussed below)— across multiple data sets and after extensive research and analysis – is that the State of North Carolina and the State Board of Education are not providing and administering a *Leandro*-compliant PreK-12 public education system.⁶

In sum, the State and the State Board of Education have yet to achieve the promise of our Constitution and provide all with the opportunity for a sound basic education. For the State and State Board of Education to make necessary progress in the provision of the *Leandro* right, the Parties agree that three significant areas require immediate attention:

(1) the initiatives and infrastructure for PreK-12 education supplied by the Defendants must be bolstered in order to address the expanding educational needs of a growing, increasingly diverse North Carolina student body;

(2) important additional state-level investments in education are needed to assure students' constitutional rights; and

⁶ Herein, the Court has not articulated every finding or conclusion that could be made based upon the data and reporting provided by WestEd. As a general matter, the Court takes full notice of the WestEd Report, including its satellite studies and accepts the data presented as true and correct. The Parties have consented to the entry of this Order and stipulate to the findings and conclusions expressly set forth herein. With regard to matters addressed in the WestEd Report not expressly set forth herein, the Parties have reserved the right to challenge those as needed, in future proceedings and/or in connection with the submission of subsequent filings that will follow in this matter.

(3) the implementation of a comprehensive, definite plan – supported by coordinated governance systems – that addresses the critical needs that must be met in order to serve every North Carolina student and, in particular, economically-disadvantaged and minority students.

2. Systemic, Synchronous Action And Investments Are Necessary to Successfully Deliver the *Leandro* Tenets

Systemic, sustained approaches deployed by the State and the State Board of Education to increase the capacity of North Carolina’s Pre-K–12 public education system are necessary to ensure every child receives the opportunity for a sound basic education. Across numerous areas, the present (sometimes piecemeal) approaches utilized by the State are insufficient to address the critical needs of all students and growing challenges across North Carolina. The WestEd Report and the record evidence in this case illuminate North Carolina’s systemic deficiencies and identify critical needs across a number of interrelated areas. These are addressed below in turn.

Teacher Quality and Supply

North Carolina can never succeed in providing the opportunity for a sound basic education to all children without vastly improved systems and approaches for recruiting, preparing, supporting, developing, and retaining teachers. A framework for placing and retaining highly-effective teachers where they are most needed to foster the academic growth of at-risk students must be created and sustained. The current teacher shortages and high turnover — particularly in high-poverty schools and districts — are a function of uneven preparation and mentoring, inadequate compensation, and poor working conditions. [WestEd Report, p. 62].

North Carolina has invested in building a strong core of teacher-leaders, piloted models to leverage teacher leadership, and launched innovative programs for preparing teachers and principals. [WestEd Report p. 168]. However, North Carolina has gone from having a highly-qualified teacher force as recently as a decade ago to having one that is uneven in terms of the number of candidates, the quality of teacher preparation (particularly in high-poverty schools and districts), the extent to which teachers have met standards before they enter teaching, and teachers’ growth and development once they enter the classroom. [WestEd Report, p. 53].

Social and economic changes are impacting the education workforce, leading both to fewer young people choosing teaching as a profession and to fewer of those who do enter teaching remaining in the profession past the first few years. For example, enrollment in traditional teacher education programs declined by more than 50% between 2008–09 and 2015–16. Likewise, the number of teacher credentials issued between 2011 and 2016 declined by 30%. [WestEd Report, pp. 17-18].

The North Carolina teacher supply is shrinking, and teacher shortages are widespread. [WestEd Report, p. 53].

The total number of teachers employed in North Carolina has decreased by 5% from 2009 to 2018, even as student enrollments have increased. [WestEd Report, pp. 18, 53]. The annual teacher attrition rate in North Carolina is 8.1%, which is higher than the national average. [WestEd Report, p. 47].

Salaries and working conditions influence both retention and school effectiveness of teachers. Even after years of increases in teacher salaries, North Carolina lags behind numerous other states in average pay and is not paying salaries at a competitive level. [WestEd Report, pp. 56-57].

Multivariate statistical analyses of the predictors of teacher retention show that the size of the teacher salary supplement (*i.e.*, additional funds provided by some local education agencies to account for variances such as geographic location, market conditions, and school demographics) is a significant predictor of retention. Low-wealth districts have limited, if any, means to offer significant salary supplements to retain effective teachers. [WestEd Report, p. 58].

The proportion of teachers in North Carolina who are not fully licensed has doubled since 2011, from 4% to 8%, and in high-poverty schools, as many as 20% of teachers are unlicensed. [WestEd Report, pp. 54, 98]. WestEd found that attrition, vacancies, and the hiring of unqualified teachers are significantly higher in high-poverty communities. [WestEd Report, p. 54].

Enrollment in traditional teacher education programs declined by more than 50% between 2008-09 and 2015-16. [WestEd Report, pp. 17-18].

The source of teacher supply has dramatically shifted in recent years, with 25% of candidates now entering through alternative routes (*i.e.*, lateral entry) without pre-service preparation. Presently, only about 35% of the state's teachers are entering through North Carolina colleges and universities—a share that was as high as 60% in 2001 and 50% in 2010. Changes in the sources of teacher supply are important because researchers have found that teachers prepared at North Carolina schools of education are generally significantly more effective than those prepared out of state and they stay in North Carolina schools at much higher rates than their peers who enter teaching through other pathways. [WestEd Report, p. 54].

