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NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE.
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
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WAKE COUNTY, C.S.C.
BY_____

MEMORANDUM OF DECISION

SECTION ONE

An Analysis Of Components of the North Carolina Educational Delivery System To Determine If Those Components Meet The Constitutional Standards Set Out By The North Carolina Supreme Court With Respect To Each Child's Right To An Equal Opportunity to Obtain A Sound Basic Education.

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
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MEMORANDUM OF DECISION

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PROCEDURAL BACKGROUND

THIS ACTION was instituted by the plaintiffs in 1994 in Halifax County, North Carolina. Since the defendants in the case are State Officers, the only proper venue was Wake County. On January 19,1995, the Honorable E. Maurice Braswell entered an order transferring venue from Halifax to Wake County. The plaintiffs in this action consisted of school children and their guardians ad litem who were then students in Hoke County, Halifax County, Robeson County, Cumberland County and Vance County, North Carolina. The other plaintiffs are the Boards of Education in each of those counties, all relatively poor school systems.

After the action was filed, several school children and their guardians ad litem who were attending schools in the City of Asheville, Buncombe County, Charlotte-Mecklenburg, the City of Durham, Wake County and Winston-Salem/Forsyth County were allowed to join the action as plaintiff-intervenors. The Boards of Education serving those individual students are also plaintiff-intervenors. The plaintiff-intervenor school systems are relatively large and wealthy school systems.

Both plaintiffs and plaintiff-intervenors alleged that their children have a right to adequate educational opportunities and that those opportunities are being denied to their students because of the system of school funding in North Carolina. The asserted a claim that the North Carolina Constitution creates a fundamental right to an education but also guarantees every child, regardless of the district in which they reside, equal educational opportunities and that the State of North Carolina and the State Board of Education have denied them their fundamental

constitutional right to equal educational opportunities.

The poor school districts allege that the children in their districts are not receiving a sufficient education to meet even the minimum standard for a constitutionally adequate education and that those children, because of disparities in funding between poor and wealthy school systems, are being denied an equal education because of the disparity in funding resulting from the present system of funding school districts in North Carolina. They also allege that they are not receiving the education provided for in the Basic Education ("BEP") Program that was adopted by the Legislature as a statutory framework for providing education to the children of North Carolina. The plaintiffs complain about a myriad of things, including, but not limited to, inadequate school facilities, outdated media centers, lack of computers and technology, lack of ability to compete for high quality teachers because of low salary supplements, and higher student teacher ratios in the classroom. Plaintiffs alleged that the scores of SAT, aptitude test and end of grade ("EOG") tests are proof that the great majority of their students are performing poorly in basic subjects.

The relatively wealthy plaintiff-intervenors alleged that the present system of funding used in North Carolina does not take into account the burdens faced by urban school districts which must educate a large number of children that have extraordinary educational needs, such as special education, limited English Proficiency, and children whose poor economic backgrounds place them at risk of educational failure, and academically gifted programs. They alleged that these extraordinary needs require the school systems to divert substantial resources from their regular education programs. The plaintiff-intervenors contend that the State of North Carolina and the State Board of

Education have violated the North Carolina Constitution and Chapter 115C of the General Statues by failing to provide those districts with sufficient resources to provide all of their students with adequate and equal educational opportunities.

The plaintiff-intervenors also complain that the State's system of providing additional funding to low wealth school districts while failing to fund the wealthier districts extraordinary needs is arbitrary and capricious and in violation of the Constitution and state law. They also complain that because of urban social problems such as poverty, disability and language barriers, they have to serve a disproportionate number of children that require special resources in order to be successful in school. Finally, because the large urban counties have high levels of poverty, crime, unemployment, and other social needs, their fiscal resources cannot be allocated to education in as large a percentage as that of rural poor districts.

The State of North Carolina moved to dismiss the complaints pursuant to Rule 12(1), (2)& (6), contending that the trial court lacked personal jurisdiction, subject matter jurisdiction, and that the complaints failed to state a claim upon which any relief could be granted. The motions to dismiss were denied by Judge Braswell and the case went first to the Court of Appeals. Arguments took place on January 24, 1996.

The Court of Appeals reversed the trial court's order denying the motion to dismiss and directed the action be dismissed. The Court of Appeals ruled that the right to education guaranteed by the Constitution of North Carolina is ***limited to an education which provides equal access to the existing educational system and does not embrace a qualitative standard. Leandro v. North Carolina, 122 N.C. App.1,11 (1996).***

The plaintiffs (both parties plaintiff) petitioned the Supreme Court for discretionary review pursuant to G.S. 7A-31. The Supreme Court allowed the petitions. Plaintiffs also appealed as a matter or right alleging that their claims presented substantial constitutional issues. The State of North Carolina contended to the Court of Appeals the educational adequacy claims were "nonjusticiable political questions." The issue was not reached by the Court of Appeals but was raised as a threshold defense again in the Supreme Court.

The Supreme Court heard arguments on October 17, 1996. Its decision was filed on July 24, 1997. ***Leandro v. State of North Carolina, 346 N.C.336(1997).***

The Supreme Court, in a landmark decision written by Chief Justice Burley B. Mitchell, Jr., addressed the "nonjusticiable political questions" defense raised by the State of North Carolina.

"It has long been understood that it is the duty of the courts to determine the meaning of the requirements of our Constitution.... When a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits..... Therefore, it is the duty of this Court to address plaintiff-parties' constitutional challenge to the state's public education system. Defendants' argument is without merit." Leandro (slip op. 9,10).

After brushing aside the State of North Carolina's first defense, the Supreme Court addressed the question of whether the constitutional right to an education has any qualitative content. The Supreme Court stated:

"The right to a free education is explicitly guaranteed by the North Carolina Constitution: ' The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.' N.C. Const. Art. I, Sec. 15. The Constitution

also provides: The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal educational opportunities shall be provided for all students.' Art IX, Sec. 2(1). The principal question presented by this argument is whether the people's constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.....

---------- We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education

or gainful employment in contemporary society…." (emphasis added; citations omitted) slip op. 13-15).

The Supreme Court, having declared that there is a constitutional qualitative standard mandating that every child should have the equal opportunity to receive a sound basic education, then addressed the second issue relating to equality of school funding between school districts. The plaintiffs argued that North Carolina's system of school funding, based in part on funding from the county in which the district is located, of necessity, denies the low wealth (relatively poor) school districts educational opportunities equal to those in wealthy districts and is in violation of the equal opportunities clause of Article IX, Section 2(1). The Supreme Court rejected the argument and stated in pertinent part:

" Although we have concluded that the North Carolina Constitution requires that access to a sound basic education be provided equally in every school district, we are convinced that the equal opportunities clause of Article IX, Section 2(1) does not require substantially equal funding or educational advantages in all school districts….

As a result we conclude that provisions of the current state system for funding schools which require or allow counties to help finance their school districts and result in unequal funding among the school districts of the state do not violate constitutional principles.

Article IX, Section 2(2) of the North Carolina Constitution expressly authorizes the General Assembly to require that local governments bear part of the costs of their local public schools…….. Because the North Carolina Constitution expressly states that units of local government with financial responsibility for public education may provide additional funding to supplement the educational programs provided by the

state, there can be nothing unconstitutional about their doing so or in any inequality of opportunity occurring as a result……. Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. ……For the foregoing reasons, we conclude that Article IX, Section 2(1) of the North Carolina requires that all children have the opportunity for a sound basic education, but is does not require that equal educational opportunities be afforded students in all of the school districts of the state. (slip op. pp. 17-22)

The Supreme Court also addressed the wealthy plaintiff-intervenors' contention that their relatively wealthy urban districts have been denied equal protection because there is no rational nexus between the state's funding allotment and the actual costs of providing students with educational resources. They contend that this is an acute problem in their districts because they have so many children with special needs. Because the state system of funding does provide additional moneys to low wealth and small counties for their educational systems and fails to provide similar additional funding to the relatively wealthy school districts, the funding system is arbitrary and denies children in the plaintiff-intervenors' wealthy urban districts equal protection guaranteed by Article I, Section 19. On this issue, the plaintiff-intervenors did not argue that the General Assembly may not provide supplemental funds to some districts and not others, but rather that the programs for supplemental funding to small county and low wealth counties without regard for the large urban districts needs is arbitrary and denies equal protection.

