

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 95 CVS 1158

HOKE COUNTY BOARD OF
EDUCATION, et al.,

Plaintiffs,

and

CHARLOTTE-MECKLENBURG BOARD
OF EDUCATION

Plaintiff-Intervenor,

and

RAFAEL PENN, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and the
STATE BOARD OF EDUCATION,

Defendants,

and

CHARLOTTE-MECKLENBURG BOARD
OF EDUCATION

Realigned Defendant,

and

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

Intervenor-Defendants.

PROPOSED ORDER

PROPOSED ORDER

1. **THIS MATTER** is before this Court following the North Carolina Supreme Court's decision in *Hoke County Board of Education v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) (*Leandro IV*). There, the Supreme Court affirmed this Court's November 10, 2021 order directing state actors to transfer state funds necessary to implement Years Two and Three of the Comprehensive Remedial Plan (CRP). The Court also vacated in part and reversed in part this Court's April 26, 2022 order recalculating those funds to account for the 2021 State Budget. Finally, the Supreme Court remanded the case to this Court "for the narrow purpose of recalculating the amount of funds to be transferred in light of the State's 2022 Budget" and directing "State officials to transfer those funds to the specified State agencies." *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 199.

I. Procedural Background

2. This case has a history spanning nearly 29 years. Because *Leandro IV* details much of the extensive history of this case, the Court recites here only the factual and procedural background which may provide helpful context for this Order.

3. On March 15, 2021, the State of North Carolina and State Board of Education (collectively, State Defendants) submitted to the Court a Comprehensive Remedial Plan. The CRP was developed by experts retained to assist the Court in determining the concrete steps (which the CRP calls "action items") necessary to ensure that children in the State's K-12 public schools have the opportunity to obtain a "sound basic education" as required by the North Carolina Constitution.

4. The action items, which largely correspond to existing programs and purposes in the State Budget, build upon one another. Thus, for the CRP to be most effective, State Defendants must complete the action items in one year before moving to the next year's action items. The CRP

contains an appendix that identifies the resources necessary to implement those action items.

5. On June 7, 2021, the trial court ordered that the actions in the CRP were “necessary to remedy continuing constitutional violations and to provide the opportunity for a sound basic education to all public school children in North Carolina.” (June 7, 2021 Or. at 7). The trial court further ordered the State Defendants to implement the CRP consistent with the CRP’s timelines and to secure the funding necessary to implement the CRP.

6. Between June 7, 2021 and November 10, 2021, the North Carolina General Assembly did not pass, and the Governor did not sign, any legislation providing funding or resources necessary to implement the CRP as ordered by the trial court.

7. On November 10, 2021, this Court entered an order directing the transfer of funds totaling \$1,753,153,000. The payments ordered by this Court were to fully fund action items in Years Two and Three of the CRP.

8. Based on the CRP’s designation of the “responsible party” for each action item, the November 2021 Order determined that three entities, the Department of Public Instruction (DPI), the Department of Health and Human Services (DHHS) and the UNC System should receive the funding. The Court divided the funds among the entities as follows:

- a. DHHS: \$189,800,000;
- b. DPI: \$1,522,053,000; and
- c. UNC System: \$41,300,000.

9. On November 18, 2021, the General Assembly passed, and the Governor signed, the Current Operations and Appropriations Act of 2021, N.C. Sess. L. 2021-180 (the 2021 Appropriations Act).

10. Soon after the Court entered the November 2021 Order, the State Controller

petitioned the Court of Appeals for a Writ of Prohibition, Temporary Stay, and Writ of Supersedeas blocking the November 2021 Order's transfer directive. As the Controller has oft repeated, his quibble is with the transfer directive alone, he does not question the merits of the CRP or the necessity of the state funds to implement it.

11. The Court of Appeals granted the writ, prohibiting the trial court from enforcing the transfer directive. The Court of Appeals' order granting the writ did "not impact that trial court's finding that these funds are necessary" nor disturb "that portion of the judgment." *In re 10 Nov. 2021 Order*, No. P21-511 (N.C. Ct. App. Nov. 30, 2021). Plaintiffs appealed the Writ of Prohibition to the Supreme Court.

