

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 30 2017

S.C. SUPREME COURT

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2007-065159

Abbeville County School District, et al.,.....Appellants-Respondents,

v.

The State of South Carolina, et al., of whom
Hugh K. Leatherman, as President Pro Tempore
of the Senate and as a representative of the
South Carolina Senate, and James H. Lucas,
as Speaker of the House of Representatives and
as a representative of the South Carolina House
of Representatives, are.....Respondents-Appellants,

and

State of South Carolina, Henry D. McMaster,
as Governor of the State of South Carolina, are.....Respondents.

**REPORT OF GOVERNOR HENRY D. MCMASTER
AS GOVERNOR OF THE STATE OF SOUTH CAROLINA
AS REQUIRED BY ORDER DATED SEPTEMBER 20, 2016**

Respondent Henry D. McMaster as Governor of the State of South Carolina hereby enters
this 2017 Report pursuant to this Court's order in Abbeville County School District v. State, S.C.
Sup. Ct. Order dated Sept. 20, 2016.

A. BACKGROUND

On November 12, 2014, this Court held that South Carolina violated its constitutional duty
to provide students with the opportunity to acquire a minimally adequate public education. See

Abbeville Cty. Sch. Dist. v. State, 410 S.C. 619, 624, 767 S.E.2d 157, 159 (2014) (“Abbeville II”). Emphasizing the statutory and administrative changes needed, the Court directed all Parties to “present a plan to address the constitutional violation.” Id. at 661, 767 S.E.2d at 179. The Court then provided additional guidance to the Parties, requiring that they provide a “written summary to the Court detailing their efforts to implement a constitutionally compliant education system, including all proposed, pending and enacted legislation.” Abbeville Cty. Sch. Dist. v. State, S.C. Sup. Ct. Order dated Nov. 5, 2015. Governor Haley provided a Report to the Court on June 29, 2016, detailing her commitment to ensure that every child in South Carolina receives a quality education. (See June 2016 Gov. Report).

After reviewing the initial reports, this Court directed the Parties to submit a second report on or before June 30, 2017, identifying information demonstrating progress in the areas of concern identified in Abbeville II. Abbeville Cty. Sch. Dist. v. State, S.C. Sup. Ct. Order filed Sept. 20, 2016. Accordingly, below are various reforms that the Office of the Governor¹ has championed, either through promoting and discussing education reform or by reviewing and executing legislation. While the chief executive of our state does not participate in the drafting of legislation and does not have constitutional authority over the South Carolina Department of Education (“SCDE”), Governor McMaster has supported, and will continue to support, significant reform initiatives designed to ensure that all children receive a quality education.

¹ On January 24, 2017, Governor Haley resigned to serve as United States Ambassador to the United Nations and then-Lieutenant Governor McMaster was sworn in as Governor of the State of South Carolina. Upon ascending to the Office of the Governor, Governor McMaster was automatically substituted for Governor Haley in the above-referenced matter pursuant to Rule 265(d) of the South Carolina Appellate Court Rules. In light of this automatic substitution, and because the gubernatorial transition took place during the legislative session, this Report compiles work completed over the past year under both administrations.

B. GOVERNOR'S JUNE 30, 2017 REPORT

The June 2016 Report details a 2016 Education Agenda with six recommendations that the State should implement. (See June 2016 Gov. Report). The six recommendations are: (1) reform the governance structure of SCDE; (2) fund the basics of education; (3) continue to recruit and retain effective teachers, specifically in rural and underserved school districts; (4) integrate technology into student life; (5) improve school facilities; and (6) reform South Carolina First Steps to School Readiness. (See June 2016 Gov. Report). Moreover, the proposed Fiscal Year ("FY") 2017-2018 Executive Budget recommended appropriate budgetary measures to support these initiatives. Many positive legislative and budgetary changes have occurred under each of the six categories, as detailed below.