Professional development programs enhance the professional skills of educators, including the New Teacher Support Program for teachers during their first three years in the profession; the many programs for experienced teachers provided by the North Carolina Center for the Advancement of Teaching, the Distinguished Leadership Practice, and the Future-Ready Leadership programs for current and future principals provided by North Carolina Principals and Assistant Principals' Association ("NCPAPA"); and other statewide, regional, and district programs. However, existing professional development programs operate on a small scale.⁷ The New Teacher Support Program, for example, supports fewer than 10% of beginning teachers, a much smaller proportion than the statewide mentoring program that reached all beginning teachers in the 1990s. [WestEd Report, pp. 15, 66]. Likewise, the effective Teaching Fellows program, which recruits and prepares talented individuals to teach in content areas and in geographic parts

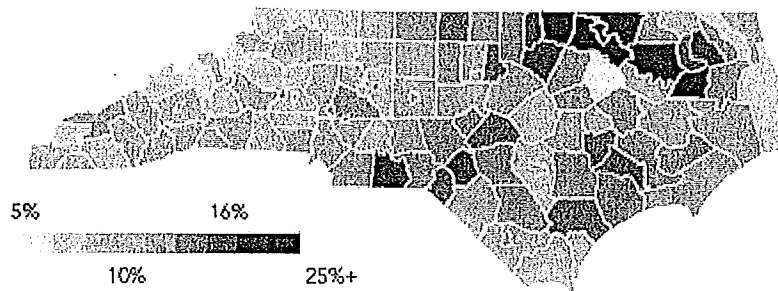
⁷ NCPAPA, not the NCDPI, has developed and delivers many of these professional learning opportunities. Since *Race to the Top* (RttT), North Carolina has not taken a leadership role in providing professional development to school administrators as the NCPAPA has. Researchers suggest that North Carolina would be wise to study its current priorities and better allocate resources, information, and models to give principals more access to high-quality professional development. [WestEd sub-report, *Attracting, preparing, supporting and retaining educational leaders in North Carolina* (Koehler, P., & Peterson, M. (2019)), pp. 15-16].

of the state in which there are shortages of qualified teachers, is operational again, but not as large as it once was. [WestEd Report, p. 56].

Access to effective, diverse, and experienced teachers is critical for students' academic success and well-being, especially for economically-disadvantaged students and students of color. [WestEd Report, pp. 59-60]

Recruiting and retaining qualified teachers in high-poverty schools is a significant challenge, with some of the rural districts losing more than 20% of their teachers in a single year.

Exhibit 5. Teacher turnover in K-12 traditional public schools, by district (2016-17)



13.5% State Average Teacher Turnover in 2016-17

Source: North Carolina Department of Public Instruction (2018c)

[WestEd Report, pp. 17-18, Exh. 5].

Teachers of color are an important resource, as recent research — much of it conducted in North Carolina — has found a positive impact of having a same-race teacher on the long-term education achievement and attainment of students of color, particularly for African American students [WestEd Report, p. 59 (*e.g.*, Dee, 2004; Gershenson, Hart, Lindsay, & Papageorge, 2017)]. North Carolina's current teacher workforce, however, has only about 20% teachers of color, although more than half of the state's students are students of color. [WestEd Report, p. 59]. Between 2011 and 2016, teacher education enrollments in minority-serving institutions, including historically black colleges and universities, declined by more than 60%. [WestEd Report, pp. 51-52].

There is an inequitable distribution of qualified teachers in North Carolina public schools. High-poverty schools have far more beginning teachers and far more lateral-entry teachers. [WestEd Report, pp. 18-19 (Exhibits 6-7)]. Teachers who are insufficiently prepared are more likely to leave teaching, and more of these teachers are hired into high-poverty schools, which most need a stable, experienced workforce. [WestEd Report, pp. 17-18]. This inequitable distribution negatively impacts students in high-poverty schools. [WestEd Report, p. 18]. High-poverty schools have nearly double the one-year teacher turnover rates of low-poverty schools [WestEd Report, p. 99]. The proportion of teachers in North Carolina who are not fully licensed has doubled since 2011, from 4% to 8%, and in high-poverty schools, as many as 20% of teachers are unlicensed. [WestEd Report, p. 47].

Access to, and the quality of, professional learning opportunities vary across schools and districts, and state-level efforts to support teacher growth and development are inadequate and inequitable. The once-extensive infrastructure and funding for professional learning in North Carolina has been greatly reduced. There has been a significant decrease in funding and support for professional learning for teachers over the last decade. This has resulted in a reduced capacity to provide adequate professional development for teachers in recent years, especially in low-wealth districts. Low-wealth districts especially have few resources to find substitute teachers so that teachers can attend any professional development sessions that are provided, and they have limited money to pay for teachers' time outside of school hours or for travel to conferences. [WestEd Report, p. 60].

The North Carolina educator workforce is highly committed and working diligently every day to meet the needs of at-risk children, even contributing their own resources whenever they can to fill needs. [WestEd Report, p. 168] Unfortunately, their effort and commitment is not enough to address the issue. In order to improve the quality of the teaching workforce, North Carolina must implement wide-scale infrastructure for professional learning at the State, district, and school levels. [WestEd Report, pp. 68-69].

Principal Quality and Supply

School leadership is the second most important factor influencing student learning, after teacher effectiveness. [WestEd Report, p. 70 (Leithwood, Seashore Louis, Anderson, & Wahlstrom, 2004)]. Since effective principals are critical for recruiting and retaining excellent teachers and ensuring they have supportive working conditions and opportunities for professional growth, the importance of the principal to students' success goes well beyond what is found in the statistical analyses. [WestEd Report, p. 70].

