

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09CVS06655

JUNE ST. CLAIR ATKINSON,)
individually and in her official capacity as)
Superintendent of Public Instruction of the)
State of North Carolina;)
Plaintiff,)

v.)

STATE OF NORTH CAROLINA;)
BEVERLY PERDUE, Governor of the)
State of North Carolina, in her official)
capacity; NORTH CAROLINA STATE)
BOARD OF EDUCATION; WALTER)
DALTON, Lieutenant Governor of the)
State of North Carolina, in his official)
capacity; JANET COWELL, State)
Treasurer of the State of North Carolina, in)
her official capacity; KATHY TAFT, RAY)
DURHAM, KEVIN HOWELL, SHIRLEY)
E. HARRIS, MELISSA E. BARTLETT,)
ROBERT THOMAS SPEED, WAYNE)
MCDEVITT, PATRICIA N.)
WILLOUGHBY, and JOHN A. TATE, III,)
Members of the North Carolina State Board)
of Education, in their official capacities;)
and WILLIAM C. HARRISON, Chief)
Executive Officer and Chairperson of the)
North Carolina State Board of Education)

Defendants.

AFFIDAVIT OF

DR. JUNE ST. CLAIR ATKINSON

JUNE ST. CLAIR ATKINSON, after being duly sworn, deposes and states the following:

1. I am the duly elected North Carolina Superintendent of Public Instruction. I was first elected by the People to the office of Superintendent in 2004. On November 4, 2008, I received 2,177,934 votes and was reelected to the office of Superintendent of Public Instruction.

2. I received a B.S. in Business Education from Radford University in 1969, an M.S. in Vocational and Technical Education from Virginia Tech in 1974, and a Doctorate in Educational Leadership and Policy from North Carolina State University in 1996.

3. Prior to serving as Superintendent, I worked for the North Carolina Department of Public Instruction ("DPI"). Other than leaving the DPI to run for the office of Superintendent in April 2004, I have worked continuously for the DPI since October 1976.

4. My curriculum vita is attached to this affidavit as Exhibit A and details my professional expertise and my various publications.

5. This affidavit chronicles certain developments related to the office of the State Superintendent of Public Instruction ("Superintendent") and the State Board of Education ("State Board") and the relationship between them. This affidavit is based upon my experience as Superintendent as well as my service as a DPI employee before becoming Superintendent.

Day-to-Day Duties of the State Superintendent of Public Instruction

6. Through the three decades I have served at DPI, including the last four years as Superintendent, I have observed and later performed the duties of Superintendent. Those duties have changed since the creation of the position of the Chief Execution Officer ("CEO") on March 4, 2009.

7. Several charts, created by the DPI, setting out the organization of the public schools and DPI, as the same has evolved, are attached hereto as Exhibit B.

8. Prior to the creation of the CEO position, the State Superintendent had a clear, definitive responsibility to coordinate and direct communication between DPI and public school principals, local school superintendents, and the United States Department of Education. As a result, these lines of communication have now been changed because of the creation of the CEO.

Formerly, the Superintendent signed official letters to the United State Department of Education and sent communication to local superintendents about policies adopted by the State Board of Education. However, since the creation of the CEO, Dr. Harrison, has begun signing such documents in his capacity as CEO and Chairman of the State Board of Education. This has included communications with Halifax educators in relation to ongoing litigation in the Leandro case. A copy of a letter from the CEO to Halifax Educators, dated April 30, 2009, is attached hereto as Exhibit C. The CEO has also undertaken to sign the National Voluntary Standards Agreement in my place and without my authorization, though I later found the document and signed it in my official capacity as Superintendent. Another example includes the communication about policies recently adopted by the State Board of Education. In a memorandum dated April 3, 2009, from the CEO to local superintendents across the state, the CEO advised local schools of State Board action on policies concerning graduation projects and graduate pay. A copy of this memorandum is attached hereto as Exhibit D.

9. Regularly scheduled meetings between the DPI senior leadership and me have been rescheduled by the CEO. For example, I had regularly scheduled meetings with the State Superintendent's Cabinet, which were rescheduled at the direction of the CEO and from which I have been excluded on occasion. Nevertheless, in an effort to fulfill the obligations of my office, I have persisted in meeting with staff. Without any conversation with me, the CEO cancelled a meeting I had scheduled with staff to talk about the implementation of the educational provisions of the federal stimulus package. (See Exhibit E).

10. Although the CEO has directed that he shall be in charge of local superintendent, principal, and teacher advisory committees whose membership I have appointed, I have continued with those meetings. I believe that these committees are vital in being able to advise

the State Board of Education about critical policies to be discussed at State Board meetings; therefore, I have continued meeting with these committees.

11. Previously, in my capacity as Superintendent, I met regularly with members of the General Assembly. Since his appointment, however, the CEO has directed that he be the only representative of DPI, unless otherwise directed, to talk with legislators.

12. When the CEO was first appointed, I, in the spirit of cooperation provided him with a list of the duties I had been performing. He countered by giving me a list of duties he directed that I discontinue performing. To date, this proposed list of duties has not been shared with the entire State Board of Education, and I have not agreed to the CEO's proposal. (See Exhibit F).

