

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

HOKE COUNTY BOARD OF)
EDUCATION; et al.,)

Plaintiffs,)

and)

CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)

Plaintiff-Intervenor,)

and)

RAFAEL PENN, et al.,)

Plaintiff-Intervenors,)

v.)

STATE OF NORTH CAROLINA and)
the STATE BOARD OF EDUCATION,)

Defendants,)

and)

CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)

Realigned Defendant,)

and)

PHILIP E. BERGER, in his official)
capacity as President *Pro Tempore* of)
the North Carolina Senate, and)

**BUSINESS COURT
RULE 14.3 REPORT**

TIMOTHY K. MOORE, in his official)
capacity as Speaker of the North)
Carolina House of Representatives,)
)
Intervenor-Defendants.)
)

Pursuant to the North Carolina Supreme Court’s Opinion (*Hoke County Bd. of Educ., v. State*, 2022-NCSC-108, 879 S.E. 2d 193, No. 425A21-2) (ECF No. 56) (“Opinion”), as certified to this Court on 28 November 2022 (ECF No. 55), and Rule 14.3 of the North Carolina Business Court Rules, the Parties respectfully file this report for the purpose of informing the Court that they have conferred about the case-management issue upon remand and propose a schedule for the action this Court was ordered to take on remand as follows:

1. The Supreme Court’s Opinion of 4 November 2022 vacated in part and reversed in part this Court’s April 2022 Order and affirmed and reinstated this Court’s “10 November 2021 Order’s directive instructing certain State officials to transfer the funds necessary to comply with Years 2 and 3 of the State’s Comprehensive Remedial Plan.” (ECF No. 56 ¶ 7).

2. The Supreme Court remanded the case “to the trial court for the narrow purpose of recalculating the amount of funds to be transferred in light of the State’s 2022 Budget,” and “[o]nce those calculations have been made,” this Court is to “order [certain] State officials to transfer those funds to the specified State agencies.” (*Id.*) The Court further directed the trial court “to

retain jurisdiction over this matter to ensure implementation of this order and to monitor continued constitutional compliance. (*Id.* at ¶ 240).

3. On 28 November 2022 the Supreme Court issued its mandate . (ECF No. 55).

4. Business Court Rule 14.3 provides as follows:

14.3 Procedures on remand. If an appellate court orders that a case on appeal be remanded to the Court for further proceedings, then—unless the Court instructs otherwise—the parties must confer within fifteen days of the issuance of the mandate pursuant to Rule 32 of the North Carolina Rules of Appellate Procedure about the case-management issues that apply to the proceedings upon remand. The parties must submit a report to the Court within ten days of the meeting that proposes a case-management structure for the proceedings.

5. Pursuant to Rule 14.3, the Parties have conferred and agree to the following schedule:

- That, on or before 19 December 2022, Defendant State of North Carolina shall file with the Court an accounting showing the recalculations, if any, of the amount of funds to be transferred in light of the State's 2022 Budget.
- That, on or before 20 January 2023, Plaintiff Parties and any other party shall respond.

6. The State Controller indicated in writing that he opposes the proposed schedule. The Controller's stated objection provided to Plaintiffs by email is that additional procedures are needed to assure an accurate and responsible handling of any money which the Controller authorizes. Due to the need for those additional procedures, the Controller believes it is premature to determine a scheduling order for the proceedings on remand. Counsel for the Controller indicated he would make a subsequent filing to address these issues and requested his position be reported to the Court.

7. Intervenor-Defendants reserve the right to seek leave of Court to submit a reply.

WHEREFORE, the Parties respectfully request entry of a scheduling order as set forth herein.

This the 12th day of December, 2022.

/s/ Melanie Black Dubis

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the NC Business Court which will automatically send notification of same to the following:

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This 12th day of December, 2022.

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