The Supreme Court found this argument to be without merit and wrote:

" Because we conclude that the General Assembly, under Article IX, Section 2(1), has the duty of providing the children of every school district with access to a sound basic education, we also conclude that it has the inherent power to do those things reasonably related to meeting that constitutionally prescribed duty. This power would include the power to create a supplemental state funding program which has as its purpose the provision of additional state funds to poor districts so that they can provide their students access to a sound basic education. However, a funding system that distributed state funds to districts in an arbitrary and capricious manner unrelated to such educational objectives simply would not be a valid exercise of that constitutional authority and could result in a denial of equal protection or due process……. Plaintiff-intervenors have made sufficient allegations in their complaint to entitle them to attempt to prove that the state funding system in question is unrelated to legitimate educational objectives and, therefore, is arbitrary and capricious….

We have concluded, however, that the North Carolina Constitution does guarantee every child of the state the opportunity to receive a "sound basic education" as we have defined that phrase in this opinion…….(slip op. 27-28)

The Supreme Court acknowledged with trepidation that courts are not experts in educational matters, but remanded the case to the Superior Court for trial on the claims. In doing so, the Supreme Court provided this Court with some guidance as to what factors could properly be considered by the Court in determining the issues in this case such as:

(a) educational goals and standards adopted by the legislature; (b) the level of performance of the children on standard achievement tests, or "output" measurements; (c) the level of the state's general educational expenditures and per-pupil expenditures and (d) other factors which may be relevant. However, no single factor may be considered as determinative in and of itself. (Slip op. pp. 29-33)

The Supreme Court then concluded as follows:

"In conclusion, we reemphasize our recognition of the fact that the administration of the public schools of the state is best left to the legislative and executive branches of government. Therefore, the courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children of the various school districts of the state a sound basic education. A clear showing to the contrary must be made before the court may conclude that they have not. Only such a clear showing will justify a judicial intrusion into areas so clearly the province, initially at least, of the legislative and executive branches as the determination of what course of action will lead to a sound basic education. But like other branches of government, the judicial branch has its duty under the North Carolina Constitution. If on remand of this case to the trial court, that court makes findings and conclusions from competent evidence to the effect that the defendants in this case are denying the children of the state a sound basic education, a denial of a fundamental right will have been established. It will then become incumbent upon the defendants to establish that their actions denying the fundamental right are 'necessary to promote a compelling governmental interest.' If defendants are unable to do so, it will then be the duty of the court to enter a judgment granting declaratory relief and such other relief as

needed to correct the wrong while minimizing the encroachment upon the other branches of government." (Slip op. 33-34) *The case was remanded to the Superior Court of Wake County for trial.*

Following the Supreme Court's decision, this case was declared an exceptional case by Chief Justice Mitchell pursuant to Rule 2.1 of the General Rules of Practice. The Chief Justice assigned the case to this Court for trial. After reviewing the issues and the Supreme Court decision, and after meeting with counsel, the Court determined that the case should be bi-furcated into a trial on the merits of the issues relating to the small school district plaintiffs and into a second trial on the merits related to the issues of the large, urban school district plaintiff-intervenors.

Because of the sheer size and complexity of dealing with evidence relating to five (5) low wealth districts and the sheer size of dealing with evidence relating to the six (6) large urban districts, the Court also made the initial decision to take evidence on one system in the low wealth plaintiffs' districts and one system in the so called wealthy urban districts. The Court suggested that the low wealth district be Hoke County and the parties agreed with that decision, as well as the decision to bi-furcate the case and to proceed with one school district in the small and large systems versus including them all. It is clear that the same issues affecting each small district are similar and the same conclusion is true with the large urban districts.

The plaintiff-intervenors were permitted to participate fully in discovery and in the trial of the case centered on Hoke County. The large, urban school segment will not be scheduled until the conclusion of the Hoke County case segment. The large, urban school

district was not, and has not, been selected by the Court.

Thereafter, discovery began. The Court and counsel held frequent meetings in chambers to deal with matters relating to discovery issues, student privacy issues and the pre-trial process.

The Issue of Rights of Pre-kindergarten "at-risk" Children.

In considering the scope of the issues for trial, the Court, on its own motion, raised the issue of the rights of pre-kindergarten age children. The Court discussed with counsel the necessity for a determination at an early stage of the proceedings of whether or not the constitutional rights enumerated by the Supreme Court in its decision of July 24, 1997, extend to certain "at-risk" children before they reach the age of (5), the beginning age for state supported kindergarten. The Court made this decision after reviewing Leandro *and its mandate that every child in the state should have an equal opportunity to receive a sound basic education.*

The Court believed that there was an issue as to whether or not children under age 5, who may be "at-risk" of not being in a position to perform and compete with others at the time they enter the five year old kindergarten program setting, are entitled to educational rights under the North Carolina Constitution sufficient to prepare them for entry level into the five year old kindergarten so that those children would be able to receive an equal opportunity to receive a sound basic education.

It was determined that the most expedient way to frame the question and have the issue decided sooner rather than later was by way of amendments to the complaints pursuant to Rule 15, North Carolina Rules of

Appellate Procedure. On October 28, 1998, the Court entered an Order permitting amendments and setting a briefing schedule for the parties on this issue. The plaintiff parties both filed amended complaints alleging the need for pre-kindergarten and other programs in order to provide children living in poverty with the opportunity to receive a sound basic education. The State of North Carolina then filed a motion to dismiss both amendments to the complaints.

On February 9,1999, this Court denied the motions to dismiss and found as a matter of law that "***under the Leandro doctrine and the North Carolina Constitution, the right to an opportunity to receive a sound basic education in the public schools is not to be conditioned upon age, but rather upon the need of the particular child, including, if necessary, the right to early childhood education prior to the child reaching the age of 5 and entering 5 year old kindergarten..... This ruling does not require the legislature to provide every 4 year old child, or for that matter every 3 year old child with a free pre-kindergarten education. To the contrary, the ruling merely clarifies the right to certain children to pre-kindergarten and early childhood intervention so as to permit them to take advantage of, and have an equal opportunity to receive, the sound basic education to which they are entitled in North Carolina under its Constitution."(Order, February 9, 1999).***

The State of North Carolina filed answer to the amended complaints and this issue was included in the matters for trial in Hoke County.

The trial of the Hoke County case began in September, 1999, one day before Hurricane Floyd arrived and devastated much of eastern North Carolina. Due to lack of courtroom availability, the case was continued from the first of October until November 15, 1999, where it resumed in the U.S. District Courthouse in

Raleigh thanks to the generosity and cooperation of Senior United States District Judge W. Earl Britt who made his courtroom available for the trial for three weeks. The plaintiff parties presented evidence for 12 days and the State of North Carolina for 11 days. No party was denied the opportunity to call any witness.

The plaintiff parties called 26 witnesses and introduced other testimony by deposition. The State of North Carolina called 17 witnesses, including Jay Robinson, the former chairman of the State Board of Education ("State Board") and Phil Kirk, the current chairman. Sadly, Jay Robinson passed away in early 2000, but the Court will never forget the story of Virgil McKinney of Mitchell County and how only he understood the "new" math.