12. Meanwhile, the State appealed the November 2021 Order. The day after the State filed its notice of appeal, legislative leaders intervened and filed their own notice of appeal. In February 2022, the State petitioned the Supreme Court for discretionary review prior to review by the Court of Appeals.

13. On March 21, 2022, the Supreme Court granted the State's petition for discretionary review prior to determination by the Court of Appeals. In that same order, the Supreme Court remanded the case to this Court "to determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted in its" November 2021 Order. *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-2 (N.C. Mar. 21, 2022) (order granting State's petition for discretionary review prior to determination by the Court of Appeals). In a separate order, the Supreme Court ruled that it would hold in abeyance Plaintiffs' appeal of the Writ of Prohibition.

14. On remand, this Court accepted briefing and evidence from the parties regarding the effect of the 2021 Appropriations Act on the amounts transferred in the November 2021 Order.

On April 26, 2022, this Court issued an order that recalculated the amount of funds necessary to implement the Years Two and Three action items of the CRP following the passage of the 2021 State Budget.

15. The April 2022 Order found that the 2021 State Budget appropriated \$968,046,752.00 to the action items in Years Two and Three of the CRP. Accordingly, the trial court found that the 2021 State Budget left \$785,106,248 of the CRP unfunded, divided as follows:

- a. DHHS: \$142,900,000;
- b. DPI: \$608,006,248; and
- c. UNC System: \$34,200,000.

16. Relying on the Court of Appeals' Writ of Prohibition, this Court's April 2022 Order removed the November 2021 Order's transfer directive. The Court certified its Order to the Supreme Court for appellate review.

17. In July 2022, during the pendency of the parties' appeal, the General Assembly passed, and the Governor signed, the Current Operations Appropriations Act of 2022, N.C. Sess. L. 2022-73 (the 2022 Appropriations Act).

18. On November 4, 2022, the Supreme Court issued its decision in *Leandro IV*. *Leandro IV* affirmed this Court's November 2021 Order directing state actors to transfer state funds necessary to implement Years Two and Three of the CRP. *Leandro IV*, 382 N.C. at 468, 879 S.E.2d at 244.

19. *Leandro IV* also vacated in part and reversed in part this Court's April 26, 2022 Order recalculating the amount of state funds necessary to implement the CRP. *Id.* The Supreme Court reversed the trial court's conclusion—made in reliance on the Court of Appeals' Writ of Prohibition—that it lacked legal authority to issue the transfer directive. *Id.* The Supreme Court

also vacated the April 2022 Order because the State had enacted the 2022 Appropriations Act while that order was on appeal. *Id.* The 2022 Appropriations Act rendered the trial court's calculations of the amounts needed to fund the CRP moot. *Id.*

20. Finally, *Leandro IV* remanded the matter to this Court “for the narrow purpose of recalculating the amounts of funds to be transferred in light of the State’s 2022 Budget.” *Id.* at 391, 879 S.E.2d at 199. “Once that calculation is complete,” the Court further stated, “we instruct the trial court to order the applicable State officials to transfer these funds as an appropriation under law.” *Id.* at 476, 879 S.E.2d at 249. To permit the trial court to enter a transfer directive, the Supreme Court stayed the Writ of Prohibition. *Id.* The Supreme Court also ordered that this Court “retain jurisdiction over this matter to ensure the implementation of this order and to monitor continued constitutional compliance.” *Id.*

21. On February 8, 2023, the Controller and Legislative Intervenors moved the Supreme Court to dissolve the stay of the Writ of Prohibition and order briefing on several issues that they assert remain unaddressed following *Leandro IV*. Among the issues raised by both the Controller and Legislative Intervenors is the reversion of funds transferred for the Year Two action items to the General Fund at the end of the 2021-2022 Fiscal Year.

