

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

HOKE COUNTY BOARD OF
EDUCATION, et al.,

Plaintiffs,

and

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,

Plaintiff-Intervenor,

and

RAFAEL PENN, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and
the STATE BOARD OF EDUCATION,

Defendants,

and

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,

Realigned Defendant,

and

PHILIP E. BERGER, in his official
capacity as President Pro Tempore of
the North Carolina Senate, and
TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives,

Intervenor-Defendants.

**PENN-INTERVENORS'
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
REGARDING 2022 BUDGET
IMPACT ON COMPREHENSIVE
REMEDIAL PLAN**

On remand, the Supreme Court of North Carolina directed this Court, in part, to “recalculat[e] the amount of funds to be transferred in light of the State’s 2022 Budget.” *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 391, 879 S.E.2d 193, 199 (2022) (“*Leandro IV*” or “the Opinion”). Pursuant to this Court’s 17 March 2023 Order, Rafael Penn, *et al.*, (“Penn-Intervenors”) submit the following proposed findings of fact and conclusions of law responsive to that limited directive of the Supreme Court.

I. Findings of Fact¹

(a) Procedural Background

1. The Court’s present task is limited in scope. However, it is the product of, and relies upon, the extensive work and analysis that has come before. The Court articulated the extensive procedural history in this case in its 10 November 2021 Order (“November Order”).

2. On 15 March 2021, Defendants State of North Carolina and the State Board of Education (collectively, the “State”) submitted a Comprehensive Remedial Plan (“CRP”) that identified programs, policies, and resources required to address the ongoing constitutional violations identified by the Supreme Court in *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) (“*Leandro I*”), and *Hoke Cnty. Bd. Of Educ. v.*

¹ A findings of fact inadvertently labeled as a conclusions of law and vice versa shall be deemed as such as consistent with law. *See, e.g., Zimmerman v. Appalachian State Univ.*, 149 N.C. App. 121, 130–31, 560 S.E.2d 374, 380–81 (2002) (“To the extent that this finding of fact contains conclusions of law, we will consider those portions as such.”).

State, 358 N.C. 605, 599 S.E.2d 365 (2004) (“*Leandro II*”). See November Order at 6-7 (citing 15 March 2021 Comprehensive Remedial Plan).

3. In the Appendix to the CRP, the State identified the resources required to implement the specific action steps needed to provide North Carolina students with a sound basic education. *Id.* at 7.

4. The November Order held that the State had represented that “more than sufficient funds are available to execute the current needs of the [CRP].” *Id.* at 9. Despite that, as of the filing of the November Order, the State had not provided the requisite funds to implement the CRP. *Id.*

5. Accordingly, the November Order concluded that “[t]he State’s ability to meet this constitutional obligation is not in question” because “[t]he unappropriated funds in the State Treasury greatly exceed the funds needed to implement the [CRP].” *Id.* at 16.

6. The November Order thus required the Office of State Budget and Management and the State Budget Director, the Office of the State Controller and the State Controller, and the Office of the State Treasurer and the State Treasurer to take the necessary actions to transfer the funds needed to implement Years 2 and 3 of the CRP from the General Fund to the state agencies responsible for implementing the CRP, in the following amounts:

- a. Department of Health and Human Services (“DHHS”): \$189,800,000;
- b. Department of Public Instruction (“DPI”): \$1,522,053,000; and
- c. University of North Carolina System: \$41,300,000.

Id. at 19.

7. On 24 November 2021, the State Controller petitioned the North Carolina Court of Appeals for a Writ of Prohibition, Writ of Supersedeas, and a Temporary Stay of this Court's November Order. *In re: 10 November 2021 Order*, No. 21-511 (N.C. Ct. App. Nov. 24, 2021).

8. On 30 November 2021, the Court of Appeals granted the Writ of Prohibition. *In re: 10 November 2021 Order*, Order, No. 21-511 (N.C. Ct. App. Nov. 30, 2021).