The parties introduced a total of 670 documentary exhibits, consisting of many thousands of pages, relating to operations of the North Carolina public school system in general and the Hoke County public schools. Many of these documents were official State publications or records, and many others were generated for purposes of this litigation from publicly available data maintained by the State. The Court has over 60 loose leaf binders of documentary evidence to consider.

At the conclusion of the evidentiary portion of the Hoke County trial, there were no closing arguments. The Court believed it more productive to wait for the parties to obtain the transcripts, prepare their individual proposed findings of fact and conclusions of law, and exchange them between themselves. The parties exchanged their proposals in mid June, 2000. The volume of the proposed findings from all parties consists of some 800 pages, more or less. Upon receipt of the proposed findings, the Court directed the parties to review each other's proposed findings and conclusions and "red, white and green" them. This required the parties to mark the findings and conclusions that they

did not dispute "green" and those that they did dispute "red." If they did not dispute a finding or conclusion, but did not consider it relevant, it was to be left "white" or unmarked. This process was completed in early July.

Arguments on certain issues set out by the Court were held on Friday, August 18, 2000. The Court now has the task of working through the evidence and the myriad of issues in order to reach the decisions in this case in accord with the ***Leandro*** decision's guidelines. In working through the record and considering the multitude of issues before it, the Court has determined to make its decision in segments rather than all at one time.

CHARTING THE COURSE - AN OPENING STATEMENT

" All of us do not have equal talent, but all of us should have an equal opportunity to develop our talents."
- John F. Kennedy

Every child in N.C. has the constitutional right to an equal opportunity to receive a sound basic education. An equal opportunity to receive a sound basic education as defined in ***Leandro*** is the constitutional mandate for every child.

After taking the evidence, examining the proposed findings of fact and conclusions of law and hearing the arguments of the parties, the Court concludes that the initial ***Leandro*** battleground centers on finding the answer to the question of what is the substance and scope of the equal opportunity of each child to receive a sound basic education.

The State seeks to have the Court define the scope and substance of an equal opportunity to receive a

sound basic education in a simple manner. The State argues that if the State provides an educational system that is sufficient to offer children the opportunity to obtain a sound basic education, then it is up to each child to take advantage of the opportunity. If large numbers of children do not obtain a sound basic education, then it is somehow their problem and not the State's problem.

If the school doors are open and qualified teachers are in the classrooms teaching the standard course of study, then the State has provided all children that come to the school with an equal opportunity to obtain a sound basic education.

Put another way, if the educational infrastructure is in place and available to provide quality teachers teaching a satisfactory standard course of study, then each child is being provided with the equal opportunity to receive a sound basic education. Whether or not the child obtains a sound basic education is the child's responsibility. It is up to the child and its parent(s) to take advantage of the opportunity.

Missing in the State's argument is any focus on the term "equal" opportunity as applied to each child. What effort is required to provide an "equal" opportunity to each child is where the battle line is drawn. The State maintains that if the opportunity is there and certain children are able to take full advantage of the opportunity, then, the ***Leandro*** mandate has been complied with. It's like the old saying, "you can lead a horse to water, but you can't make it drink."

The plaintiff parties contend that ***Leandro*** is not so simple. The plaintiff parties believe that the proper analysis is to examine what each child needs. In the plaintiff parties' analysis, one should look at each child as an individual, take the child as the child is found, and then assess the educational needs

of that child. Within the possibilities of a public education system, the goal is to provide sufficient resources to enable the child to be on equal footing with other children so that child has an equal opportunity to take advantage of the educational delivery system available.

The plaintiff parties are also at odds with the State in terms of defining the minimum level of student academic performance that will satisfy the ***Leandro*** mandate and provide evidence that a child is on track to obtain a sound basic education.

In its papers and arguments to the Court, the State contends that poor academic performance on standardized tests is just evidence that some children are not taking advantage of the educational opportunities being provided.

The State contends that a sound basic education is so fundamental that an elementary school child who is performing below grade level (defined as level II performance on the End of Grade (EOG) tests for grades 3 through 8)is on track to receive a sound basic education.

Level II performance on EOG tests is below grade level and defined as: "Students performing at this level demonstrate inconsistent mastery of knowledge and skills in these subject areas and are minimally prepared to be successful at the next grade level."

In its "notes" provided to the Court, the State wrote, "Level II performance more closely describes the minimal level of performance which is indicative of a student being on track to acquire the sufficient, fundamental education described in a sound basic education." The contrast between Level II performance and Level III performance is substantial.

Level III performance on EOG tests is performance at or above grade level and defined as: 'Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared for the next grade level."

The State concedes that, " Level III performance does represent mastery of the Standard Course of Study but that standard exceeds the minimum academic performance necessary to demonstrate that a student is on track to receive a sound basic education."

The State continues to adhere to the below grade level standard despite the State Department of Public Instruction (DPI)'s determination that Level III performance constitutes mastery of the Standard Course of Study and DPI's admission that "Students who fail to achieve Achievement (Performance) Levels III or IV are considered academically at risk." (Rule 30(b)(6)Deposition) T. 11/15, pp. 230-1.

In oral arguments before this Court on August 18, 2000, counsel for the State agreed with the Court's following characterization: the State's position on the substance of a sound basic education is like comparing a moped to a Cadillac.

The State argues that the goals of having all children achieving Level III and above on EOC and EOG tests are laudable, but that those goals are not the performance levels required to meet the minimum Constitutional standard for a sound basic education. Level II performance - performance below grade level standards as set by the DPI - as far as the State is concerned, is sufficient to meet the minimum standards of the sound basic education.

The State also argues that neither of the plaintiff parties has presented any evidence as to what is the appropriate performance standard for determining

whether a student is on track to acquire a sound basic education or whether a student has received a sound basic education. (Note to PIs' Proposed Findings, par.140, p. 99)

The State's position is that a sound basic education is so basic and fundamental that it is a moped not a Cadillac. The Court is urged to adopt a fundamental standard for math like that of West Virginia.

" In West Virginia, the state constitution was construed to provide for development in every child of the ability to add, subtract, multiply and divide numbers. (citation omitted) That is 'fundamental mathematics.' To be sure, the Leandro standard for a sound basic education is higher, in that it will include courses necessary for graduation from high school that go beyond fundamental mathematics. But 'fundamental' mathematics is as described by the West Virginia Supreme Court. Student performance on tests can be indicative as to whether they are on track to acquire a sound basic education prior to exhaustion of the educational opportunities available in the public schools but they cannot prove that educational opportunities do not exist."
(Notes to P-Is' proposed findings, par. 213, p. 129-30)

The plaintiff parties contend that the minimum performance standard is much higher and should be at least grade level (Level III, or above). The plaintiff parties concede that Level III is some evidence that a student is receiving a sound basic education, but that other input/output measures should also be considered. Because the differences between the parties as to what the minimum performance standard of the sound basic education is, or is not, are so extreme, the Court has to first determine what the minimum level of academic achievement is under the ***Leandro*** standard. Without

making this initial determination, there can be no baseline in place for the Court to anchor its review of the North Carolina educational delivery system.

The Minimum Performance Standard under *Leandro* is Performance at or above Grade Level, (Level III, or above).

The Court has determined that the minimum level of academic performance under ***Leandro*** is performance at or above grade level performance as defined by the ABCs' and DPI (Level III or above). Academic performance below grade level (Level II) is a constitutionally unacceptable minimum standard and the State of North Carolina's argument that academic performance below grade level is sufficient is rejected.

Having determined that grade level or above is the minimum ***Leandro*** standard, the Court must now examine the evidence to determine whether or not the State is providing the children of North Carolina and Hoke County with the equal opportunity to receive a sound basic education.