22. On March 3, 2023, the Supreme Court granted the Controller’s motion and reinstated the Writ of Prohibition, pending the Supreme Court’s resolution of additional issues raised by the Controller. The Supreme Court denied Legislative Intervenors’ motion.

23. As a result of *Leandro IV* and the Supreme Court’s March 3, 2023 Order, this Court is now charged with the responsibility of recalculating the funds due for action items in Years Two and Three of the CRP in light of the enacted 2022 State Budget, but by virtue of the reinstated Writ of Prohibition, is prevented from enforcing an order to transfer those funds.

II. Findings of Fact¹

24. Pursuant to the Supreme Court's narrow directive on remand, the Court makes the following findings of fact.

25. On March 10, 2023, the Court held a status conference. During the status conference, the Court ordered the parties to submit to the Court information about the amount of the CRP funded by the 2022 State Budget.

26. On March 17, 2023, the Court held an evidentiary hearing. Mr. Brian Matteson, Director of the General Assembly's Fiscal Research Division, and Ms. Anca Grozav, Chief Deputy Director of State Budget for the North Carolina Office of State Budget and Management, testified during the hearing.

27. Based on the Court's review of analyses provided to it by the North Carolina Office of State Budget and Management (OSBM) and the General Assembly's Fiscal Research Division (FRD), the testimony of Mr. Matteson and Ms. Grozav, and the arguments and submissions of the parties, the evidence demonstrates that significant necessary services for students, as identified in the CRP, remain unfunded or underfunded by the 2022 State Budget.²

28. This Court's November 2021 Order determined that it would cost approximately \$1.75 billion to fund action items in Years Two and Three of the CRP. Based on the materials and evidence before it, the Court finds that the 2022 State Budget fails to provide nearly 40 percent of those total necessary funds. Specifically, the 2022 State Budget funds approximately 63% of the

¹ To the extent any proposed finding of fact is more properly considered a conclusion of law, the State intends it as such. Similarly, to the extent any proposed conclusion of law is more properly considered a finding of fact, the State intends it as such.

² The 2022 State Budget is comprised of the 2021 Appropriations Act and the 2022 Appropriations Act.

Year Two action items and 60% of the Year Three action items.

29. The parties submitted to the Court two competing spreadsheets purporting to show how much of each action item during Years Two and Three of the CRP the 2022 State Budget funded. *See* Trogdon Aff., Ex. A (FRD Chart); Grozav Aff., Exs. 1-4 (OSBM Chart).

30. The chart submitted by the State (the OSBM Chart) was prepared under the supervision of Ms. Grozav. The data and conclusions within the OSBM Chart are endorsed by the State, Plaintiffs, and Plaintiff intervenors.

31. The chart submitted by Legislative Intervenors (the FRD Chart) was prepared under the supervision of Mark Trogdon, Senior Advisor to the Legislative Services Officer at the Fiscal Research Division of the General Assembly.

32. The OSBM Chart and the FRD Chart largely agree on the funding status of the CRP action items for Years Two and Three, but ultimately diverge by roughly \$48 million. Specifically, the FRD Chart includes \$48 million in funding not included in the OSBM Chart. The differences are as follows:

- a. The FRD Chart contains an additional \$2 million for “New Teacher Support Programs” not included in the OSBM Chart;
- b. The FRD Chart contains an additional \$50,000 for an “Educator Compensation Study” not included in the OSBM Chart;
- c. The FRD Chart contains an additional \$26 million for “Disadvantaged Student Supplemental Funding (DSSF)” not included in the OSBM Chart;
- d. The FRD Chart contains an additional \$6.2 million for “Principal and Assistant Principal Salaries” not included in the OSBM Chart;
- e. The FRD Chart contains an additional \$14 million for “District and Regional

Support” not included in the OSBM Chart;

- f. The FRD Chart contains an additional \$260,000 for “Review and Adoption of Curricular Resources” not included in the OSBM Chart. However, the FRD Chart does not subtract the \$260,000 from the total amount of the CRP unfunded by the 2022 State Budget; and
- g. The FRD Chart contains an additional \$730,000 for “Additional Cooperative Innovative High Schools” not included in the OSBM Chart. Again, the FRD Chart does not subtract the \$730,000 from the total amount of the CRP unfunded by the 2022 State Budget;

See Trogon Aff. at 5-6. The Court addresses each discrepancy in turn, using the OSBM Chart as its baseline.