In 2018–19, North Carolina had 2,389 state-funded principal positions, 1,987 assistant principal positions, and 226 charter school principals, for a total of 4,602 school administrators [WestEd Report, p. 70 (North Carolina Department of Public Instruction, 2019a)].

While North Carolina has developed effective programs to recruit and retain effective principals, these programs are far too limited in scale. Consequently, many districts, especially low-wealth districts, lack meaningful resources to recruit and retain qualified and well-trained principals. [WestEd Report, pp. 72, 78].

There has been a significant reduction in the numbers of candidates entering principal preparation programs over the past decade; many schools are led by inexperienced principals with fewer than three years of experience; and the current principal compensation structure may be a disincentive to becoming a principal, particularly for becoming a principal in a low-performing school. In addition, changes to the context within which schools operate (*e.g.*, advances in technology, changes in the conditions and characteristics of children, and higher levels of accountability for student achievement) have increased demands on what principals need to know and be able to do. [WestEd Report, p. 72].

While North Carolina has adopted appropriate standards for principals (North Carolina Standards for School Executives) and evaluation procedures that reflect those standards, models

of high-quality pre-service training in the Northeast Leadership Academy (“NELA”) and Transforming Principal Preparation (“TPP”) programs, these programs need to be scaled to reach aspiring principals in *all* regions and schools of the State, especially those in high-poverty areas. [WestEd Report, pp. 78-80].

In North Carolina, principals of high-poverty schools, on average, do not have the longevity in their schools necessary to make sustainable changes. A survey of the state’s principals conducted by WestEd showed that 64% of respondents who are principals in high-poverty schools have been the principal in their current school for three or fewer years and only 5% have been in place for 11 or more years. Data from 2016 and 2017 show that about 30% of principals in the highest-poverty schools left their school each year, as compared with about 17% in other schools, resulting in many high-need schools having a new principal each year. [WestEd Report, pp. 70-71]

For principals to become more effective and grow in their profession, they need ongoing professional learning opportunities. Even the most effective administrator preparation programs cannot prepare principals for all the necessary knowledge typically obtained over time at different schools throughout their careers. [WestEd Report, p. 79 (Matlach, 2015)]. Ensuring that principals have access to job-embedded, ongoing, and customized professional development and coaching can increase their competence and improve retention. [WestEd Report, p. 79 (Goldring & Taie, 2014)].

The need for effective leaders is especially important in persistently low-performing schools and high-poverty schools. Compared with other schools, these schools tend to have less-prepared and less-experienced teachers, much higher teacher turnover rates, students with additional needs, and fewer resources while also being faced with pressure to show increased student growth and proficiency each year. Research indicates that only with strong, talented leadership are these schools able to make the fundamental shifts in practice needed to increase positive outcomes for all students. [WestEd Report, p. 70 (Grissom, 2011)].

Resources and School Funding

North Carolina does not presently provide adequate resources and funding to ensure that all students, especially those at-risk, have the opportunity to receive a sound basic education. [WestEd Report, p. 41]. There is inadequate funding to meet student needs, especially among economically-disadvantaged students and students in high-poverty schools. [WestEd Report, pp. 35-49].

Educating today’s students to meet high standards and to be successful in this century requires new investments in, among other things, infrastructure, instructional tools, technology, and the educator workforce. [WestEd Report, p. 20].

In the last two decades, North Carolina’s public school student population has grown by approximately 25% overall, and the number of children with higher needs, who require additional supports to meet high standards, has increased significantly. [WestEd Report, p. 20].

The number of economically-disadvantaged students (those eligible for free or reduced-price lunch programs) in public schools has grown from 470,316 in 2000–01 to 885,934 in 2015–

16, an 88% increase over 15 years. [WestEd Report, p. 20]. The increase of economically-disadvantaged students by more than 400,000 is the result of the overall growth in the student population, combined with the significant increase in the proportion of students who are economically disadvantaged, from 39% in 2000–01 to 57% in 2015–16. [WestEd Report, p. 20 (National Center for Education Statistics, 2018)].

The proportion of economically disadvantaged students is especially high in many of the economically-distressed rural districts, followed by urban districts. The high per-pupil costs associated with serving high concentrations of economically disadvantaged students affects a substantial proportion of North Carolina schools; approximately 31% of schools in the State are serving student populations in which more than 90% of students are economically disadvantaged. [WestEd Report, p. 36].

State funding for education has not kept pace with this growth, and the State does not currently provide adequate resources to ensure that all students have the opportunity to obtain a sound basic education. As of fiscal year (FY) 2017, the most recent year for which national rankings are available, North Carolina’s per-pupil spending was the sixth lowest in the nation (U.S. Census Bureau, 2019). When adjusted to 2018 dollars, per-pupil spending in North Carolina has declined about 6% since 2009–10. [WestEd Report, pp. 21, 35].

Compared with the nationwide average and with neighboring states, North Carolina’s public education system receives a significantly higher proportion of its funding from state-level appropriations. [WestEd Report, p. 34 (Ex. 22)]. Consequently, the State plays the most critical role in determining the level and distribution of funding for K–12 education, and the State must implement the funding structures that attend to adequacy, equity, and alignment.

Exhibit 22 (WestEd Report): Public Education Funding by Source, FY 2016

	Federal	State	Local
North Carolina	12%	62%	26%
South Carolina	10%	48%	43%
Tennessee	12%	46%	42%
Georgia	10%	46%	45%
U.S. Average	8%	47%	45%

[WestEd Report, p. 34].