The Court's initial examination will not focus on the issue of whether or not the educational delivery system in place in Hoke County is providing Hoke County children with the equal opportunity to receive a sound basic education. Instead, the examination will focus on the statewide educational delivery system. By first addressing the statewide educational delivery system, the Court will be able to conduct an overview of certain components of the statewide system and determine whether the system meets the constitutional mandate. Components such as curriculum, teacher qualifications and training, funding delivery, accountability measures, performance standards and at risk children will be examined. Once the Court has completed its analysis of these components, then the

Court will address the question as to whether or not Hoke County is providing its school children with an equal opportunity to receive a sound basic education through its educational delivery system. Accordingly, a Final Judgment on the ultimate issue regarding the Hoke County Schools will not be entered until the Court's examination is complete.

This analytical process will result in a series of decisions focusing on certain components of the educational delivery system rather than one large judgment. Because the record in this case is so large and because there are so many components and issues, it just good makes sense to go forward in small steps. Also, by taking this approach, there will be a better understanding of the Court's analysis and decision as the process goes forward.

In attempting to meet this goal, the Court, upon completion of each step, will make findings of fact and conclusions of law reflecting its decision on the area of the educational delivery system examined. Using this flexible process, the Court can render decisions that may deal with one or more components at a time. The Court finds that the issues and record in this case are so many and so voluminous that to take any other course would be impractical given the size and scope of this case.

Accordingly, the Court, in its discretion, and pursuant to Rule 42, North Carolina Rules of Civil Procedure, will further bifurcate its decisions on the constitutional validity of the North Carolina educational delivery system and Hoke County into multiple ones and will not enter a Final Judgment on Hoke County until this process is complete.

Under this bifurcated procedure, if one or more of the parties is unhappy with the Court's decision on a particular segment of the case, the parties can request

the Court to certify that particular decision for appellate review under Rule 54, North Carolina Rules of Civil Procedure without impeding the progress of the Court's decision making on other segments of the case.

REVIEW OF COMPONENTS OF THE NORTH CAROLINA EDUCATIONAL DELIVERY SYSTEM

The Court will conduct its analysis and review of some of the components of the North Carolina Educational Delivery System in the following order:

I. Curriculum and Standard Course of Study
II. Teacher Licensure and Certification Standards
III. Funding Delivery System
IV. ABCs Accountability System
V. Student Performance Standards
VI. Educational Needs - At Risk Students***

***This Memorandum of Decision covers components I through V. Component VI. addressing the subject of Educational Needs - At Risk Students will be in a separate Memorandum of Decision to follow.

I. THE STATE CURRICULUM IS SUFFICIENT TO PROVIDE THE OPPORTUNITY FOR A SOUND BASIC EDUCATION

INTRODUCTION

Leandro requires the State to offer students the opportunity to receive a "sound basic education." It defined the opportunity to receive a "sound basic education" as one which provides the student with the opportunity to acquire:

> (1) *sufficient* ability to read, write, and speak the English language and a sufficient knowledge of *fundamental* mathematics and physical science to enable the student to *function* in a complex and rapidly changing society;
>
> (2) *sufficient fundamental* knowledge of geography, history, and *basic* economic and political systems to enable the student to *make informed choices* with regard to issues that affect the student personally or affect the student's community, state, and nation;
>
> (3) *sufficient* academic and vocational skills to *enable* the student to *successfully engage* in post-secondary education or vocational training; and
>
> (4) *sufficient* academic and vocational skills to *enable* the student *to compete on an equal basis* with others in *further formal education or gainful employment* in contemporary society.

Leandro, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997) (emphasis added).

A substantial component in the Court's examination of the opportunity of North Carolina's school children to receive a sound basic education, of necessity, is a determination as to whether or not what the students are to be taught in the public schools is sufficient in substance and content as to meet the constitutional content set forth in ***Leandro's sound basic education standard.***

Accordingly, the Court must address the State of North Carolina's curriculum that is required to be implemented and taught to children in all public schools in the public school districts ("LEAs") in North Carolina's one hundred counties.

The plaintiffs have stated that they have no complaint about the content of the State curriculum. The State of North Carolina's curriculum is known as the Standard Course of Study ("SCOS"). Counsel for Plaintiffs, Sep. 21, 1999, at 500.

In fact, counsel for the plaintiffs have confessed that their only complaint about the Standard Course of Study is how it "is brought into practice" or "implemented." Counsel for Plaintiffs, Sep. 21, 1999, at 500.

With respect to the issue of the content of education in North Carolina's public schools, the *Leandro* Court acknowledged:

> [T]he legislative process provides a better forum than the courts for discussing and determining what educational programs and resources are most likely to ensure that each child of the state receives a sound basic education. . . . The legislature can properly conduct public hearings and

> committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view as to what curricula will best ensure that every child of the state has the opportunity to receive a sound basic education.. . . .
>
> [T]he courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children of the various school districts of the state a sound basic education.

Leandro, 346 N.C. at 354-55, 357, 488 S.E.2d at 259, 261.

STATE CURRICULA STANDARDS

Pursuant to the Supreme Court's guidance, the Court has examined the North Carolina General Statutes to determine whether the General Assembly has enacted any statutes mandating the content of North Carolina public school education.

Following the publication of *A Nation at Risk*, which criticized the nation's public schools and called for reforms, the General Assembly in 1985 passed legislation rewriting the Basic Education Program ("BEP") for the State of North Carolina. Robinson, Nov. 16, 1999, at 65-67; N.C. Sess. Laws c. 479, s. 55(14)(c) (1985); N.C.G.S. § 115C-81. That legislation specifically directed the State Board of Education to adopt a "Basic Education Program for the public schools of the State," N.C.G.S. § 115C-81(a), and went on to describe the BEP follows:

> The Basic Education Program ("BEP") shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education.

N.C.G.S. § 115C-81(a1).

Pursuant to that directive, the State Board of Education adopted the BEP and has, from time to time, revised the BEP. Defendants' Exhibit 200, p. ii, SCS-U 00001.

The BEP, as adopted by the State Board of Education, describes a program of instruction which "is fundamentally complete" and which provides students with the opportunity for "a thorough grounding" in language and communication skills, mathematics, science, social studies, information and computer skills, vocational education, arts and healthful living. It describes the courses, the knowledge and ability and the staff and materials needed to provide students this "thorough grounding" in these basic courses. Defendants' Exhibit 200, p. 1, SCS-U 00004.

The BEP developed under N.C.G.S. § 115C-81(a1) is broader than the sound basic education described in *Leandro*. Whereas the sound basic education described in *Leandro* is focused on English communication skills, mathematics, physical science, geography, history, basic economic and political systems, vocational training, the BEP mandates instruction in all those areas as well as

art, physical education, personal health and safety, media, computer skills, and second languages.

The Hoke County School System ("HCSS") has reported to the State that HCSS has fully implemented all parts of the BEP related to instruction in subjects included in the Supreme Court's definition of a sound basic education. Defendants' Exhibits 199, 202, 205, 206. This information, standing alone, does not answer the questions before this Court.

In addition to the BEP, the General Assembly has directed the State Board to develop content standards for instruction in the North Carolina public schools that meet the following standards:

> The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined

grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes. High school course content standards shall include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of The University of North Carolina. The Board shall develop and implement a plan for end-of-course tests for the minimum courses required for admission to the constituent institutions. All end-of-course tests shall be aligned with the content standards.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area every five years. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing

> professional development and other university activity in the State's public schools align with the State Board's priorities.

N.C.G.S. § 115C-12(9a).

The General Assembly has directed the State Board of Education to develop pursuant to N.C.G.S. § 115C-12(9a), a Standard Course of Study ("SCOS") the contents of which encompasses and exceeds the content requirements of a "sound basic education" as defined by ***Leandro***.