- 33. With respect to the “New Teacher Support Program,” the CRP provides that:

I.G.ii.1 - Provide comprehensive induction services through the NC New Teacher Support Program to beginning teachers in low performing, high poverty schools.

The UNC System is the entity responsible for this action item.

- 34. FRD’s Chart includes an additional \$2 million in appropriations for this action item not included in the OSBM Chart.³ FRD Chart Mr. Matteson testified that the additional \$2 million reflects allocations to the UNC System made by the Governor from the Governor’s Emergency Education Relief Fund (“GEER”) in August 2022. [**Draft T pp 16-17**].⁴ Ms. Grozav, meanwhile,

³ Compare FRD Chart, Row 4, with OSBM Chart (Ex. 4 – UNC), Row 6.

[⁴ The State cites to the draft transcript of the March 17, 2023 evidentiary hearing only for the Court’s benefit in reviewing the State’s proposed order. Because the draft transcript is only for use by attorneys and the Court, the State has included its citations to the draft transcript in bracketed, bold text to assist the Court in removing the citations before issuing its Order.]

testified that OSBM omitted the \$2 million because the General Assembly did not appropriate those funds to the Governor in the 2022 State Budget. **[Draft T pp 60-61]**.

35. The General Assembly appropriated the GEER funds to the Governor in a March 2021 bill appropriating federal COVID-19 Relief Funds. *See* N.C. Sess. Law. 2021-3, § 1.1(a). Thus, the \$2 million was not appropriated in the 2022 State Budget.

36. Although this \$2 million was not directly funded in the 2022 State Budget, and was appropriately excluded in the OSBM chart, the State is paying for this item through federal GEER funds appropriated in 2021. Thus, the State has provided \$2 million in funding for this action item.

37. Accordingly, the Court includes the \$2 million in its calculations and reduces the amount owed to the UNC System by \$2 million.

38. Next, with respect to the “Education Compensation Study,” the CRP provides that:

I.A.ii.2 - Develop a plan for implementing a licensure and compensation reform model designed to offer early, inclusive, clear pathways into the profession, reward excellence and advancement, and encourage retention. The plan should include a focus on restoring respect for the teaching profession, building a more diverse, quality teaching force, increasing instructional capabilities, enticing more young professionals, career switchers, and out-of-staters to teaching, and investing in teachers, students and NC’s economy. This action step requires a non-recurring appropriation.

The CRP calls for \$50,000 in appropriations for this action item.

39. The FRD Chart includes an additional \$50,000 in appropriations for the action item not included in OSBM’s Chart.⁵ Mr. Matteson testified that FRD believed the 2022 State Budget fully funded this program because the 2021 Appropriations Act appropriated funds for evidence-

⁵ Compare FRD Chart, Row 28, with OSBM Chart (Ex. 2 – DPI), Row 5.

based grants and OSBM awarded \$109,909⁶ of that appropriation to DPI in October 2022 to evaluate Advanced Teaching Roles. **[Draft T pp 18-19].**

40. Ms. Grozav, meanwhile, testified that OSBM did not consider the action item funded because the parameters of the Advanced Teaching Roles study are too narrow to satisfy the action called for in the CRP. **[Draft T pp 61-62, 67].** Specifically, the Advanced Teaching Roles study concerned only advanced teachers, while the CRP calls for a study on issues related to teacher licensure and compensation more broadly. **[See Draft T p 67].**

41. The Court concludes that the \$50,000 is not properly credited to the Education Compensation Study. The Advanced Teaching Roles study does not reflect the study contemplated by the CRP. Accordingly, the Court does not include the \$50,000 in its calculations.