In North Carolina, the need – and opportunity – to address inequity is particularly significant because the State has an above-average proportion of high-need students. As of fiscal year (FY) 2017, the most recent year for which national data are available, 53.1% of North Carolina’s enrolled K–12 students were eligible for free lunch, which is a federal definition for the most economically-disadvantaged student population. Compared with other states with reportable data, North Carolina has the ninth-highest proportion of this student population in the country. [WestEd Study, “*A Study of Cost Adequacy, Distribution, and Alignment of Funding for North Carolina K-12 Public Education System*” (Willis, J., Krausen, K., Berg-Jacobson, A., Taylor, L., Caparas, R., Lewis, R., & Jaquet, K. (2019) (“WestEd Cost Study”)), p. 5]. Moreover, these students are frequently, though not always, concentrated in communities with less ability to

provide local supplemental funding. [WestEd Cost Study (citing Public School Forum of North Carolina, 2018)]. Even in better resourced and urban districts these students are also concentrated in high poverty schools, and face the same challenges.

Higher levels of funding are required to meet the needs of at-risk student populations, including English learners, economically-disadvantaged students, and exceptional children. Many school districts, including many rural districts, lack the funding necessary to meet the educational needs of historically underserved student populations and economically-disadvantaged students. [WestEd Report, pp. 35-49].

Lack of spending flexibility at the district level is an obstacle to aligning funding with student needs. Restrictions on the allowable uses of allotments, including new restrictions around the Classroom Teacher allotment, hamper districts' ability to align funding to student needs. When funds are restricted to a particular use and cannot be transferred, it restricts district leaders' ability to make decisions about how to allocate resources to make the greatest impact on student outcomes given their local circumstances. [WestEd Report, pp. 40, 187].

For example, recent legislated restrictions on the transfer of funds from the Classroom Teacher allotment presented a particularly significant challenge, reducing districts' funding flexibility, creating inequities, and reducing some districts' overall funding. Prior to the 2012–13 school year, districts could transfer Classroom Teacher allotment funds to another area at the statewide average teacher salary level. Now, districts can only transfer these funds at a starting teacher salary level, rather than the average salary level. [WestEd Report, p. 40].

Over the past two decades the number of students enrolled in charter schools in North Carolina has increased, similar to the rate of growth in charter enrollment nationally. [WestEd Cost Study, p. 8 (citing National Center for Education Statistics, 2018)]. When a student exits a traditional public school district to enroll in a charter school, the per-pupil funding follows the student, which district financial officers identify as an administrative burden that obstructs districts' budget forecasting and planning processes. The proportion of North Carolina public school students attending charter schools has risen from 0.3% in FY 1998 to 6.6% in FY 2018.⁸ [WestEd Cost Study, p. 8].

⁸ Data indicate that the growth of charter school enrollment impacts where and how the State's public schools serve high-need students. WestEd found that in 2016–17, 807 (33%) of the state's traditional public schools and 36 (21%) of the state's charter schools qualified as high-poverty schools, with 389,204 (26%) of traditional public school students and 15,301 (17%) of charter school students attending these schools. Using the same data, WestEd also found that only 162 (7%) of traditional public schools in North Carolina were low-poverty schools — defined as having less than 25% of their students being economically disadvantaged — with 10% (147,901) of the state's traditional public school students attending these schools. Thus, a much higher percentage of charter schools, 46% (77 schools), qualify as low poverty, with 55% (51,073) of charter school students attending these schools. [WestEd Report, p. 96]. Recent data from the Department of Public Instruction indicate that high-need students (i.e., students receiving free and reduced price lunch, English language learners, and students with disabilities) are less-concentrated in North Carolina charter schools than in traditional public schools:

Charter schools are exempt from the state's allotment system requirements and are afforded a great deal of financial and educational flexibility. For example, each charter school receives a single allotment of flexible funds, is not required to use statewide salary schedules to determine staff compensation, and is not subject to the class size maximums for grades K–3 [WestEd Cost Study, p. 8].

Assessment and Accountability System

North Carolina continues to revise its core curriculum standards and assessments several times. The State updated the mathematics standards prior to the 2005–06 school year and the English language arts standards prior to 2007–08 and then updated both again for 2013–14. Each of these updates aimed to make the standards more rigorous, to reflect what is required to prepare students for success in the increasingly technological and complex society, and to make North Carolina's standards more comparable with those of other states and countries whose students perform well on national and international assessments. As a result, the bar for meeting proficiency has been raised in ways that are necessary and appropriate, but that also increase the challenges for schools in preparing students to achieve proficiency. [WestEd Report, p. 17].

While the State has adopted more rigorous standards, there has not been adequate State investment in, and leadership for, implementing the standards and providing the professional learning, instructional materials, and other supports needed to change practice in schools and classrooms. [WestEd Report, p. 17].