9. On 7 December 2021, the State of North Carolina filed its notice of appeal to the North Carolina Court of Appeals.

10. Plaintiffs and Penn-Intervenors appealed the grant of the Writ of Prohibition by the Court of Appeals. Plf.-Intervenors' Petition for Writ of Certiorari, *Hoke Cnty. Bd. of Educ. et al. v. State*, No. P21-511 (N.C. Dec. 15, 2021); Plf.-Intervenors' Notice of Appeal and Pet. for Discretionary Review, *Hoke Cnty. Bd. of Educ. et al. v. State*, No. P21-511 (N.C. Dec. 15, 2021); Pls.' Notice of Appeal, Pet. for Discretionary Review and, Alternatively, Pet. for Writ of Certiorari, *Hoke Cnty. Bd. of Educ. et al. v. State*, No. P21-511 (N.C. Dec. 15, 2021).

11. On 14 February 2022, the State of North Carolina filed a Petition for Discretionary Review with the Supreme Court, pursuant to N.C.G.S. § 7A-31, to bypass the Court of Appeals' review of the November Order ("Bypass Petition."). Pet. for Discretionary Review Prior to a Determination by the N.C. Court of Appeals, *Hoke Cnty. Bd. of Educ. et al. v. State*, No. P21-511 (N.C. Feb. 14, 2022).

12. The Supreme Court granted the Bypass Petition on 18 March 2022. The same order granting the bypass petition remanded the case to this Court to determine what effect, if any, the enactment of the State Budget had on the nature and extent of relief granted in the November Order. 18 March 2022 Order, *Hoke Cnty. Bd. of Educ. et al. v. State*, No. 425A21-2 (N.C.).

13. On 26 April 2022, this Court issued an Order Following Remand (“April Order”), which revised the sums required to properly fund Years 2 and 3 of the CRP as follows:

- a. DHHS: \$142,900,000;
- b. DPI: \$608,006,248; and
- c. The University of North Carolina System: \$34,200,000.

April Order at 24–25.

14. On 4 November 2022, the North Carolina Supreme Court issued its decision in *Leandro IV*, 382 N.C. 386, 879 S.E.2d 193. The Opinion was certified to the Wake County Superior Court on 28 November 2022.

15. The *Leandro IV* opinion vacated in part and reversed in part the trial court’s April Order and affirmed and reinstated the November 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.” *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 198.

16. The Supreme Court remanded the case “to the trial court for the narrow purpose of recalculating the amount of funds to be transferred [for Years 2 and 3 of

the CRP] in light of the State’s 2022 Budget.” *Id.* at 391, 879 S.E.2d at 198–99. “Once those calculations have been made,” the Supreme Court instructed the trial court to: (1) “order those State officials to transfer those funds to the specified State agencies,” and (2) “retain jurisdiction over the parties to monitor State compliance with this order.” *Id.* at 391, 879 S.E.2d at 199; *see also id.* at 475–76, 879 S.E.2d at 249.

17. The Supreme Court explained that “our Constitution’s Declarations of Rights in neither aspirational nor advisory; it is a mandate.” *Id.* at 476, 879 S.E.2d at 249. As such, the Supreme Court was unequivocal in its directive that, “[u]ntil that mandate is fulfilled, the judiciary will stand ready to carry out its constitutional duties.” *Id.*

18. The parties agreed to a schedule for submissions relating to the Supreme Court’s remand to recalculate the funds to be transferred in light of the State’s 2022 Budget.

19. The State of North Carolina submitted its accounting on 19 December 2022.

20. Plaintiffs and Penn-Intervenors filed a response to the State’s accounting on 20 January 2023. Defendant-Intervenors filed their response on 15 March 2022.

21. The *Leandro IV* opinion stayed the Court of Appeals’ Writ of Prohibition. *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 199. However, on 3 March 2023, the Supreme Court temporarily lifted the stay of the Writ of Prohibition, pending resolution of motions filed by Controller Nels Roseland and Defendant-Intervenors.