42. Regarding the “Disadvantaged Student Supplemental Funding (DSSF)” program, the CRP provides that:

II.B.ii.2 - Combine the DSSF and at-risk allotments and incrementally increase funding such that the combined allotment provides an equivalent supplemental weight of 0.4 on behalf of all economically-disadvantaged students. This action step requires incremental recurring increases in funding through fiscal year 2028.

43. The FRD Chart includes approximately \$26 million in appropriations for this action item not included in the OSBM Chart.⁷ Mr. Matteson testified that FRD included in its chart \$26 million appropriated not to the DSSF allotment, but to the At-Risk allotment. **[Draft T pp 19-20].**

44. The CRP calls for the At-Risk allotment to be combined with the DSSF allotment so that funds appropriated to those allotments can be better targeted to benefit economically

⁶ Mr. Matteson testified that FRD only included \$50,000 of the \$109,909 because the CRP only called for \$50,000 and thus the additional \$59,909 overfunds the action item. **[Draft T p 19].**

⁷ Compare FRD Chart, Row 45, with OSBM Chart (Ex. 2 – DPI), Row 18.

disadvantaged students.

45. The At-Risk allotment does not target economically disadvantaged students in the same way as the DSSF allotment.

46. For one thing, funds appropriated to the At-Risk allotment cannot be used for all the purposes that funds appropriated to the DSSF allotment can be. The additional At-Risk allotment funds appropriated in the 2022 State Budget are primarily intended to increase salaries for school resource officers, rather than to support the educational needs of economically disadvantaged students. **[See Draft T p 20]**. Indeed, Ms. Grozav testified that OSBM did not include the funds appropriated to the At-Risk allotment in its chart because FRD’s Committee Report accompanying the 2022 Appropriations Act explained that the funds appropriated to the At-Risk allotment were for school resource officer salaries. **[Draft T p 63]**.

47. Additionally, different criteria determine how much funding school districts receive from the two allotments, with the allotment formula for DSSF funds more strategically targeted to higher needs districts. **[Draft T p 54]**.

48. As of the time of this Order, the At-Risk allotment has not been combined with the DSSF allotment. **[Draft T pp 28, 62]**. Thus, the \$26 million appropriated to the At-Risk allotment is not targeted to economically disadvantaged students as required by the CRP. Accordingly, the Court does not include the \$26 million appropriated to the At-Risk allotment in its calculations.

49. With respect to the “Principal and Assistant Principal Salaries” program, the CRP calls for:

II.D.ii.1 - Incrementally increase principal and assistant principal pay consistent with teacher salary increases. Cost estimates for later fiscal years for this action step will be determined on the basis of the wage comparability study

50. The FRD Chart includes approximately \$6.2 million in appropriations for this action item not included in the OSBM Chart.⁸ Mr. Matteson testified that the additional \$6.2 million is from funds appropriated to provide stipends to students enrolled in a Masters of School Administration program who serve as interns in school districts. **[Draft T pp 20-21].**

51. The interns who receive these stipends, however, are not for principals or assistant principals. No witness testified that the interns are principals. **[See Draft T p 41].** Mr. Matteson testified that the interns are assistant principals. **[Draft T p 41].** But DPI requires assistant principals to have a North Carolina educator's license. *See Employee Salary and Budget Manual 2022-2023* at 6, N.C. DEP'T OF PUB. INST. (July 1, 2022).^[9] Administrative interns, like those who would receive the stipend, are not required to hold a license. *Id.*

52. Nor do the stipends augment anyone's salary. Both Mr. Matteson and Ms. Grozav testified that the stipends are not a part of any employee's permanent salary but instead one-time payments. **[Draft T pp 42-43, 63-64].**

53. The CRP specifically calls for increases in principal and assistant principal salaries. Both because the interns are neither principals nor assistant principals, and because the stipends are not salary increases, the \$6.2 million are not available to school districts to increase salaries for principals and assistant principals. Accordingly, the Court does not include the appropriation of \$6.2 million in its calculations.

54. Next, regarding "District and Regional Support," the CRP provides:

⁸ Compare FRD Chart, Row 56, with OSBM Chart (Ex. 2 – DPI), Row 27.