Consistent with the Supreme Court's admonition to "grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children of the various school districts of the state a sound basic education" *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261, the Court has reviewed the record to determine whether the plaintiffs have made a clear showing that the Standard Course of Study described in N.C.G.S. § 115C-12(9a) does not provide North Carolina students with a curriculum sufficient to provide them with the opportunity to acquire a sound basic education.

Leandro specifically requires instruction in certain academic subjects, to wit: reading English, writing English, speaking English, mathematics, physical science, geography, history, and economic and political systems. The "core academic areas" identified in N.C.G.S. § 115C-12(9a) include: reading, writing, mathematics, science, history, geography and civics.

With the exception of speaking the English language, the "core academic areas" defined in

N.C.G.S. § 115C-12(9a) include all the academic subjects required for a sound basic education. Moreover, speaking the English language is incorporated in the Standard Course of Study for English language arts. Defendants' Exhibit 200, p. 6, SCS-U 00009.

With respect to the level of skill or knowledge required in the specified academic areas, *Leandro* describes a sound basic education as one that is "sufficient," "fundamental," and "basic." *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. In contrast to these constitutional minimum standards, the General Assembly has mandated that the content of a North Carolina public education "reflect high expectations" and permit "in-depth mastery of the content." N.C.G.S. § 115C-12(9a). Thus, the legislatively mandated content standards for the core academic areas of a North Carolina public school education described in N.C.G.S. § 115C-12(9a) exceed the requirements for a sound basic education as described in *Leandro*.

Leandro describes a sound basic education as one that "enable[s] the student to successfully engage in post-secondary education or vocational training" and "enable[s] the student to compete on an equal basis with others in further formal education." *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. Consistent with the ***Leandro*** standard, the General Assembly has specifically mandated that the public schools of North Carolina offer high school courses with content standards that include the knowledge and skills "aligned with the coursework required for admission to the constituent institutions of The University of North Carolina." N.C.G.S. § 115C-12(9a).

The Court finds that the constituent institutions of the UNC system include some of the best colleges and universities in the world. For example, the median SAT score for UNC-Chapel Hill freshmen is about 200 points higher than the national mean. Plaintiffs' Exhibit 478, pp. 9, 15.

Consequently, a quality public school education aligned with the admission requirements for the constituent institutions of the UNC system meets the requirements for a sound basic education as described in *Leandro* for those students who wish to compete with others in further formal education and have received the equal opportunity to receive an education that will permit them to do so.

Reduced to essentials, the Court finds that the content standards that the General Assembly mandates are more than sufficient to provide the opportunity for North Carolina students to acquire a sound basic education provided that the content standards are being properly implemented in the classroom. 346 N.C. 357.

Having determined that the content standards described in N.C.G.S. 115C-12(9a) are sufficient to provide North Carolina students with the opportunity for a sound basic education if properly implemented in the classroom, the Court reviewed evidence regarding the State Board of Education's efforts to develop contents standards and the Standard Course of Study consistent with the General Assembly's directives.

Process. North Carolina has had a Standard Course of Study in one form or another since the Nineteenth Century. In accordance with the direction of the General Assembly, the State Board

of Education undertook a substantial revision of the Standard Course of Study beginning in 1985. The Standard Course of Study is part of the Basic Education Program. Local boards of education and the schools they administer are statutorily required to teach the Standard Course of Study (SCOS).

The Standard Course of Study is prepared and disseminated by the DPI, and is intended to "communicate what students should know and be able to do as a result of instruction at each grade level or from a course. The SCOS is used by teachers to design lesson plans and provides a guide to what is expected of teachers by the State.

The Standard Course of Study for the core academic areas is now revised on a five-year schedule. Defendants' Exhibit 3; Atkinson, Nov. 16, 1999, at 177;

The SCOS is, in effect, the State's curriculum. Just having the SCOS is not enough to guarantee children an opportunity for a sound basic education. If students are to have a genuine equal opportunity to acquire the knowledge and skills set forth in the SCOS, they most also have access to qualified teachers, adequate materials, equipment, facilities and programs to address the needs of children performing below grade level.

Prior to 1985, the content of the Standard Course of Study was substantially, if not exclusively, determined by curriculum experts and other academic specialists. Since 1985, however, the General Assembly has required DPI to seek input and DPI has sought input from a broad range of people and sources, including parents, the general public, business and industry, classroom teachers as well as State and national curriculum experts.

Atkinson, Nov. 16, 1999, at 180-81, 186; Nov. 17, 1999, at 100; Defendants' Exhibit 3.

For example, during the recent revision of the English language arts component of the Standard Course of Study, DPI reviewed curriculum standards from other states and national standards, conferred with business and industry leaders, conferred with faculty and administrators of the community college and university systems, hired consultants, mailed out surveys, held regional and telephone conferences for teachers and parents, conducted focus groups, and hired experts from outside North Carolina.

The opportunity for community input in the Standard Course of Study revision process is further illustrated in the Executive Summaries of the revisions for the Science curriculum, Defendants' Exhibit 2, the Mathematics curriculum, Defendants' Exhibit 7, and the Computer/Technology Skills curriculum, Defendants' Exhibit 9. For example, in the course of revising the Mathematics curriculum alone, DPI relied on the services of a committee comprised of 108 classroom teachers, 16 school district level administrators, 20 faculty and administrators from institutions of higher education, 7 mathematics consultants and 14 others, including members of the business community, vocational education experts, parents and local board members. That committee surveyed 2,000 teachers and 1,100 parents; held public hearings in Asheville, Charlotte, Greenville and Raleigh; conducted focus group meetings for a variety of groups including the North Carolina Business Committee for Education and local parent groups and PTAs; and presented drafts of the revised curriculum to meetings of professional organizations of mathematics teachers. Defendants' Exhibit 7.

All of the academic areas specifically mentioned in *Leandro* have been recently revised: a revised English language arts course of study, including reading, writing and speaking was adopted in 1994 and again in 1999; a revised Mathematics course of study was adopted in 1992 and again 1998; a revised Social Studies course of study, including history, geography and civics, was adopted in 1997; the revised Science course of study was adopted in 1994 and again in 1999. A wide variety of vocational and technical courses of study including, agricultural education, business education, technology education, and trade and industrial education were revised in 1997-98. Defendants' Exhibit 4.

Structure of the Standard Course of Study

As a result of input from curriculum experts, parents, teachers, business and the public, the Standard Course of Study identifies academic content standards which are useful to North Carolina students and properly prioritizes those standards within the overall educational mission of the public schools. In kindergarten through grade 8, it includes arts; math; science; social studies, including geography, civics, history; English language arts, computer/ technology skills, foreign language (second language); and healthful living. The Standard Course of Study for grades six, seven and eight also includes vocational education. At the high school level, the Standard Course of Study includes courses in all of those areas. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999, at 177-78, 181.

Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the Standard Course of Study is rigorous and compares favorably with other

state curricula, the national curriculum standards embodied in the National Assessment of Educational Progress ("NAEP") and international standards in math and science education. Business and industry leaders involved in curriculum development endorse its content. Atkinson, Nov. 16, 1999, at 188-89. Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the Standard Course of Study is specific. Each content area identifies competencies and objectives for each grade so that teachers will know exactly what the State expects of them and their students. Defendant's Exhibit 1; Atkinson, Nov. 16, 1999 at 189.

Consistent with the General Assembly's mandates in N.C.G.S. 115C-12(9a), the Standard Course of Study is sequenced so that there is no unnecessary duplication of learning—competencies and objectives are introduced, learned, reinforced and integrated with the next competencies and objectives as the student progresses through the curriculum. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999 at 189-90.

Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the Standard Course of Study is clear, as demonstrated by public involvement in its development and feedback from professional groups, teachers and parents. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999, at 190.

Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the Standard Course of Study is focused on the competencies, objectives and contents that are most important for students to know and are most likely to have an impact on their learning. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999, at 190-91.

Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the competencies and objectives of the Standard Course of Study are measurable. They identify specific competencies and objectives that teachers can ascertain through observation and testing, including testing under the State's ABC testing program. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999, at 190-91. Consistent with the General Assembly's mandates in N.C.G.S. § 115C-12(9a), the Standard Course of Study is based on high expectations for students compared with other state curricula as well as national and international curriculum standards. Defendants' Exhibit 1; Atkinson, Nov. 16, 1999, at 188-89, 191-92.

Content of the Standard Course of Study with Respect to the Ability of Students to Function in a Complex and Rapidly Changing Society

In order to provide students with an equal opportunity for a sound basic education, the Standard Course of Study as developed by the State Board of Education and DPI must first provide students with the equal opportunity to learn "to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society." *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. An examination of the English language arts, mathematics and science content areas in the Standard Course of Study more than meets the ***Leandro sound basic education content requirements***. Defendants' Exhibit 1. This finding does not answer the total question.

The SCOS in and of itself is a sound and valid curriculum that more than meets the content requirements of the Constitution. However, the SCOS standing alone does not prove anything in terms of whether or not the SCOS is properly delivered to the student in the classroom. Clearly, if the student is being taught by a qualified and competent teacher, that student is being provided with the equal opportunity to receive a sound basic education.

With the foregoing in mind, the Court finds that The Standard Course of Study is sequenced and builds on itself so that, as students progress through various levels of proficiency and ultimately graduate from high school, they will have had the opportunity to master all the material

in the core academic content areas. Defendants' Exhibit 1.

Put another way, the Court finds that if the Standard Course of Study is fully implemented and taught by a competent and qualified teacher to students, then and in that event, those students have been provided the equal opportunity to acquire sufficient ability "to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society." *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. The finding that a North Carolina student being taught by a competent and qualified teacher has the equal opportunity to acquire a sound basic education in core academic areas as defined by *Leandro* before completing high school is illustrated by reference to the academic subject areas that are discussed hereafter. Defendants' Exhibit 1.

English Language Arts

The philosophy of the Standard Course of Study for English language arts is predicated on the belief that the "twenty-first century will bring new challenges in preparing students for the demands of the information age." Therefore, "[t]he intent of the North Carolina Standard Course of Study for English Language Arts is to equip students with the level of literacy needed to participate as informed and effective citizens in a democratic society, to function effectively in the world of work, and to realize personal fulfillment." Defendants' Exhibit 1, English Language Arts, p. 6.

Overall "[t]he goals of the entire English Language Arts (Communication Skills) curriculum are to produce students who have the language skills to be self-directed learners, collaborative workers, and problem solvers who read carefully and write accurately. These are abilities students will need to be successful in both their personal and professional lives in the 21st century." Defendants' Exhibit 200, p. 7.

To that end the Standard Course of Study for English language arts describes the competencies each student should have to provide the opportunity to obtain proficiency in language arts in each grade, kindergarten through twelfth, as they progress to English Language Arts proficiency. Defendants' Exhibit 1, English Language Arts, p. 75.

Among other competencies, the Standard Course of Study in English writing requires a student upon completion of the eighth grade to be able to write arguments that have coherent, logical and organized structure and that provide sufficient, related and elaborated reasons for adopting a position. An eighth grader is expected to be able to write practical texts, *e.g.*, letters of request or complaint, application forms and directions. In every case, the student is expected to be able to edit for errors in sentence formation, usage, mechanics and spelling. Defendants' Exhibit 1, English Language Arts, p. 90.

Among other competencies, the Standard Course of Study in English reading requires a student upon completion of the eighth grade to be able to read independently informational and practical materials with complex vocabulary, concepts and formats. The eighth grade student is also expected to recognize the characteristics of argumentative texts and the

coherence, logic and organization of argumentative texts as well as to recognize the author's bias. Finally, the eighth grade student is expected to be able to extract ideas embedded in complex passages of text and synthesize and expand on information from a range of texts. Defendants' Exhibit 1, English Language Arts, p. 89.

While the Standard Course of Study does not enumerate the English speaking skills that students are expected to master through the eighth grade, it does emphasize the importance of speaking skills and provides guidance on how those skills can be developed within the reading and writing competencies described above. For example, the Standard Course of Study states that elementary students should be provided the opportunity to use oral language in work groups to not only gain and give information to others but also to evaluate the accuracy and reliability of oral information through asking, verifying and clarifying questions. Defendants' Exhibit 1, English Language Arts, p. 39.

In the secondary years, the Standard Course of Study emphasizes the need to provide opportunities to practice more formal speech through oral reports, interviewing and class debates. The assessment of students' fluency involves conferences and evaluations of oral reports, panel discussions or debates. Students are expected to be aware of the purpose of the presentation, and awareness of the audience as revealed through vocabulary, posture, eye contact, gesture, pitch and volume. Defendants' Exhibit 1, English Language Arts, p. 39. They are also expected to organize their oral presentations to assure the presentation of accurate and sufficient information. Defendants' Exhibit 1, English Language Arts, p. 41-42.

The Court finds that the English reading, writing and speaking skills covered by the Standard Course of Study are more than sufficient to provide students with the opportunity to acquire sufficient knowledge of and ability in those areas to enable them to function in a complex and rapidly changing society provided, however that the student is receiving instruction in English, reading and writing from a competent and qualified teacher. Defendants' Exhibit 1, English Language Arts.

Mathematics

The North Carolina Mathematics Standard Course of Study focuses on "giving students the opportunity to acquire the mathematical literacy necessary to function in an information age, cultivate the understanding and application of mathematical skills and concepts necessary to thrive in an ever-changing technological world, develop the essential elements of problem solving, communication, reasoning, and connections within their study of mathematics, and understand the major ideas of mathematics." Defendants' Exhibit 1, Mathematics, p. iii.

The goals of North Carolina Mathematics Standard Course of Study are for all students to develop:

Strong mathematical problem solving and reasoning abilities;

A firm grounding in essential mathematical concepts and skills, including computation and estimation;

Connections within mathematics and with other disciplines;

The ability to use appropriate tools including technology to solve mathematical problems;

The ability to communicate their understanding of mathematics effectively; and

Positive attitudes and beliefs about mathematics.

Defendants' Exhibit 1, Mathematics, p. 4.

Among other competencies, the Standard Course of Study in mathematics requires a student upon completion of the eighth grade to be able to compute with whole numbers, decimals, and fractions; convert fractions, decimals and percents; know the Pythagorean Theorem and use it to solve problems; solve linear equations and inequalities; figure probability of independent and dependent events; use scientific notation; analyze problems for sufficient and extraneous data, then select appropriate strategies to solve the problem; use geometric concepts to solve problems; calculate distances and areas from scale models and maps; find the surface area and volume of a variety of shapes and solids; and identify, explain and apply the commutative, associative and distributive properties, inverses and identities in algebraic expressions. Defendants' Exhibit 1, Mathematics, pp. 40-41.

The content of the mathematics component of the Standard Course of Study is more than sufficient to provide students with the opportunity to acquire sufficient knowledge of and ability in fundamental mathematics to enable them to function in a complex and rapidly changing society provided the student is receiving the content of the mathematics

component from a competent and qualified teacher. Defendants' Exhibit 1, Mathematics.

Physical Science

The stated goal of the North Carolina Science Standard Course of Study is the attainment of "scientific literacy" which, consistent with National Science Education Standards, is defined as "the knowledge and understanding of scientific concepts and processes required for scientific decision making, participation in civic and cultural affairs, and economic productivity." Defendants' Exhibit 1, Science, p. 4

The North Carolina Science Standard Course of Study states that the tenets of scientific literacy include the ability to:

> Find or determine answers to questions derived from everyday experiences.
>
> Describe, explain, and predict natural phenomena.
>
> Understand articles about science.
>
> Engage in non-technical conversation about the validity of conclusions.
>
> Identify scientific issues underlying national and local decisions.
>
> Pose explanations based on evidence derived from one's work.