Charter School Student Demographics
2017-2018 School Year

	Charter Schools		Traditional Public Schools		All	
Category	Count	Percentage	Count	Percentage	Count	Percentage
Total White	55,401	54.9%	686,652	47.9%	742,053	48.4%
Total Black	26,349	26.1%	361,746	25.2%	388,095	25.3%
Total Hispanic	10,040	9.9%	256,848	17.9%	266,888	17.4%
Other	9,196	9.1%	128,000	8.9%	137,196	8.9%
Male	50,443	50.0%	736,972	51.4%	787,415	51.3%
Female	50,543	50.0%	696,274	48.6%	746,817	48.7%
Total Enrollment	100,986	100.0%	1,433,246	100.0%	1,534,232	100.0%

	Charter		LEA		Charter + LEA	
Category	Count	Percentage	Count	Percentage	Count	Percentage
FRPL	28,199	33.2%	841,089	59.4%	869,288	57.3%
ELL	3,607	3.6%	112,575	7.9%	116,182	7.6%
SWD	10,154	10.3%	173,102	12.2%	183,256	12.0%

*FRPL: Free and Reduced-Price Lunch

*ELL: English Language Learners

*SWD: Students with Disabilities

Charter Schools Annual Report to the North Carolina General Assembly, at 4 (February 15, 2019), <https://legislative.ncpublicschools.gov/legislative-reports/charterschoolsannualreport2019.pdf/view>; see also WestEd Report, p. 96.

The student achievement goals in North Carolina's approved plan under the federal Every Student Succeeds Act provide further reason for concern. As shown in Exhibit 21 to WestEd's report, this plan sets goals for the year 2027 in reading and math for grade 3–8 students and for high school students on the state's EOG and EOC tests. Even if these goals are met, which would require an ambitious average annual increase of 2% to 3% in the number of students proficient in each area, more than one third of grade 3–8 students and more than one fourth of high school students would remain below proficient in reading, and more than one fourth of students from grade 3 through high school would remain below proficient in mathematics. That is, even if the ESSA plan's goals for 2027 are all met, North Carolina would continue to leave far too many students behind and would still be far from achieving success for every student. [WestEd Report, pp. 30-31].

The State's accountability system presently does not address all measures necessary to measure Defendants' progress toward providing all students with access to a sound basic education, even though North Carolina currently collects data that could be used for that purpose. [WestEd Report, pp. 119-23]. The State has developed high-quality data systems to track the progress of students; measure the effectiveness of teachers, schools, and districts; assess staffing and working conditions within schools; analyze the impact of programs and legislation; and identify needs that must be addressed. The data systems must be better updated and utilized to track indicators pertaining to the extent to which the state is meeting its requirement to provide every student with the opportunity to obtain a sound basic education. [WestEd Report, p. 16].

As presently configured, North Carolina's data system does not produce consolidated reports that would inform the evaluation and continuous improvement of educational programs. Revisions to the accountability systems are necessary to provide more robust information to educators, parents, policymakers, and others about the educational effectiveness of each school and about the learning and progress of individual children and of subgroups of children. [WestEd Report, p. 32]. Similarly, data presently available is not fully utilized to inform instructions in districts and in classrooms. NCDPI should provide stronger guidance and resources to LEAs on the use of data from the NC Check-Ins, end-of-year assessments, and the Education Value-Added Assessment System (EVAAS) to inform student and school improvement and close educational opportunity and achievement gaps. [WestEd Report, p. 111].

Low-Performing and High-Poverty Schools

High-poverty schools are those in which at least 75% of the students are economically disadvantaged. North Carolina has 807 high-poverty traditional public schools (33% of public schools) and 36 high-poverty charter schools (21% of charter schools), located in urban, rural, and suburban communities and in every region in the state. These schools serve higher proportions than other schools of students with additional risk factors, including students of color, students who have disabilities, and English learners. [WestEd Report, p. 128].

In 2016–17, 807 (33%) of the state's traditional public schools and 36 (21%) of the state's charter schools qualified as high-poverty schools, with 389,204 (26%) of traditional public school students and 15,301 (17%) of charter school students attending these schools. [WestEd Report, p. 96].

In contrast, only 162 (7%) of traditional public schools in North Carolina were low-poverty schools — defined as having less than 25% of their students being economically disadvantaged — with 10% (147,901) of the state’s traditional public school students attending these schools. A much higher percentage of charter schools, 46% (77 schools), qualify as low poverty, with 55% (51,073) of charter school students attending these schools. [WestEd Report, p. 96].

The highest poverty rates are among African American, Hispanic, and American Indian families, and larger percentages of students of color attend high-poverty schools. Across all traditional public schools, enrollment is 52% students of color; in high-poverty schools, enrollment is 77% students of color. In charter schools overall, enrollment is 44% students of color; in high-poverty charter schools, enrollment is 93% students of color. A total of 567 (70%) of the state’s high-poverty traditional public schools enroll 75% or more students of color; 694 (86%) enroll at least 50% students of color. [WestEd Report, p. 97].

Data shows that students attending HPSs in North Carolina are far less likely to receive a sound basic education. These schools serve disproportionate numbers of students with other academic risk factors, including students who have parents with low education levels, who have limited proficiency in English, who are members of a racial or ethnic minority group, and who have families headed by a single parent. [WestEd Report, p. 97].

Students in high-poverty schools have significantly less access to career and technical education courses, participation in online virtual learning, and participation in sports, music, theater, academic competitions, community service, business internships, and other activities. [WestEd Report, pp. 100-01].

North Carolina’s high-poverty schools have fewer fully licensed teachers, fewer teachers with advanced degrees, and fewer teachers with National Board of Professional Teaching Standards certification. High-poverty schools have more lateral-entry teachers and more early-career teachers (teachers without certification and with fewer than three years of experience, respectively), who have been shown, on average, to be less effective in improving student achievement than teachers with more preparation and experience. These schools also have much higher rates of teacher and principal turnover than other schools, and the constant influx of new teachers contributes to the challenges of improving these schools. In addition, the principals in high-poverty schools tend to be less-experienced school leaders, and the principal turnover rate is higher than that of other schools. [WestEd Report, p. 130].