[⁹ To the extent the necessary, and pursuant to Rule 201(b) of the North Carolina Rules of Evidence, the State asks the Court to take judicial notice of the Department of Public Instruction's licensing requirements for Assistant Principals and Administrative Interns contained in the Department's *Employee Salary and Benefits Manual*. The State has attached the *Employee Salary and Benefits Manual* to its submission to the Court.]

V.A.iii.1 - Implement the NC State Board of Education’s District and Regional Support model (i.e. the plan described above) to provide direct, comprehensive, and progressive turnaround assistance to the State’s chronically low-performing schools and low-performing districts by aligning systems, processes, and procedures in a unified system of support that results in every child having equitable access to a meaningful, sound basic education through:

- i. a regional structure coordinating academic supports statewide;
- ii. opportunities for educator recognition, advancement, and growth;
- iii. diagnostic services that identify areas of improvements for schools and districts;
- iv. strategic reform strategies that lead to innovation and student success; and
- v. effective partnerships to intervene on critical areas of need.

55. The FRD Chart includes an additional \$14 million in appropriations for this action item not included in the OSBM Chart.¹⁰ Mr. Matteson testified that the \$14 million represents funds appropriated to regional literacy and early learning specialists. Mr. Matteson further testified the \$14 million was not targeted to low performing schools but was instead “[b]roadly applicable to all school districts.” **[Draft T p 46]**.

56. The CRP calls for a program targeted specifically to “chronically low-performing schools and low-performing districts.” Although laudable, the legislative appropriation of \$14 million serves the well-being of all students, and does not make special provision improving the educational opportunities for students in low-performing schools. Accordingly, the Court does not include the appropriation of \$14 million in its calculations.

57. Finally, the FRD Chart includes \$260,000 for “Review and Adoption of Curricular Resources” and \$730,000 for “Additional Cooperative Innovative High Schools” not included in

¹⁰ Compare FRD Chart, Row 60, with OSBM Chart (Ex. 2 – DPI), Row 28.

the OSBM Chart.¹¹ Importantly, although the FRD Chart identifies these amounts as funded by the 2022 Budget, the FRR Chart does not subtract those amounts from the total amount of the CRP unfunded by the 2022 State Budget.

58. The CRP's appendix states that the amounts necessary for these two action items are "TBD," or to be determined. Ms. Grozav testified that the OSBM Chart omits the amounts included in the FRD Chart because the CRP lists the funding needed for the action items as TBD and thus, at this time, any funds appropriated to those action items necessary overfund the item. **[Draft T pp 65-66].**

59. Mr. Matteson and Ms. Grozav both testified that, because the FRD Chart did not subtract those amounts from the total amount of the CRP unfunded by the 2022 State Budget, this discrepancy does not contribute to the discrepancy between the FRD Chart and the OSBM Chart regarding the total amount of the CRP unfunded by the 2022 State Budget. **[Draft T pp 23, 66].** Thus, the Court need not resolve this dispute to make the calculations that the Supreme Court ordered on remand.

60. Legislative Intervenors also argue that the Court should not consider any of the recurring funding called for by the CRP for the Year Two action items. *See* Leg. Intervenors' Br. at 14-16. Legislative Intervenors omit these funds because Fiscal Year 2021-2022, which corresponds to Year Two of the CRP, concluded on June 30, 2022. Leg. Intervenors' Br. at 14-16. They argue that any recurring funds called for in Year Two of the CRP would have reverted back to the State's General Fund upon the end of Fiscal Year 2021-2022. Leg. Intervenors' Br. at 15.

61. That issue is not before this Court. The North Carolina Supreme Court "reinstate[d]"

¹¹ *See* FRD Chart, Rows 62, 70.

the trial court’s November 2021 Order directing certain State officials to transfer available state funds to implement years two and three of the Comprehensive Remedial Plan” and remanded the case to this Court “for the narrow purpose of recalculating the amount of funds to be transferred in light of the State’s 2022 Budget.” *Leandro IV*, 382 N.C. at 198-99, 879 S.E.2d at 391.