13. Previously, the Superintendent made recommendations to the State Board of Education for the hiring of staff at senior leadership positions. After the hiring of the CEO, the State Board has delegated this responsibility to the CEO.

Relationship between the Superintendent and the State Board

14. Historically, the State Board of Education has set policy for various matters and issues affecting the public schools of North Carolina and then relied on the Superintendent and staff to implement these policies. Typically, this was done by the State Board asking the Superintendent and his staff for options concerning whatever issue requiring the State Board's attention. The State Board would then determine the policy it wished to pursue, with recommendations emanating from the Superintendent and staff. While the final decisions were not always based on these recommendations, the implementation was left to the Superintendent and his designees.

15. The Superintendent/State Board relationship described in the preceding paragraph, i.e. a dynamic by which the State Board set policy and the Superintendent implemented it, was used in areas such as teacher certification requirements, graduation and testing requirements, curriculum development and professional development. For example, the State Board would set a policy about teacher and principal evaluations. Upon adopting such evaluations, the State Board of Education would rely on the Superintendent's and staff decisions about developing the time frame, budget, and structure for providing the necessary professional development to all school districts.

16. Since creating the CEO position, the delineation of responsibility for implementing State Board policy has been blurred, especially with the CEO running the day-to-day activities of DPI. Further, this delegation interferes with the Superintendent's statutory responsibility of being the chief administrative officer for managing and leading the day-to-day activities of DPI to implement State Board of Education policy. While I have elected to minimize putting staff members in the middle, the addition of the CEO position creates dysfunction when it comes to staff evaluation, work directives, focus, accountability, etc. These tasks should be the responsibility of the Superintendent but they have been assumed by the CEO.

17. In my constitutional capacity as Secretary of the State Board, I am to attend all State Board meetings and keep official meetings thereof. I have a statutory duty to attend all State Board meetings, codified at N.C.G.S. § 115C-21(b)(8).

18. I have previously been asked not to attend at least one closed session of the State Board. In the spirit of cooperation with then-Chairman Howard Lee, I agreed not to attend. The State Board regularly meets in closed session, as allowed by law, and I foresee that I may again be asked not to attend a closed session of the State Board should I not be notified.

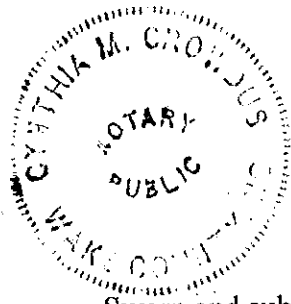
19. To my knowledge, no statute has been enacted to abridge or modify my duty, as codified at N.C.G.S. § 115C-19, to “manage[] on a day to day basis the administration of the free public school system” of North Carolina.

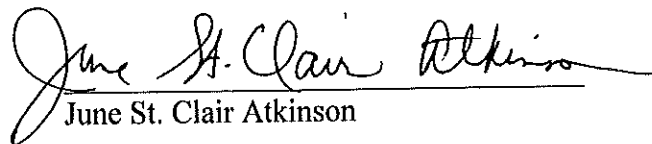
20. To my knowledge no statute has been enacted to abridge or modify my duty, as codified at N.C.G.S. § 115C-21(a)(1), “to organize and establish a Department of Public Instruction[.]”

21. To my knowledge, no statute has been enacted to create the position of CEO or to transfer any responsibility or duties of the Superintendent to such an office.

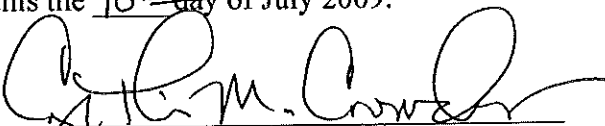
22. There exists now a conflict of authority and organization concerning the management of the public schools of North Carolina. This conflict arose as a result of the creation of the CEO position and the attempted transfer of duties from the Superintendent to the CEO.

This the 10th day of July 2009.




June St. Clair Atkinson

Sworn and subscribed to before me,
this the 10th day of July 2009.


Notary Public

My Commission expires: Feb. 4, 2014

North Carolina

County of Wake

CERTIFICATE OF SERVICE

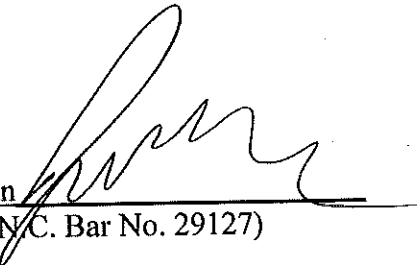
The undersigned hereby certifies that the foregoing AFFIDAVIT OF DR. JUNE ST. CLAIR ATKINSON was served on all parties by depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

Mark A. Davis, Special Deputy Attorney General
Gary R. Govert, Special Deputy Attorney General
N.C. Dept. of Justice
P.O. Box 629
Raleigh, NC 27602-0629

Service of the foregoing was also made by e-mail as follows:

mdavis@ncdoj.gov
ggovert@ncdoj.gov

This the 10th day of July, 2009.


/s/ Jeanette K. Doran
Jeanette K. Doran (N.C. Bar No. 29127)

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Pro Bono Counsel for Plaintiffs