Policies related to charter schools and opportunity scholarships contribute to the effects of cumulative disadvantage in high-poverty schools because these policies attract more-advantaged students and fewer students with disabilities to charter schools than those left behind. [WestEd Report, p. 254 (North Carolina Department of Public Instruction, 2018)]. Students enrolling in charters take with them the average cost per student in the district where the charter is located, but the loss of a student to a charter does not diminish districts’ and schools’ fixed costs, such as costs related to buildings and transportation. In effect, charter schools can reduce the amount of funds available to HPSs through a loss of per-pupil allocations and district expenses for their operations.

Early Childhood Learning and PreK

Judge Manning noted in his October 25, 2000 Order that “. . . the most common sense and practical approach to the problem of providing at-risk children with an equal opportunity to obtain a sound basic education is for them to begin their opportunity to receive that education earlier than age (5) five so that those children can reach the end of third grade able to read, do math, or achieve academic performance at or above grade level . . .” *Hoke Cty. Bd. Educ. v. State*, No. 95 CVS 1158 (Oct. 25, 2000). Too many children in North Carolina are not reaching the end of third grade able to read or do math at grade level and there are vast differences in outcomes between racial and socioeconomic groups. A robust early learning continuum from birth through third grade supports the academic, social-emotional, and physical development essential to the State’s obligation to provide a sound basic education.

Recent efforts by the State Defendants are encouraging. In 2017, the North Carolina General Assembly affirmed the importance of this early learning continuum by establishing a B-3 Interagency Council that “. . . shall have as its charge establishing a vision and accountability for a birth through grade three system of early education . . .” [Session Law 2017-57, N.C. Gen. Statute § 116C-64.25]. In August 2018, Governor Cooper, through Executive Order 49, directed the Department of Health and Human Services and the Early Childhood Advisory Council to develop an Early Childhood Action Plan. The plan, released in February 2019, provides goals, measures, and strategies to improve outcomes for children from birth through third grade.⁹ In March 2019, the State Board endorsed the Early Childhood Action Plan.

The Early Childhood Action Plan includes many components, including goals that by 2025, all North Carolina young children from birth to age eight will be:

1. Healthy: Children are healthy at birth and thrive in environments that support their optimal health and well-being.
2. Safe and Nurtured: Children grow confident, resilient, and independent in safe, stable, and nurturing families, schools, and communities.
3. Learning and Ready to Succeed: Children experience the conditions they need to build strong brain architecture and skills that support their success in school and life.

NC Early Childhood Action Plan, p.10.

Moreover, a high-quality early foundation for learning is critical for later success in school and beyond and can significantly improve life outcomes for children from low-income families. [WestEd Report, p. 87]. Early childhood programs, including Head Start, Smart Start, NC Pre-K, childcare programs and subsidies for low-income families, and services for preschool children who have disabilities, support families in preparing young at-risk children to be ready to begin formal schooling successfully when they enter kindergarten. [WestEd Report, p. 15].

All the record evidence supports the conclusion that high-quality preschool can improve child health in three ways:

⁹ North Carolina Early Childhood Action Plan, available at <https://files.nc.gov/ncdhhs/ECAP-Report-FINAL-WEB-f.pdf>.

1. High-quality preschool can directly improve children's physical and mental health through the establishment of such positive habits as eating heart-healthy foods, having balanced diets, and exercising through active play.
2. High-quality preschool has positive effects on parents, including on their mental health, their parenting skills, and their health knowledge.
3. High-quality preschool can significantly improve children's socio-emotional skills and cognitive skills in the short term, particularly for low-income and dual-language children, which can lead to improved health as adults.

[WestEd Report, pp. 236-37 (summarizing studies and data)].

Not only does high-quality preschool improve child health, it results in long-term financial benefits. [WestEd Report, p. 237]. The research studies that follow children through adolescence demonstrate that preschool participation can positively impact grade retention and special education placement, which not only benefit children, but also can produce cost savings for schools. [*Id.* at 237]. In addition, skill development at an early age is critical. [*Id.*, citing Heckman, Pinto, & Savelyev, 2013]. Children who enter school without the skills learned in early education settings get tracked into lower-quality classes and skills and may receive fewer learning resources, contributing to their falling further behind. [*Id.*, citing Belfield, 2019].

Further, preschool participation generates cost savings for society as a whole due to increased graduation rates and educational attainment. [WestEd Report, p. 237 (Meloy, Gardner, & Darling-Hammond, 2019)]. Economic studies conducted over the past 12 years find that the economic benefits of investing in early childhood education are at least double the economic costs. [*Id.*, citing Barnett & Masse, 2007; Karoly, 2016]. Results from these studies have shown specifically that providing early childhood education for disadvantaged students has even higher economic returns than doing so for the general population. [WestEd Report, p. 237].

High-quality pre-kindergarten programs have a sustainable positive impact on learning and can close the learning gaps among young children from economically advantaged and disadvantaged backgrounds.

The NC Early Action Plan echoes elements of Judge Manning's October 2000 Order and seeks to address many of the challenges WestEd identified in its research regarding early learning and PreK. By adopting the Early Childhood Action Plan, the State and the State Board of Education have acknowledged and admitted the centrality of services for children from birth through age eight for the provision of the *Leandro* mandate and the opportunity for a sound basic education as children progress through the state's public education system.