62. The Court was no doubt aware when it issued its decision in November 2022 that Fiscal Year 2021-2022 concluded on June 30, 2022. The Court nevertheless ordered this Court to recalculate the amount to be transferred in both years.

63. Additionally, the North Carolina Supreme Court recently decided that it would address issues raised by the Controller in proceedings regarding the Writ of Prohibition. *See Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-1 (N.C. Mar. 3, 2023) (order granting Controller’s motion to dissolve stay of Writ of Prohibition). Among the issues raised by the Controller is the reversion of funds transferred for the Year Two action items. Legislative Intervenors have asked to participate in those appellate proceedings. The Supreme Court’s decision to take up the Controller’s issues affirms what the Supreme Court’s narrow remand established: Legislative Intervenors arguments about Year Two recurring funds exceeds the scope of this Court’s authority on remand.

64. In short, the Supreme Court asked this Court to answer a simple, mathematical question: how much of the Years Two and Three action items of the CRP did the 2022 State Budget fund. Eliminating the Year Two action items requiring recurring funding from the Court’s calculations would result in the Court reaching an inaccurate conclusion in response to that question. Accordingly, the Court considers the Year Two action items calling for recurring appropriations.

III. Conclusions of Law

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

66. Based on the Supreme Court's remand order in *Leandro IV*, this Court is "narrowly" tasked with "recalculating the amount of funds to be transferred in light of the State's 2022 Budget."

67. The 2022 State Budget, as enacted, partially but not totally funds Years Two and Three of the CRP. Specifically, of the \$1,753,153,000.00 necessary to fund the programs called for in the CRP during the two years in question, the 2022 State Budget funds \$1,077,351,293.00. As a result, the total underfunding of CRP action items during Years Two and Three is \$675,801,707.00.

68. The underfunding of the Years Two and Three action items of the CRP on a per-entity basis are as follows:

- a. Underfunding of programs for which DHHS is responsible: \$133,900,000.00;
- b. Underfunding of programs for which DPI is responsible: \$509,701,707.00; and
- c. Underfunding of programs for which the UNC System is responsible: \$32,200,000.00.

69. In *Leandro IV*, the Supreme Court ordered this Court to direct state officials to transfer these funds. In its March 3, 2023 Order, however, the Supreme Court dissolved its stay of a Writ of Prohibition entered by the Court of Appeals that prohibits this Court from issuing a transfer directive as ordered by the Supreme Court.

70. In light of the Supreme Court's competing and conflicting orders, this Court orders immediate transfer of the funds identified above, subject to the Writ of Prohibition. Accordingly,

when the writ of prohibition is vacated or otherwise lifted, the State Controller, State Treasurer, and Director of OSBM are directed to immediately begin the process of transferring these funds.

IV. Order

71. It is THEREFORE ORDERED that:
- a. The amount of the Year Two and Year Three action items of the Comprehensive Remedial Plan unfunded by the 2022 State Budget is as follows:
 - i. Programs for which DHHS is responsible: \$133,900,000;
 - ii. Programs for which DPI is responsible: \$509,701,707; and
 - iii. Programs for which the UNC System is responsible: \$32,200,000.
 - b. Subject to the Supreme Court's resolution of the appeal concerning the Writ of Prohibition, the State Controller, State Treasurer, and Director of OSBM are to transfer these funds as directed by this Court's November 10, 2021 Order.
 - c. To the extent any other actions are necessary to effectuate the Years Two and Three programs in the Comprehensive Remedial Plan, any and all other State actors and their officers, agents, servants, and employees are authorized and directed to do what is necessary to fully effect Years Two and Three of the Comprehensive Remedial Plan.
 - d. This Court retains jurisdiction of this case to ensure the implementation of this order and to monitor continued constitutional compliance.

SO ORDERED, this __th day of _____, 2023.

James F. Ammons, Jr.
Senior Resident Superior Court Judge

CERTIFICATE OF SERVICE

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

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This the 24th day of March, 2023.

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