(b) State Accounting

22. In the November Order, this Court determined that it would cost approximately \$1.75 billion to fund Years 2 and 3 of the CRP. November Order at 19.

23. On 19 December 2022, Chief Deputy Director of State Budget for the North Carolina Office of State Budget and Management Anca Elena Grozav filed an affidavit (herein, “Grozav Aff.”) explaining that her office “determined the overall funding requirements identified in the Comprehensive Remedial Plan for each action item.” State’s Notice of Filing, Grozav Aff. ¶ 6.

24. The Grozav Affidavit shows that the State Budget falls short of the required funds in the CRP. Specifically, the State Budget funds 63% of Year 2 and 60% of Year 3. Grozav Aff., Ex. 1 at 2.

25. According to the State’s calculations, the following amounts must be transferred from the General Fund to the following state agencies for CRP Years 2 and 3:

- a. DHHS: \$133,900,000;
- b. DPI: \$509,701,707; and
- c. University of North Carolina System: \$34,200,000.

Id.

(c) Objections Raised by Defendant-Intervenors

26. The Court has considered seven specific objections raised by Defendant-Intervenors to the State of North Carolina’s accounting. *See* Defendant-Intervenors’ Brief Responding to the Executive Branch’s Accounting at 13–14 (Mar. 15 2023); *Id.* at Tab 2, Second Trogdon Aff., Ex. A at 4–6 (hereinafter Trogdon Aff., Ex. A). The Court received testimony and argument on these action items on 17 March 2023. Each item is addressed below.

i. New Teacher Support Program

27. Under Section I.G.i of the CRP, the State is required to provide all teachers with fewer than three years of teaching experience evidence-based, comprehensive induction services. CRP at 14. To meet this goal, the CRP mandates that the Responsible Parties,² “[i]n partnership with school districts, provide comprehensive induction services through the NC New Teacher Support Program to beginning teachers in low-performing, high-poverty schools.” *Id.* § I.G.ii.1.

28. The cost of the program was \$2.2 million for FY 2021–22 and \$5 million for FY 2022-23. Grozav Aff., Ex. 4.

29. Defendant-Intervenors concede that the General Assembly allocated no funds for FY 2021-22. Trogdon Aff., Ex. A at 1.

30. Defendant State of North Carolina noted in its accounting that no funds were allocated for FY 2022-23. Grozav Aff., Ex. 4. Defendant-Intervenors counter that \$2 million was allocated from the Governor’s Emergency Education Relief Fund (“GEER”), following appropriations for the General Assembly for the GEER Fund under S.L. 2021-3 § 1.1. Trogdon Aff., Ex. A at 1.

31. The State of North Carolina asserts that its updated analysis submitted on 19 December 2022 reflected the impact of the 2022 Budget Act, not other appropriations made in the 2021 Budget Act and, thus, it had not included the \$2

² The “Responsible Parties” are identified for each entity responsible for developing and/or implementing the action item in the CRP. For this item, the Responsible Parties are: NC General Assembly, NC Office of the Governor, University of North Carolina, NC New Teacher Support Program, NC school districts. CRP at 14.

million GEER expenditure. 17 March 2023 Tr. at 60:22–61:18.³ Defendant-Intervenors concede that while this action item is a recurring budget item in the CRP, the \$2 million in federal funds is nonrecurring. Trogon Aff., Ex. A at 1 (Enacted Budget FY 2022-23). By Defendant-Intervenors’ own admission, this reduction in recurring funds would impact future funding in that only \$3 million would roll forward instead of \$5 million. *Id.*

32. Accordingly, the Court finds that the \$2,000,000 in non-recurring funds for Year 3 was not made from funds appropriated in the 2022 Budget, which is the subject of this Court’s inquiry, and is inconsistent with Section I.G.ii.1 of the CRP. The General Assembly will not receive credit for this action item.

ii. Educator Compensation Study

33. Under Section I.A.ii.2 of the CRP, the State is required to “[d]evelop a plan for implementing a licensure and compensation reform model designed to offer early, inclusive, clear pathways into the profession, reward excellence and advancement, and encourage retention.” CRP at 8.