Indeed, the State Defendants have explicitly recognized that:

The first years of a child's life are a critical period. During this time, children undergo tremendous brain growth that impacts multiple areas of cognitive, physical, social, emotional, and behavioral development. This brain growth and development is significantly impacted by the interplay between children's relationships with the people and environments around them. Early positive relationships with caring adults allow children to feel safe to explore and interact

with their surrounding world and can have a lasting impact – positive or negative – on later outcomes in school and life. Early experiences in a child’s life can impact brain structure and development down to the cellular level. As a child’s brain architecture is being built in those early years, positive experience support healthy growth and development, while Adverse Childhood Experiences (ACES), such as experiences of abuse and neglect, can have a detrimental long-term impact.

NC Early Action Plan, p. 4 (citations omitted). Further, the State Defendants recognize the value of early childhood interventions to improve outcomes. See *id.* (noting that investments in early childhood programs and interventions “produce long-lasting impacts,” result in a \$2 to \$4 return for every \$1 invested, and improve academic scores).

However, access to early childhood education remains out of reach for many low-income families in North Carolina. There is a shortage of available Pre-K slots across North Carolina, and only about half of eligible children are served. [WestEd Report, p. 89].

Two statewide early childhood education programs, NC Pre-K and Smart Start, provide high-quality programs that have been shown to have a strong positive impact on participating children’s readiness for and future success in school. [WestEd Report, p. 87].

NC Pre-K is the state’s pre-kindergarten program that serves 4-year-olds, primarily from low-income families. This state-supported part-day program currently enrolls just over 29,500 children during the traditional school year in a mixed-delivery system of public schools, private centers, and Head Start centers. The NC Pre-K program has consistently had high standards, a strong record of quality, and extensive evidence of effectiveness. It has been found to have produced both short- and long-term benefits through grade 8. [WestEd Report, p. 88].

There is a shortage, however, of available Pre-K slots across North Carolina, and only about half of eligible children are served. Approximately 25 out of North Carolina’s 100 counties are reaching the target participation rate of 75% or more of eligible children in their county. The limited participation is most severe for children from low-income families and for students of color. This pattern in lack of participation holds in both urban and rural areas; however, rural counties have the most inconsistency regarding percentage of eligible children served by NC Pre-K compared with urban or suburban counties. [WestEd Report, p. 89].

Access to the high-quality early childhood education programs in the state varies dramatically, with lower-wealth counties lacking an adequate supply of high-quality early childhood programs. Based on estimates of the total number of children eligible for NC Pre-K, the unmet need is almost 33,000 children per year across North Carolina. [WestEd Report, p. 89].

There are funding barriers to the expansion of high-quality early childhood education that need to be addressed. [WestEd Report, p. 89-90]. The overriding, systemic barrier to expanding NC Pre-K is that revenues and other resources available to NC Pre-K providers are too often inadequate to cover the costs of expansion. [WestEd Report, pp. 89-90].

Lower-resourced counties need greater support to expand early childhood services, beyond just funding. Despite state attempts to expand financial support for NC Pre-K in the 2017–2019 budget, 44 out of 100 counties declined the NC Pre-K expansion funding. Specifically, 17 counties declined expansion funds in both 2017 and 2018 that are also not meeting the target of 75% of

eligible children enrolled in the county. [WestEd Report, pp. 89-90]. A number of barriers slowed or prevented expansion of early childhood services in lower wealth counties, including: (i) obtaining the necessary number of qualified teachers to fill teaching slots, (ii) having access to eligible/high-quality private programs to meet the need, (iii) having the ability to meet local funding match requirements, and (iv) providing transportation to enable families and program staff to get to centers. [WestEd Report, p. 89-90]

The State only covers about 60% of the cost for an NC Pre-K slot, leaving individual counties to cover the remaining 40%. The State's current NC Pre-K contribution is \$5,200 per child. The North Carolina Pre-Kindergarten Cost Study conducted by North Carolina State University found that the average cost per child for those already in the program is approximately \$9,100. [WestEd Report, p. 89].

Smart Start is a network of 75 nonprofit agencies that offer a "one-stop shop" of coordination for early education services for families with children from birth to age 5 – including parenting classes, child care program consulting, and case management or referral services for families – as well as ensuring early childhood programs are high-quality, child-focused, and family friendly. Research studies have found that children who participated in Smart Start-supported programs entered elementary school with better math and language skills, as well as fewer with behavioral problems compared with their peers. Both Smart Start and NC Pre-K programs have been found to significantly reduce the likelihood of special education placement in third grade. [WestEd Report, p. 88].

As of 2017–18, the Smart Start program supports 1,974 centers serving approximately 79,292 children and their families. The program was designed to meet 25% of the defined need for children aged 0-5. In 2018–19, Smart Start local partnerships spent \$147 million to meet approximately just 5% of the defined need in early childhood learning. Smart Start is a significant funding source for NC Pre-K. Income-eligible families receive a child care subsidy, an average payment of about \$6,200 a year. [WestEd Report, p. 88].

In 2011, the state legislature imposed a 20% budget cut on Smart Start, bringing the annual funding levels to less than \$150 million, which is the lowest amount of funding for the program since the 1998 fiscal year. [WestEd Report, p. 89].

In addition, the volume and quality of the early childhood educator pipeline in North Carolina is insufficient. As of 2015, 64% of lead child care teachers in North Carolina did not have an associate's or bachelor's degree in early childhood education. In fact, 38% of lead child care teachers did not have an associate's or bachelor's degree at all. [WestEd Report, p. 90].

Most early childhood education services in North Carolina have limited education requirements for teachers; however, NC Pre-K has been shown to have the most stringent policies related to teacher qualification. [WestEd Report, p. 90]. Turnover in the early childhood workforce is quite high. [WestEd Report, p. 91].

