



PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION | William W. Cobey Jr., Chairman
WWW.NCPUBLICSCHOOLS.ORG

William W. Cobey, Jr.
Chairman
At-Large Member

July 2, 2018

Eric Davis
Vice Chairman
At-Large

Dan Forest
Lt. Governor

Dale Folwell
State Treasurer

Rebecca Taylor
Northeast Region

Reginald Kenan
Southeast Region

Amy White
North Central Region

Olivia Oxendine
Sandhills Region

Alan Duncan
Piedmont Triad Region

Todd Chasteen
Northwest Region

Gregory Alcorn
Southwest Region

Wayne McDevitt
Western Region

Tricia Willoughby
At-Large Member

FOR IMMEDIATE RELEASE

Three weeks ago in *State Board of Education v. State of North Carolina and Mark Johnson*, the North Carolina Supreme Court reaffirmed three of our State Constitution's core principles:

1. The State Board of Education, the Superintendent of Public Instruction, and the General Assembly all have constitutionally based roles in the governance and operation of the public school system in North Carolina;
2. The Board has the ultimate authority under the Constitution to supervise and administer the state's public school system; and
3. The General Assembly cannot enact legislation that deprives the Board of its constitutional responsibilities.

In the Supreme Court's unanimous decision, it further declared that the Board has the authority to "govern the mechanics of the relationship between the Board and the Superintendent, as well as how their respective departments will operate internally." The Court also stated, repeatedly, that the Superintendent's actions are "subject to rules and regulations adopted by the Board."

When the Board fulfills these constitutional responsibilities, its members from across the state always put North Carolina's 1.5 million public school students first. Consistent with this students-first approach, a few days after the Supreme Court's decision, the Board on June 13 delivered a letter to the Superintendent (attached) that reiterated the Board's commitment to cooperation. The Board's letter further reminded the Superintendent of existing governance rules and regulations, and it outlined a path forward—together—on shared policy goals.

Unfortunately, the Superintendent rebuffed the Board's invitation to cooperate. Instead of engaging with the Board, the Superintendent and his staff immediately sought new legislation from the General Assembly. This new legislation was designed to expand the Superintendent's role in ways that disregard the constitutional principles that the Supreme Court reaffirmed just days earlier—specifically, by repealing longstanding Board rules that, to use the Supreme Court's words, "govern the mechanics of the relationship between the Board and the Superintendent, as well as how their respective departments will operate internally."

Within days, that new legislation was ratified as part of House Bill 374. Governor Cooper vetoed that legislation, but, after the General Assembly voted to override the Governor's veto, it was enacted into law.

NORTH CAROLINA STATE BOARD OF EDUCATION

William W. Cobey Jr., *Chairman* | william.cobey@dpi.nc.gov
6302 Mail Service Center, Raleigh, North Carolina 27699-6302 | (919) 807-3430 | Fax (919) 807-3198
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

HB374 not only conflicts with the Supreme Court's decision from two weeks ago, but it is also wrong for North Carolina as a matter of policy. The longstanding Board rules repealed in HB374 are rules that have proven vital to the Board's ability to fulfill its constitutional responsibilities. Again, those rules—to use the Supreme Court's words—"govern[ed] the mechanics of the relationship between the Board and the Superintendent, as well as how their respective departments will operate internally." They laid the groundwork for sensible, effective governance at the Department of Public Instruction. They also included uncontroversial provisions, such as the following:

- The Superintendent is to comply with, execute, and administer Board policies and rules.
- The Superintendent is to keep the public informed of the problems and needs of the public schools as identified by the Board.
- The Superintendent is to organize and manage DPI on a day-to-day basis, subject to the direction, control, and approval of the State Board.
- A limited number of key division leaders at DPI are accountable to both the Superintendent and the Board, which has final employment-decision authority over these key policymaking positions.
- The Superintendent executes documents on behalf of the Board signifying compliance with state law, Board rules and policies, and rules related to educator licenses.
- The Superintendent is to address issues involving teacher licensure investigations, suspensions, and revocations.

To be sure, HB374's elimination of these and other Board rules disregards the Supreme Court's recent decision and inappropriately intrudes upon the Board's constitutional authority.

Furthermore, the Board is disappointed that, in response to its sincere invitation to cooperate, the Superintendent reacted by actively working to advance the legislative overreach in HB374. Notably, after the Supreme Court's decision, the Superintendent made a public statement that he was "looking forward to putting this lawsuit behind us and working with board members to strengthen public education in North Carolina." Unfortunately, however, when presented with the Board's invitation to cooperate, the Superintendent turned to the General Assembly for new, top-down decision-making powers that would imperil our public school system.