34. The cost of the program is a non-recurring expenditure of \$50,000. Grozav Aff., Ex. 2 at 1.

35. Defendant-Intervenors refer to this as an “Educator Compensation Study.” According to Defendant-Intervenors, the General Assembly appropriated \$109,909 for an evaluation grant in S.L. 2021-180, for which a portion of the funds were to be used for an educator compensation study. Trogon Aff., Ex. A at 2; Tr. at 18:4–24.

³ Citations to the uncertified transcript (“Tr.”) refer to the volume for the 17 March 2023 proceedings unless otherwise noted.

36. Defendant State of North Carolina presented testimony showing that the \$109,909 was part of an appropriation through the 2021 Budget Act and, thus, did not include it in their 19 December 2022 accounting. Tr. at 61:19–62:15. Defendant State of North Carolina further stated that the funds were part of a broader appropriation for program evaluations, and not directly for educator compensation studies. *Id.*

37. A review of S.L. 2021-180, Section 23.1 discussing the appropriation of \$500,000 for “evidence- based grants” does not identify any specified funds for an educator compensation study.⁴ Instead, the 2021 Budget Act describes a broad, competitive grant application process. *Id.* And, according to the Office of State Budget and Management’s (“OSBM”) award announcement for NC Evaluation Fund grants, none of those awards supported an educator compensation study.⁵

38. Consequently, the Court finds that the \$50,000 in non-recurring funds for Year 2 remains outstanding for the educator compensation evaluation under Section I.A.ii.2 of the CRP. The General Assembly will not receive credit for this action item.

iii. Disadvantaged Student Supplemental Funding (“DSSF”)

39. Under Section III.B.ii.2 of the CRP, the State is required to “[c]ombine the DSSF and at-risk allotments and incrementally increase funding such that the

⁴ Current Operations Appropriations Act of 2021, S.L. 2021-180, § 23.1, S105v8.pdf, <https://www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S105v8.pdf>.

⁵ See Press Release, Off. of State Budget and Mgmt., NC Evaluation Fund Awards \$1 Million in Grants to State Agencies, OSBM (Oct. 17, 2022), <https://www.osbm.nc.gov/news/press-releases/2022/10/17/nc-evaluation-fund-awards-1-million-grants-state-agencies>.

combined allotment provides an equivalent supplemental weight of 0.4 on behalf of all economically-disadvantaged students. This action step requires incremental recurring increases in funding through fiscal year 2028.” CRP at 26.

40. The cost of this action item was \$35,000,000 in FY 2021-22 and \$70,000,000 in FY 2023. Grozav Aff., Ex. 2 at 1. The General Assembly failed to appropriate any funds in FY 2021-22 and the parties do not dispute such. *Compare id., with Trogdon Aff., Ex. A at 3.*

41. Defendant-Intervenors concede that the at-risk funding has not been combined with the DSSF allotment. Tr. at 28:17–24. They further agree that the basis for calculating the allotment for at-risk and DSSF is different. Tr. at 54:7–11. Indeed, they do not dispute that “the DSSF allotment is more progressive providing a higher share of funds to higher-need districts.” *Id.* at 54:12–20; *see also* CRP at 26. And they admit that while the CRP calls for a change in the formula with an increase to a “.4” weight for DSSF funding, the 2022 Budget Act did not modify the formula. Tr. at 31:22–32:13.