(1) Reform the Governance Structure of the SCDE: Four joint resolutions introduced this legislative session propose amending article VI, section 7 of the South Carolina Constitution to change the State Superintendent of Education ("Superintendent") from an elected position to a gubernatorial appointment. (See S. 27, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017); see also, e.g., S. 137, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017); H. 3146, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017); H. 3036, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017). Besides obtaining legislative support, to effectuate this change, South Carolinians must vote to amend the South Carolina Constitution. Governor McMaster will continue to champion this change. Otherwise, while the governor can discuss and encourage education reform, the governor has little authority to initiate or implement the necessary changes. In contrast, with an appointed Superintendent, the governor could develop and advance a common vision and coordinate budget requests and the implementation of specific education initiatives.

(2) Fund the Basics of Education: The State must continue funding education to meet the basic needs of students and schools alike. The Education Finance Act (“EFA”) is the predominant mechanism for providing state funding to local districts. Governor McMaster signed into law the General Assembly’s allocation of \$60 million to increase the base student costs, increasing it from \$2,350 in FY 2016-2017, (H. 5001, proviso 1.3, 121st Gen. Assemb., 2d Reg. Sess. (S.C. 2016), to \$2,425 in FY 2017-2018 (H. 3720, proviso 1.3, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017.)) Moreover, the total average funding per pupil, when local and federal funds are included, is estimated to be \$13,140, excluding additional revenue from local bonds. This figure represents an increase from the prior year’s estimate of \$12,614 estimate.² These increases resulted in an overall increase in the total per pupil expenditure for all but one of the Plaintiff Districts.³ (Rev. Per Pupil Reported by Sch. Dist. FY 2016-17, available at www.rfa.sc.gov/econ/educ/revperpupil (last visited June 29, 2017).)

In addition to providing appropriate levels of funding, achieving a basic education requires schools to be fiscally responsible. Thus, Governor McMaster signed into law Act 23 of 2017 on May 9, 2017 (H. 3221, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017)). Act 23 requires the SCDE to assist school districts with their fiscal practices and budgets. Id. The SCDE must prescribe budgetary guidelines for districts, and provide a three-tier warning system to rate school finances. Id. Further, the Superintendent may announce a “fiscal watch” of a district or create a corrective

² Although Proviso 1.3 from FY 2016-17 includes an estimate of \$14,120, the stated numbers in the proviso equal \$12,614. Further, the FY 2016-17 State Revenue Per Pupil Report estimates \$12,696. Rev. Per Pupil Reported by Sch. Dist. for FY 2016-17, at 28, available at www.rfa.sc.gov/econ/educ/revperpupil (last visited June 29, 2017). Thus, the \$14,120 is an error.

³ There was an overall decline in Marion County per pupil dollars due to the consolidation of schools. However, the state per pupil dollars increased; it was the estimated federal and local dollars that declined this budget cycle. See Rev. Per Pupil Report 19.

plan to work with a district that is struggling. Id. Ensuring that schools are fiscally responsible and receive assistance when problems appear is crucial to funding basic education at each school.

Governor McMaster also signed into law Act 35 on June 10, 2017, revising the state Education Accountability Act. (H. 3969, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).) This revision provided an additional \$1.4 million of recurring funds as part of the Education Improvement Act appropriations to purchase a program that is an “Accountability Value Added Instrument” to measure student growth. Id. SCDE will set accountability standards for schools to achieve. The program will monitor all of the various school systems from pre-K through college, and also requires the State to combine the state and federally mandated school report cards so that school ratings are easier to review. By the FY 2019-2020 school year, reports issued will combine data from all different levels of education, including First Steps and the Commission on Higher Education. Id. The Act also has a component for career readiness assessment and college readiness, requiring all eleventh graders to be offered a college entrance assessment. Id.