The Board will always act in the best interests of North Carolina's educators and public school students. Consistent with its constitutional responsibility to supervise and administer the public school system, the Board will continue its oversight and accountability function. Consequently, the Board will continue to adopt rules and regulations that "govern the mechanics of the relationship between the Board and the Superintendent, as well as how their respective departments will operate internally." Regardless of whether the Board ultimately chooses to exercise its full constitutional power when enacting these rules and regulations, the public can rest assured that the Board will continue to oversee the actions of the Superintendent and his staff to ensure accountability and good outcomes for our public education system.

In the coming weeks and months, the Board remains open to working with the Superintendent. Each of the Board's offers to collaborate, as set forth in the Board's June 13 letter to the Superintendent, remains on the table. The Board hopes that the Superintendent will choose to work with the Board on issues of governance at DPI, and on the many important issues that impact our shared ability to improve public education.

The Superintendent's voice is, indeed, an important one in public education. Each Board member and the Superintendent have sworn an oath to uphold the Constitution and fulfill their respective constitutional duties. Those are awesome responsibilities. To fulfill them, we can—and we must—focus on putting our students and educators first.

On behalf of the North Carolina State Board of Education

A handwritten signature in black ink that reads "W.W. Cobey, Jr." The signature is written in a cursive style with a large, sweeping flourish at the end.

William W. Cobey, Jr.
Chairman, State Board of Education



PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION | William W. Cobey Jr., Chairman
WWW.NCPUBLICSCHOOLS.ORG

June 13, 2018

VIA HAND DELIVERY

The Honorable Mark Johnson
Superintendent of Public Instruction

Dear Mark,

Last week the North Carolina Supreme Court reaffirmed one of our State Constitution's core principles: the State Board of Education, the Superintendent of Public Instruction, and the General Assembly "all have constitutionally based roles in the governance and operation of the public school system in North Carolina."

Now that litigation is behind us, the Board hopes that we can work collaboratively with you to advance our joint work of building and improving our state's public school system. Local school districts, policy leaders, educators, and students depend on our leadership and we must provide it. We may not always agree on the particulars, but the Board firmly believes that we all share the common goal of providing all public school students the opportunity to learn, achieve, and thrive. Our students are the State's most important resource, and that foundational principle should inform every decision we make.

We are encouraged by your public statement last week that you look forward to putting this lawsuit behind us and working with the Board. I understand that preliminary discussions between our respective legal counsel have been fruitful so far, even though issues remain for us to resolve. I am pleased to work with your staff on creating a path forward, together. To that end, I suggest we reinstate a practice utilized in the past by Board Chairs and Superintendents: a regularly-scheduled meeting between the two of us to discuss issues. Meeting outside of the boardroom will help us build consensus and better understand one another's perspectives in areas where we disagree.

Further, the Board also invites you to contact us to engage in dialogue on the many areas in which our priorities align – for example, on issues of equity, student health and safety, testing, career and technical education, personalized learning, and educator preparation – as well as those areas where we have different opinions. Unified advocacy on issues where we align will amplify our voices, and a willingness to listen to each other when we do not is vital to the fulfillment of our constitutional commitments.

Each institution we serve has a unique role to play in North Carolina's public school system. The Board is fully cognizant of how important the role of the State Superintendent is in our system, and we are heartened by your renewed commitment to engage in the day-to-day operations at the Department of Public Instruction. As you proceed, please keep in mind our Supreme Court's declaration last week that the State Board of Education has the final say on the "mechanics of the relationship between the Board and the [State] Superintendent." The Court also stated, repeatedly, that the position of the Superintendent's "actions are

NORTH CAROLINA STATE BOARD OF EDUCATION

William W. Cobey Jr., *Chairman* | william.cobey@dpi.nc.gov
6302 Mail Service Center, Raleigh, North Carolina 27699-6302 | (919) 807-3401 | Fax (919) 807-3198
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

subject to rules and regulations adopted by the Board,” and that the Board has the “explicit ability to adopt appropriate rules and regulations governing the duties that have been assigned to the Superintendent.”

The Board has had such rules in place for some time, including (among others) in its long-standing Delegation of Authority (SBOP-013) and in its related rule regarding Operations and Responsibilities (SBOP-011). Per the Supreme Court’s opinion and law, these policies remain in effect, though I understand your lawyers have a different legal interpretation. To resolve this matter, I propose that you and Lindsey Wakely meet with Eric Davis and Eric Snider to work through any disagreements and find a way forward. I am hopeful that you will accept this invitation.

Thank you again for your commitment to work with the Board and to engage in the day-to-day operations of the Department. We look forward to getting back to work on behalf of educators and students.

North Carolina State Board of Education



William W. Cobey, Jr.
Chairman, State Board of Education