42. Nevertheless, Defendant-Intervenors ask that the Court credit \$26,068,720 for appropriations increasing at-risk funding in the 2022 Budget Act. Trogdon Aff., Ex. A at 3. This additional funding was based on the actual average salaries of school resource officers provided for each funded high school. *Id.*

43. The Court finds that the \$26 million appropriation toward at-risk funding is not compliant with the CRP. The CRP does not call for increased at-risk funding. While some of the funds could conceivably be used for DSSF needs, the CRP does not

allow the General Assembly authority to arbitrarily pick and choose how it will fund these needs and ignore key tenets of the CRP. That determination has already been made by the parties and the Court. Indeed, the fact that the CRP identifies DSSF funding as being *more progressive* in providing greater funds to *higher-need* districts indicates to the Court how and why such funding obligations cannot be skirted.

44. Accordingly, the Court will not credit Defendant-Intervenors \$26 million for Section III.B.ii.2 of the CRP.

iv. Principal and Assistant Principal Salaries

45. Under Section II.D of the CRP, the current principal compensation system “creates a disincentive for effective principals to work in underperforming schools” and makes “leading a small and low-performing school less attractive to aspiring principals.” CRP at 22. To counter these outcomes, Section II.D.ii of the CRP requires the State to “incrementally increase principal and assistant principal pay consistent with teacher salary increases.” *Id.*

46. The cost of the program for FY 2021-22 is \$19 million and for FY 2022-23 is \$29.7 million. *Grozav Aff.*, Ex. 2 at 2.

47. For FY 2021-22, the outstanding balance was \$10,049,187. *Id.* For FY 2022-23, the State of North Carolina shows a credit of \$24,735,945, leaving a balance of \$4,964,055.

48. Defendant-Intervenors assert that the State failed to account for the General Assembly’s appropriation of \$6,236,038 to support masters of school administration (“MSA”) interns in FY 2022-23 as part of the 2022 Appropriations Act for this CRP action item. *Trogon Aff.*, Ex. A at 3. Defendant-Intervenors posit that

interns under the MSA program could include assistant principals and that the additional money went to their “stipends or . . . in other words their salaries.” Tr. at 12:9–13. The State made clear that the stipend is a “one-time” allocation and is “not calculated as part of their annual salary.” *Id.* at 64:4–11.

49. In fact, the training stipend is limited to only those persons in the MSA course, does not go to principals, and is not a part of even an intern’s future compensation or permanent salary. *Id.* at 31:4, 43:11–14.

50. A review of this item under the 2022 Budget Act does not identify any specified funds intended to “incrementally increase principal and assistant principal pay consistent” as required under the CRP. *See* S.L. 2022-74 § 7A.6.(c).

51. Because the \$6,236,038 appropriation does not satisfy the State’s obligation under the CRP, the General Assembly will not receive credit for this action item.

v. District and Regional Support

52. According to Section V.A. of the CRP, “low-performing schools and districts are receiving significantly less support than they did up to 2015.” CRP at 36. Consequently, Section V.A.iii.1 of the CRP requires the State to implement the State Board of Education’s new District and Regional Support model to provide turnaround assistance to the “State’s chronically low-performing schools and low-performing districts.” CRP at 37.

53. The cost of the program for FY 2021-22 is \$10 million and for FY 2022-23 is \$19 million. Grozav Aff., Ex. 2 at 2.

54. For FY 2021-22, the outstanding balance was \$0. *Id.* For FY 2022-23, the State of North Carolina shows a payment of \$8 million, leaving a balance of \$11 million.

55. The General Assembly asserts that OSBM's calculation excludes a \$14 million appropriation intended to place a regional literacy and early learning specialist in every district across the state, regardless of performance. Trogon Aff., Ex. A at 5. However, the State of North Carolina purposefully did not include the \$14 million because "it was nonspecifically targeted to the chronically low-performing school districts." Tr. at 65:12–13. While rising tides may raise all boats, Tr. at 70:24–25, this action item of the CRP explicitly mandates targeted raises for the State's at-risk, disadvantaged, and lowest performing schools and districts. CRP at 36. Providing general support for all districts undermines the CRP provision requiring services for turnaround interventions. Indeed, allowing Defendant-Intervenors to recover a \$14 million credit where only a fraction of those costs could possibly reach students in the lowest performing schools and districts would only encourage further reckless policymaking. While the State may pursue such policies for other reasons, it will not receive credit against the CRP.