On May 23, 2016, Act 178 became effective, which codified the SCDE’s Office of Transformation. See S.C. Code Ann. § 59-18-1575 (Supp. 2016). Then-Governor Haley signed in support of this bill, which requires SCDE to implement assistance to “underperforming schools and districts as directed by the Superintendent of Education.” Id. The statutory direction is paired with a recurring proviso authorizing direction by the Superintendent to assist low-performing schools. (See Proviso 1A.12, both 121st Gen. Assemb. 2nd Reg. Sess. (S.C. 2016) and 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).) While SCDE had this authority in a Proviso, the codification bolsters the Superintendent as there is no known threat that the Proviso will be removed at a later date. Governor McMaster has nevertheless encouraged the General Assembly to permanently codify such provisos. To this end, the Superintendent has declared an emergency

and taken over management of Florence School District 4 in March of 2016 and the Allendale County School District in June of 2017.

Last, this Court found fault with the State requiring Plaintiff Districts to pay the costs of student transportation. Abbeville II, 410 S.C. at 644, 767 S.E.2d at 170. Through FY 2017-18, the budget provided \$5 million in recurring funds for school busses, up from \$3 million provided last year. Also, \$6.5 million in non-recurring funds from the certified lottery funding and other available funding will go to school busses. (Provisos 3.4, 8.2, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).) While the General Assembly proposed that an additional \$20.5 million go to school busses from potential Education Lottery Account (“ELA”) revenue, (Proviso 3.4, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017)), Governor McMaster properly vetoed this measure. (Governor H.3720 Veto, vetoes 15, 21, and 23, available at <http://governor.sc.gov/ExecutiveBranch/Pages/VetoMessages.aspx>, last reviewed June 29, 2017.) First, the State does not predict that the ELA will have additional revenue, and thus, this effort was merely a wish list in the event extra funds became available. Second, the lottery’s original purpose is to provide money for college scholarships, and taking from one resource to pay for another is not a sustainable solution. Going forward, Governor McMaster will continue utilizing real dollars the State can spend on school busses, as this expenditure should be a budget priority.

(3) Continue to Recruit and Retain Effective Teachers, Specifically in Rural and Underserved School Districts: Act 291 took effect on June 5, 2016, and requires the SCDE and the Center for Educator Recruitment, Retention and Advancement (“CERRA”) to work together on surveying students to identify incentives to entice new teachers to live and work in rural, lower income districts. (H. 4938, 121st Gen. Assemb, 2d Reg. Sess. (S.C. 2016).) The General

Assembly requested the report by February 1, 2017, and this administration looks forward to the seeing the report and working to recruit and retain effective teachers.

(4) Continue Integrating Technology into Student Life: Previously, in the FY 2016-2017 budget cycle, the General Assembly committed one-time funds to the Plaintiff Districts to provide technical assistance. (Proviso 1A.84, 121st Gen. Assemb., 2d Reg. Sess. (S.C. 2016).) For FY 2017-2018, recurring funds to assist in technology are now provided for all South Carolina schools. (Proviso 1A.84, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).) Further, schools with the highest level of poverty receive greater amounts. Id. The Proviso also requires that the funds be spent on school internet connectivity, and expanding one-on-one computer ratios. Id. Schools must provide a report that connectivity issues are completed and seek approval from the K-12 Technology Committee before remaining dollars are spent on other technology-related uses. Id. These changes create an appropriation of \$12 million in recurring funds. Additionally, changes were made to the FY 2016-17 Proviso 1A.74, now known as FY 2017-18 Proviso 1A.84, to Career and Technology Education programs to require the inclusion of charter schools and authorize expenditures expenditure allowances on evidence-based initiatives that have been proven to work in schools. (Proviso 1A.74, 121st Gen. Assemb., 2d Reg. Sess. (S.C. 2016); Proviso 1A.84, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).)

(5) Improve School Facilities: The FY 2017-2018 budget provides a new Abbeville Equity School District Capital Improvement Plan to fund school upgrades. (Proviso 1A.82, 122d Gen. Assemb., 1st Reg. Sess. (S.C. 2017).) Plaintiff Districts and districts with a poverty index of 80% or higher are eligible to receive funds to help with classrooms, libraries, media centers, laboratories, cafeterias, physical education spaces, interior and exterior facilities, and hardware installations for network systems and computers. Id. Non-recurring funds in the amount of

\$55,828,859 have been provided in this budget cycle for this program. (Proviso 1A50, 122nd Gen. Assemb., 2d Reg. Sess. (S.C. 2017).)