Defendants' Exhibit 1, Science, p. 4.

The Standard Course of Study in science, kindergarten through eighth grade, is based upon

four educational principals: the nature of science as a human endeavor; science as inquiry and experiment; the relation between science and technology; and the effect of science on people and social structures. Defendants' Exhibit 1, Science, pp. 9-15.

While the science curriculum is thoroughly integrated in kindergarten through fifth grade education, by sixth grade it begins to offer the opportunity to acquire substantive knowledge of essential scientific facts and principles. In sixth through eighth grade students have the opportunity to learn about the soil and its characteristics; the characteristics of matter and the energy flow through an ecosystem, including photosynthesis and food chains; the solar system; characteristics of energy, including the conservation of energy; the atmosphere; cell theory; heredity and genetics; properties of matter, *i.e.*, elements, compounds and mixtures and their suitability for technological designs; conservation of matter; the hydrosphere; population dynamics; evolution; geological changes; and motion and forces including Newtonian physics and the basic properties of electricity. Defendants' Exhibit 1, Science, pp. 48-66.

The content of the science component of the Standard Course of Study is more than sufficient to provide a student with the opportunity to acquire sufficient knowledge of and ability in fundamental physical science to enable the student to function in a complex and changing society provided the student is receiving the content of the science component from a qualified and competent teacher. Defendants' Exhibit 1, Science.

The Standard Course of Study with Respect to the Ability of Students To Make Informed

Choices About Issues that Affect Them and Their Community, State, and Nation

In order to provide the opportunity for a sound basic education, the Standard Course of Study as developed by the State Board and DPI must also provide students with the course content so as to provide a "sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation." *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

An examination of the content of the social studies component of the Standard Course of Study reveals that it provides a curriculum with a content that more than meets the constitutional standard required by ***Leandro.***

Social Studies

The North Carolina Social Studies Standard Course of Study adopts the Board of Directors of the National Council for the Social Studies stated purpose of the study of social studies which is "to help young people develop the ability to make informed and reasoned decisions for the public good as citizens of a culturally diverse, democratic society in an interdependent world." Defendants' Exhibit 1, Social Studies, p. 1.

> Civil competence -- "the knowledge, skills, and attitudes required of students to be able to assume 'the office of citizen . . .' in our democratic republic" -- is the major purpose of social studies programs under the Standard

Course of Study. Defendants' Exhibit 1, Social Studies, p. 1.

The overall goals of the social studies program under the Standard Course of Study are to produce students who:

> possess civic understanding and accept their responsibilities as citizens in a democratic society;
>
> are proficient in the skills of: information acquisition; information use for problem-solving, decision-making, and planning; interpersonal relationships and social participation; and civic participation;
>
> possess the ability to apply concepts, generalizations, and theories to analyze and explain the structure, function, and operations of the economic, social, and political institutions of the United States and other societies and the economic, social, and political behavior of people;
>
> the historical development and unique characteristics of past and present societies;
>
> persistent issues and problems;
>
> basic geographic concepts;
>
> demonstrate values consistent with the fundamental tenets of democracy;

exhibit constructive attitudes toward change, conflict, diversity, and uncertainty; and

demonstrate concern for others and for the environment;

Defendants' Exhibit 1, Social Studies, p. 3.

The North Carolina Social Studies Standard Course of Study integrates knowledge, skills, and attitudes within and across disciplines while helping students construct a knowledge base and attitudes drawn from academic disciplines as specialized ways of viewing reality. Defendants' Exhibit 1, Social Studies, pp. 1- 2.

The academic disciplines specifically incorporated into the social studies program are: history, geography, economics, political science, anthropology, psychology and sociology. Defendants' Exhibit 1, Social Studies, pp. 6-15.

The geography, history and economic and political systems components of the Standard Course of Study are integrated into the social studies programs in kindergarten through eighth grade. Beginning in fifth grade students are expected to study the United States, Canada and Latin America; Europe and the former Soviet Republics; Africa and Asia; and finally, the history of North Carolina in the context of national and international events. For each geographic area, the student is expected to learn the characteristics of the inhabitants; the influence of religious, ethical and aesthetic values on their lives; the major physical features of the region and their influence on the lives of the inhabitants; how people have used, modified and adapted to their physical environment; the movement of people, goods, and ideas through the region; the

relationships between this region and other regions of the world; how the people of that region govern themselves; how they make decisions about the allocation and use of economic resources; economic relationships within the region; how and why the people's way of life has changed; and the impact of historical, economic, political and social trends on the region.

In the eighth grade, students are expected to engage in an in-depth study of North Carolina from pre-colonial times through the present, including, its economic, social and political development and significant historic events and personalities. Defendants' Exhibit 1, Social Studies, pp. 33-41.

Further opportunities for each student to have the equal opportunity to obtain a sound basic education in geography, history and basic economic and political systems are contained in the content of both the economic, legal and political systems course ("ELPS") and the United States history course that are required for graduation from a North Carolina high school provided that the student is performing at or above grade level and being taught the content of ELPS and U.S. History by a competent and qualified teacher.

The Standard Course of Study for ELPS course requires the student to learn the problems confronting American economic, legal and political systems; understand the obligations of citizenship; investigate how and why individuals and groups make economic choices; analyze features of the United States' economic system; analyze the factors that influence the United States' economy; explain the function and importance of the North Carolina and United States constitutions; explain the structure and functions of local, state and national governments and their relations to each other; explain why laws are needed and how they are enacted, implemented and enforced; explain how these political and legal systems provide for balancing competing interests and resolving conflicts; and evaluate how ethical, moral and religious principles and beliefs influence economic, legal and political systems. Defendants' Exhibit 1, Social Studies, pp. 42-44.

The content of the social studies component of the Standard Course of Study is more than sufficient to provide a student with the equal opportunity to acquire "sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation" provided that the student is being taught the content of the social studies component by a competent and qualified teacher. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. Defendants' Exhibit 1, Social Studies.

THE STANDARD COURSE OF STUDY WITH RESPECT TO THE OPPORTUNITY TO PREPARE FOR A POST-SECONDARY AND/OR FOUR YEAR COLLEGE EDUCATION

In addition to its core academic content, a sound basic education as defined in *Leandro* requires the State to offer students in the public schools the opportunity to acquire sufficient academic skills to successfully engage in post-secondary education and to enable the student to compete on an equal basis with others in further formal education. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

This does not mean that all students must be prepared to go on to college or that all students must take college preparatory courses in order to satisfy this requirement of ***Leandro***. To put such a burden on the educational system would be to impose an impossible and unrealistic task as there are many levels of performance between children as well as many different levels of interest.

The Court finds that any student who has the opportunity to elect to take high school courses that satisfy the admission requirements for college can successfully engage in post-secondary education or compete equally in further formal education provided that student is being taught by qualified and competent teachers in those courses. The General Assembly has gone beyond the minimum requirements for admission to just any college or university and mandated that the Standard Course of Study be aligned with the course work required for admission to the constituent institutions of the UNC system. N.C.G.S. § 115C-12(9a).

In addition to a high school diploma, the UNC system currently requires that students have the following courses in order to qualify for admission

to a constituent institution in the UNC System: English I, II, III, and IV; Algebra I, Algebra II, and Geometry or a higher level math course for which Algebra II is a prerequisite; a physical science course, a life or biological science course and one laboratory science course; United States History and one other social studies course. In addition, at least two units in one foreign language are recommended. It is also recommended that students take one foreign language course and one mathematics course in the twelfth grade. Defendants' Exhibit 1, Introduction, p. xxi; Defendants' Exhibit 61, p. HO 04214.