56. Because there is no appropriation for district and regional support specifically targeted to turning around chronically low-performing schools, the General Assembly will not receive credit for this action item.

vi. Review and Adoption of Core Curricular Resources

57. Under Section V.B.ii.1 of the CRP, the State is required to "[r]eview, update, and strengthen the state-level process for reviewing and adopting core curriculum

resources that are high quality, standards-aligned, and culturally-responsive.” CRP at 37.

58. The cost of this program had not been determined and has been listed as “TBD.” Trogon Aff., Ex. A at 3.

59. Defendant-Intervenors assert that the Court should credit \$260,000 for FY-2022-23 for this action item. Trogon Aff., Ex. A at 3. According to the Joint Conference Committee Report on the 2022 Budget Act, this amount is intended to provide funding for two new Education Program Consultant positions and associated operating costs to facilitate standards and curriculum development.⁶

60. Defendant-Intervenors conceded that there is no evidence before the Court of whether this funding is sufficient to carry out the action item. Tr. 65:17–66:9. While the Court will recognize the \$260,000 appropriation under this action item, the Court will still require the various State Defendants (including the General Assembly and the State of North Carolina) to present such evidence to the Court as soon as possible sufficient to show that the CRP obligation is fully satisfied.

61. However, because this amount was not previously included in the Court’s 26 April 2022 Order on Remand, the Court will not give a credit against the outstanding amount owed.

⁶ N.C. Gen. Assemb., H.B. 103, *J. Conf. Comm. Report on the Current Operations Appropriations Act of 2022* at B-18 (June 28, 2022), https://webservices.ncleg.gov/ViewNewsFile/61/JointConferenceCommitteeReport_2022_06_28_final.

vii. Additional cooperative and innovative high schools

62. Under Section VII.B.i of the CRP, the goal is to ensure that “[a]ll students, *especially students in high-poverty schools and low wealth districts*, will have equitable access to postsecondary and career-readiness opportunities, including dual enrollment coursework and high quality, rigorous pathways leading to a career-ready credential.” CRP at 54 (emphasis added). Under Section VII.B.iv.2, the State is required to “[p]rovide recurring funding for up to three additional Cooperative Innovative High Schools annually if approved by the NC State Board of Education.” *Id.*

63. Cost estimates were to be determined based on the number of schools approved. *Id.*

64. Defendant-Intervenors assert that in the 2022 Budget Act, \$730,000 was appropriated for the cost of supporting cooperative and innovative high schools and this item is recurring. Trogon Aff., Ex. A at 6.

65. A review of the 2022 Budget Act reflects an additional amount of \$730,000 allocated to provide supplemental funding at three such high schools: (1) Cabarrus Early College of Health Sciences, (2) EDGE Academy of Health Sciences, and (3) Wake Early College of Information and Biotechnologies. S.L. 2022-74 § 7.5(a).

66. Defendant-Intervenors conceded that there is no evidence before the Court of whether this funding is sufficient to carry out the action item. Tr. 65:17–66:9. While the Court will recognize the \$730,000 appropriation for this CRP item, the Court will still require the various State Defendants (including the General Assembly and the

State of North Carolina) to present such evidence to the Court so it is satisfied that the CRP obligation is fully satisfied.

67. However, because this amount was not previously included in the Court's 26 April 2022 Order on Remand, the Court will not give a credit against the outstanding amount owed.

(d) Other "TBD" items in the CRP

68. The Court further recognizes that there are several outstanding obligations owed under the CRP for which the cost has not been determined. These include:

- a. Increase Teachers Graduating (I.A.iii.1, FY 2022-23);
- b. Increase Teacher Graduates of Color (I.A.iii.2, FY 2022-23);
- c. DRIVE Task Force Recommendations (I.F.iii.1, FY 2021-22, FY 2022-23);
- d. School Leadership Academy (II.C.iii.1, FY 2022-23); and
- e. Grant Program for Incentives for School Leaders to Work in High Need Schools (II.D.iii.1, FY 2022-23).