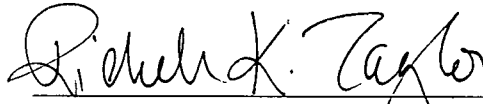
(6) Reform South Carolina First Steps to School Readiness: South Carolina First Steps to School Readiness (“First Steps”) has much to accomplish as the agency still is working on how to effectively evaluate school readiness. However, the program, implemented in 2000, is making strides as shown by US News’ ranking of South Carolina’s pre-k program as fourth in the United States. (U.S. News & World Report, available at <https://www.usnews.com/news/best-states/south-carolina>, last reviewed June 29, 2017.)

To assist First Steps in focusing on its mission, Executive Order 2016-20 moved Babynet, a program to provide early intervention and services to infants and toddlers with disabilities, from First Steps to the South Carolina Department of Health and Human Services (“SC DHHS”). (E.O. 2016-20, available at <http://governor.sc.gov/ExecutiveBranch/Pages/ExecutiveOrders.aspx>, last reviewed June 30, 2017.) For the past fifteen years, Babynet has not met the U.S. Department of Education’s requirements. *Id.* SC DHHS already provides services to this population starting with prenatal care, and it has the ability to implement many of the needs of the program.

C. CONCLUSION

Governor McMaster will continue working to ensure that every child in South Carolina receives a quality education, regardless of the child’s socioeconomic status. Prior to next year’s session, Governor McMaster will announce his education platform and Executive Budget, both of which will address meaningful school reform.

Respectfully submitted,



Richele K. Taylor (S.C. Bar No. 70493)
Thomas A. Limehouse, Jr. (S.C. Bar No. 101289)
Office of the Governor

State House
1100 Gervais Street
Columbia, South Carolina 29201
(803) 734-2100
*Counsel for Respondent Henry D. McMaster, as
Governor of the State of South Carolina*

June 30, 2017
Columbia, South Carolina

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State of South Carolina, Henry D. McMaster,
as Governor of the State of South Carolina, are.....Respondents.

PROOF OF SERVICE

I certify that I have served the *Report of Governor Henry D. McMaster as Governor of The State of South Carolina as Required by Order Dated September 20, 2016*, on each of the other parties, through their respective counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, on this date, addressed as follows:

Carl B. Epps, III, Esquire
Elizabeth Scott Moise, Esquire
Rachel Atkin Hedley, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070

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PROOF OF SERVICE

I certify that I have served the (1) Report of Governor Henry D. McMaster, as Governor of the State of South Carolina, as Required by Order Dated September 20, 2016 and (2) Return to Petitions to Vacate on each of the other parties, through their respective counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, on this date, addressed as follows:

Carl B. Epps, III, Esquire
Elizabeth Scott Moise, Esquire
Rachel Atkin Hedley, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070

Laura Callaway Hart, Esquire
Duff, White & Turner, LLC
Post Office Box 1486
Columbia, South Carolina 29202

Counsel for Abbeville County School District, et al.

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

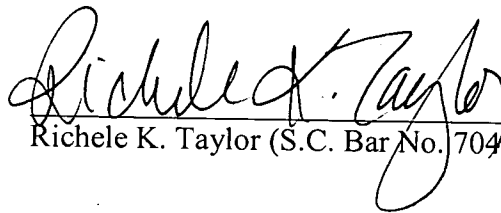
Counsel for the State of South Carolina and the Governor

Kenneth M. Moffitt, Esquire
Daina M. Riley, Esquire
South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Counsel for Hugh K. Leatherman, as President Pro Tempore of the Senate and as a representative of the South Carolina Senate

Patrick G. Dennis, Esquire
South Carolina House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Counsel for James H. Lucas, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives



Richele K. Taylor (S.C. Bar No. 70493)

June 30, 2017
Columbia, South Carolina