Elementary school environments are often not equipped to support the developmental transition of young children into K–12 environments, including through appropriate and proportional staffing of school support staff such as nurses, social workers, and counselors. Better alignment is needed between the early childhood programs and the schools that children from these programs will attend. [WestEd Report, p. 91].

Alignment and Preparation for Post-Secondary Opportunities

Systemic efforts at all levels of the education system are necessary to create the conditions for all of North Carolina's students to achieve a sound basic education, which includes preparation for some level of post-secondary success. Likewise, the State's goal and obligation to provide all students with a sound basic education that prepares them for future success necessitates a systemic approach to education improvement.

The recent call to action issued by the MYFUTURENC COMMISSION (2019) further highlights the ways that the State's talent supply is not keeping pace with current changes in the job market. For example, the State has experienced significant declines in blue collar work and an increased need for employees to fill skilled-service jobs. However, the State is not producing sufficient talent with the technical skills and education to fill these skilled roles. Further, educational opportunities are not equitably distributed across the State, as far fewer students from more economically-disadvantaged backgrounds are earning postsecondary credentials than are their more economically-advantaged peers. [WestEd Report, p. 12 (myFutureNC Commission, 2019)]. The commission's ambitious goal, to enable two million 25- through 44-year-olds to obtain a high-quality postsecondary credential or degree by 2030, will not be possible without systemic efforts at all levels of the public education system. Likewise, the State's goal and obligation to provide all students with a sound basic education that prepares them for future success also necessitates a systemic approach to education improvement. [WestEd Report, p. 12].

The State established 125 Early College High Schools and other Cooperative Innovative High Schools that provide small schools on college campuses that enable students to complete high school and earn college credits, with no tuition or other costs. [WestEd Report, p. 16].

The Career and College Promise legislation enables high school students throughout North Carolina to attend college courses and obtain both high school and college credits, with the state providing funding for college tuition. [WestEd Report, p. 16].

This program is widely used: In 2016–17, 61% of high school students earned college credit prior to their high school graduation, with 86% earning a grade of C or higher. [WestEd Report, p. 101 (Coltrane & Eads, 2018)]. However, barriers exist that prevent some students participating in and benefiting from the program. Many economically-disadvantaged students cannot afford the cost of college textbooks, lab fees, and other college fees, and they also struggle to find transportation to and from the college. In addition, high school schedules are often not aligned with schedules at the local community college. Misaligned schedules present barriers for students who must work after school and for those who depend on school busing for transportation and on food lunch programs for meals. [WestEd Report, p. 101].

Career and technical education (CTE) programs provide many high school students with professional skills and credentials that lead to opportunities in the workplace. [WestEd Report, p. 16]. Unfortunately, many students across North Carolina, especially those at-risk, are not prepared for postsecondary success. [WestEd Report, pp. 21-30].

It is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

A. The findings and conclusions set forth herein are hereby entered by this Court and incorporated into the record of this case;

B. The time has come for the State Defendants to work expeditiously and without delay to take all necessary actions to create and fully implement the following:

1. A system of teacher development and recruitment that ensures each classroom is staffed with a high-quality teacher who is supported with early and ongoing professional learning and provided competitive pay;
2. A system of principal development and recruitment that ensures each school is led by a high-quality principal who is supported with early and ongoing professional learning and provided competitive pay;
3. A finance system that provides adequate, equitable, and predictable funding to school districts and, importantly, adequate resources to address the needs of all North Carolina schools and students, especially at-risk students as defined by the *Leandro* decisions;
4. An assessment and accountability system that reliably assesses multiple measures of student performance against the *Leandro* standard and provides accountability consistent with the *Leandro* standard;
5. An assistance and turnaround function that provides necessary support to low-performing schools and districts;
6. A system of early education that provides access to high-quality prekindergarten and other early childhood learning opportunities to ensure that all students at-risk of educational failure, regardless of where they live in the State, enter kindergarten on track for school success; and
7. An alignment of high school to postsecondary and career expectations, as well as the provision of early postsecondary and workforce learning opportunities, to ensure student readiness to all students in the State.

C. To keep the Court fully informed as to the remedial progress, the Parties are hereby ordered to submit a status report to the Court (a joint report if all Parties agree, and individual reports if the Parties do not) no later than 60 days from the date of this Order setting out the following:

1. Specific actions that the State Defendants must implement in 2020 to begin to address the issues identified by WestEd and described herein and the seven components set forth above;

2. A date by which the State Defendants, in consultation with each other and the Plaintiffs, will submit to the Court additional, mid-range actions that should be implemented, including specific actions that must be taken, a timeframe for implementation, and an estimate of resources in addition to current funding, if any, necessary to complete those actions.
3. A date by which the State Defendants, in consultation with each other and the Plaintiffs, will submit to the Court a comprehensive remedial plan ("the Plan") to provide all public school children the opportunity for a sound basic education, including specific long-term actions that must be taken, a timeframe for implementation, an estimate of resources in addition to current funding, if any, necessary to complete those actions, and a proposal for monitoring implementation and assessing the outcomes of the plan.

D. The State Defendants shall identify the State actors and institutions responsible for implementing specific actions and components of the proposed Plan.

E. The Parties may consult with WestEd and each other in the development of the short and longer-term remedial measures, as may be needed.

F. This Order may not be modified except by further Order of this Court.

G. The Court retains jurisdiction over this matter and the Parties.

This the 21st day of January, 2020


The Honorable W. David Lee
North Carolina Superior Court Judge