See CRP Appendix: Implementation Timeline and Estimated Costs, Fiscal Year 2021-2028; *see also* Trogdon Aff., Ex. A.

69. The Budget Acts of 2021 and 2022 did not address these action items, and they remain unsatisfied obligations. The Court urges the State of North Carolina: to study and determine the amounts necessary to fully satisfy the corresponding CRP action items, to report those figures back to the parties and the Court as soon as possible, and to fully fund and implement those items as required by this Court's 11 June 2021 Order on Comprehensive Remedial Plan.

(e) Recurring Expenditures

70. Defendant-Intervenors argue that there is no need for the Court to determine the recurring amounts for Year 2 (FY 2021-22) of the CRP because that year has passed. Def.-Intervenors' Br. at 14–16. However, as they readily acknowledge in their same brief, the *Leandro IV* Court directed this Court, on remand, “to recalculate the funding required for full compliance with years two and three of the CRP in light of the 2022 Budget Act.” *Id.* at 8 (quoting *Leandro IV*, 382 N.C. at 468, 879 S.E.2d at 244).

71. In addition, the Court recognizes that the CRP is a continuum of support programs and services. “All parties agree that the actions outlined in the Plan are necessary and appropriate actions that must be implemented to address the continuing constitutional violations and to provide the opportunity for a sound basic education to all children in North Carolina.” CRP at 4. “Actions in the early years of the Plan are intended to lay the foundation for actions and investments in the later years of the plan” *Id.* at 6. As noted by the Court in its Order entered approving the CRP,

Failure to implement all of the actions in the Year One Plan will necessarily make it more difficult for State Defendants to implement all the actions described in the [CRP] in a timely manner. The urgency of implementing the [CRP] on the timeline currently set forth by State Defendants cannot be overstated.

11 June 2021 Order on Comprehensive Remedial Plan at 5.

72. Accordingly, the Court finds that it is not only compelled to calculate the outstanding costs owed under the CRP for FY 2021-22 per the Supreme Court's order

in *Leandro IV*, but also necessary to make certain that those funds are accounted for to ensure the CRP is fully implemented.

(f) Amount of CRP Expenditures Outstanding

73. Based on the accounting set forth in the State Affidavit and the parties' responsive briefs, arguments and evidence, the Court finds that the following amounts are due for Years 2 and 3 of the Comprehensive Remedial Plan and shall amend the November Order accordingly at the most immediate and proper time, pending resolution of appeal No. 425A21-1 by the Supreme Court:

- a. Department of Health and Human Services ("DHHS"): \$133,900,000;
- b. Department of Public Instruction ("DPI"): \$507,701,707 (reduction of \$2 million for New Teacher Support Program from State's accounting showing \$509,701,707); and
- c. University of North Carolina System: \$34,200,000.
- d. Total amount due: \$675,801,707.

74. Broken out by Fiscal Year, these amounts are:

FY 2021-22 (Year 2)

- a. DHHS: \$53,500,000;
- b. DPI: \$190,079,930; and
- c. University of North Carolina System: \$14,100,000.
- d. Total amount due: \$257,679,930.⁷

⁷ During the 17 March 2023 hearing, there was an unanswered question regarding a \$50,000 difference between Trogon's total outstanding for FY 2021-22 (\$257,629,930) and Grozav's figure (\$257,679,930) in Exhibit 1 (Tr. 36:13-37:22).

FY 2022-23 (Year 3)

- e. DHHS: \$80,400,000;
- f. DPI: \$319,621,777; and
- g. University of North Carolina System: \$20,100,000.
- h. Total amount due: \$418,121,777.

75. The Court further finds that total nonrecurring, unfunded CRP programs for FY 2021-22 equals \$525,000, not \$475,000 as asserted by Defendant-Intervenors. Trogdon Aff., Ex. A at 4. The \$50,000 difference results from the unwarranted credit Defendant-Intervenors award for the Educator Compensation Study, which the Court finds should not be credited. These CRP action items include:

- (a) \$50,000- Educator Compensation Study, § I.A.ii.2 of CRP (Grozav Aff., Ex. 2 at 1, line 5);
- (b) \$25,000- Educator Preparation Program Analysis, § I.A.ii.3 of CRP (Grozav Aff., Ex. 2 at 1, line 6);
- (c) \$200,000- NC-specific Wage Comparability Study, § I.J.ii.1 of CRP (Grozav Aff., Ex. 2 at 1, line 14); and
- (d) \$150,000- Cost Study for Expanding NC Infant Toddler Program, § VI.C.ii.2 of CRP (Grozav Aff., Ex. 3, line 7);

This difference appears to result from Grozav's \$50,000 credit for CRP § VII.A.ii.3 in FY 2021-22 and \$50,000 credit for CRP § VII.B.iv.1 in FY 2022-23. *See* Grozav. Aff., Ex. 2 at 2 (notes to lines 31 and 33). Defendant-Intervenors, however, give a credit of \$100,000 for § VII.A.ii.3 in FY 2021-22 and no credit for § VII.B.iv.1 in FY 2022-23. Trogdon Aff., Ex. A (lines 64, 69). Because both give a total \$100,000 credit for both years, the total of both years is unaffected.

- (e) \$100,000- Readiness Assessment of NC Infant Toddler Program, § VI.C.ii.3 of CRP (Grozav Aff., Ex. 3, line 8).

II. Conclusions of Law

(a) Jurisdiction on Remand

1. While the Supreme Court has temporarily lifted the stay of the Writ of Prohibition pending its consideration of the merits of motions filed by Controller Nels Roseland and Defendant-Intervenors in appeal No. 425A21-1, this Court understands that the Writ only applies to the transfer directive in the November Order. The Writ does not prohibit the Court from determining the calculations, and no party has presented any persuasive argument or authority asserting such. Accordingly, and consistent with the *Leandro IV* order on remand, this Court has jurisdiction to determine the impact of the 2022 Budget Act on the amounts outstanding under the CRP for FY 2021-22 and FY 2022-23. *See Leandro IV*, 382 N.C. at 468, 879 S.E.2d at 244.

2. Based on its calculation, the Court concludes that once it regains jurisdiction to amend the 10 November 2021 Order, it will amend that Order consistent with the amounts reflected in Paragraphs 74-75 above.

3. This Court will continue to retain jurisdiction over this matter for the duration of the implementation of the CRP. On remand, the Supreme Court of North Carolina further ordered this Court “to retain jurisdiction over the case in order to monitor compliance with its order and with future years of the CRP.” *Leandro IV*, 382 N.C. at 468, 879 S.E.2d at 244. Because the CRP is an 8-year plan, the Court will retain jurisdiction to ensure full compliance with the State’s duty to provide the

opportunity for a sound basic education for all North Carolina school children. As the Supreme Court held, the judiciary must “stand ready to carry out its constitutional duties . . . [and] must honor our constitutional obligations.” *Id.* at 476, 879 S.E.2d at 249.

(b) Federal Funding

4. While *Leandro II* permitted the State to account for certain federal funds as part of their calculation in determining whether a sound basic education is provided, nothing requires the State, or the courts, to consider such funds wholesale. *See Leandro II*, 358 N.C. at 646, 599 S.E.2d at 395–96. And for good reason. Sources of federal funds run the gamut with many different purposes and periods of funding. Consequently, the courts may consider but are not compelled to weigh the State’s own consideration of the type of federal funds at issue. And determinations of whether to include such funds must be made on a case-by-case basis.

Respectfully Submitted on 24 March 2023,

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This the 24th day of March, 2023.

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