As part of the Standard Course of Study revision process, the State Board of Education specifically requires that the content standards in the Standard Course of Study fulfill university requirements. Defendants' Exhibit 3, p. 20. The revision process achieves that objective by including faculty representing the area of study at the higher education level on the review committee for each area of the Standard Course of Study. Defendants' Exhibit 3, pp. 6, 7; Atkinson, Nov. 16, 1999, at 180. The revision process also includes higher education personnel among the groups from which the review committee should seek feedback on drafts of the revised content areas. Defendants' Exhibit 3, p. 8. In order to assure that the content of the Standard Course of Study is aligned with admission requirements and is sufficiently rigorous, DPI specifically asks representatives of the community college and university systems: "What should people know in order to be successful at the next level of education?" Atkinson, Nov. 16, 1999, at 185, 188-89.

The State Board's commitment to aligning the Standard Course of Study with the coursework required for admission to the constituent

institutions of the UNC system is illustrated in the Executive Summary for the revisions to the mathematics component to the Standard Course of Study. Defendants' Exhibit 7. The review committee for the revisions of that content standard included representatives from 20 institutions of higher education. Defendants' Exhibit 7, p. 6. Drafts of the revised content standards were shared with and feedback was sought from the Mathematics and Science Education Network Center Directors, the North Carolina Association of Mathematics Teacher Educators, and the Early Mathematics Placement Test Committee. Defendants' Exhibit 7, p. 3. Further, a focus group on the proposed revised content standards was held for the Statewide College Tech Prep Advisory Committee. Defendants' Exhibit 7, p. 3.

The Standard Course of Study includes course descriptions aligned with all the courses necessary for admission to the constituent institutions of the UNC system.

In mathematics, the Standard Course of Study for grades 9-12 includes: Algebra I and II, Geometry, Discrete Mathematics, Advanced Mathematics, Advanced Placement Statistics, and Advanced Placement Calculus.

In social studies, the Standard Course of Study for grades 9-12 includes: ELPS, United States History, World History, World Geography, World Cultures, Law and Justice, Economics and Government.

In science, the Standard Course of Study for grades 9-12 includes: Biology, Chemistry, Earth/Environmental Science, Physical Science, and Physics. The Standard Course of Study also

includes descriptions of curricula in Psychology and Sociology under its Social Studies curricula. In English, the Standard Course of Study for grades 9-12 includes: English I (world, American and British literature); English II (modern world literature other than American or British literature); English III (United States literature); and English IV (British literature). All the English courses emphasize reading and writing skills.

Although a foreign language is not currently required for admission to UNC institutions, the Standard Course of Study identifies characteristics of novice, intermediate, advanced and superior skills in speaking, listening to, reading and writing a foreign language.

Not only has the State Board of Education adopted a Standard Course of Study that offers a curriculum aligned with the admission requirements for the constituent institutions of the UNC system, but it has also established high school graduation requirements that, except in the area of mathematics and foreign language, are substantially similar to those admission requirements. The graduation requirements for North Carolina high school students in 1999-00 are: four units in English; three units in mathematics, including Algebra I; three units in social studies, including government and economics, United States History and one unit in world studies; three units in science, including biology, one physical science, and one earth and environmental science (beginning with students who will be freshmen in 2000-01); one unit in health and physical science, and six electives designated by the local school board. Defendants' Exhibit 1, Introduction, p. xviii.

The State Board of Education does not require a student to take and pass a mathematics course above Algebra I to earn a diploma from a North Carolina high school. Defendants' Exhibit 1, Introduction, pp. xviii, xxi.

Consistent with the Supreme Court's decision in *Leandro*, the State's constitutional obligation to provide the equal opportunity to receive a sound basic education with respect to those students who elect to pursue a college education is satisfied if the State meets a two pronged test: (a) first, the SCOS must provide those students with an equal opportunity to take the high school courses that will be required, at a minimum, for admission to college in the University of North Carolina System; and (b) second, that those students taking the college preparatory courses are being taught by competent and qualified teachers.

Provided the foregoing test is met, the graduation requirements that the State Board of Education has established, including the six elective courses which may include the mathematics required by UNC institutions and recommended foreign language courses, are sufficient in content and scope to provide those students, who elect to pursue a college education, with the equal opportunity to acquire sufficient academic skills to successfully engage in post-secondary education and to enable the student to compete on an equal basis with others in further formal education. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

The fact that some students may elect not to take advantage of courses that will best prepare them for college does not make the curriculum constitutionally infirm. Everyone knows that not every child, for various reasons, aspires to a

college education and may wish to pursue a vocational education or no post high school education at all. The bottom line is that the State of North Carolina's curriculum in High School for students who wish to pursue a college education meets the constitutionally required minimum to provide a student with the equal opportunity to receive a sound basic education sufficient to successfully engage in post-secondary education, provided the student is being taught those courses by qualified and competent teachers.

The Standard Course of Study with Respect to the Opportunity to Prepare for Vocational Training

In addition to its core academic content, a sound basic education as defined in *Leandro* requires the State to offer students in the public schools the equal opportunity to acquire sufficient academic and vocational skills to successfully engage in vocational training or to enable the student to compete on an equal basis with others in gainful employment in contemporary society. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

The General Assembly has mandated that the Standard Course of Study include high school content standards that will provide students with the opportunity to acquire the knowledge and skills necessary to enter the workforce. N.C.G.S. § 115-12(9a).

The Standard Course of Study for vocational education is also known as the Programs of Study and Support Services Guide. It was most recently revised in 1997. Defendants' Exhibit 1, Workforce Development, p. I. The prior document had been approved in 1992. Defendants' Exhibit 473.

The content areas included in the Programs of Study and Support Services Guide go beyond the statutory requirements by including content standards for workforce development, *i.e.*, vocational education, through age appropriate vocational and technical courses beginning in grade 6 and running through grade 12. Defendants' Exhibit 1, Workforce Development; Atkinson, Nov. 16, 1999, at 181, 184. Like the other components of the Standard Course of Study, the Programs of Study and Support Service Guide was developed with assistance and input from a broad community of interested persons, including at least 2,000 teachers, 130 local school administrators and 340 business/industry representatives and parents from across the State. Defendants' Exhibit 1, Workforce Development, p. I; Defendants' Exhibit 473. Business and industry representatives are the people that the curriculum developers first contact and they are the people that drive the curriculum in workforce development education.

The Programs of Study and Support Service Guide was developed in order to prepare students to be effective participants in the international economy, both as citizens and workers, by:

1. Preparing students for further vocational and technical education and lifelong learning.

2. Preparing students for initial and continued employment.

3. Assisting students in making educational and career decisions.

4. Applying and reinforcing related learning from other disciplines.

5. Assisting students in developing decision-making, communication, problem-solving, leadership and citizenship skills.

6. Preparing students to make informed consumer decisions and apply practical life skills.

7. Making appropriate provisions for students with special needs to succeed in workforce development education programs.

The Programs of Study and Support Service Guide offers over 120 competency-based courses in eight program areas: agriculture, business, career development, family and consumer sciences, health occupations, marketing, technology and trade and industrial. Defendants' Exhibit 1, Workforce Development/Planning, pp. 17-19. Not all of these courses are available in every school district.

Introduction of the term local education agency ("LEA")

In its data collection system, the State of North Carolina uses the term **local education agency ("LEA")** instead of the more familiar term-school district. Accordingly, the Court's reference to school districts will use the term LEA so as to match up with the data.

The reason not all course are available in every LEA is because each LEA is responsible for determining which programs it will support and offer based on job market demand, student demand and adequacy of facilities and equipment support the program. Atkinson, Nov. 17, 1999, at 22-23.

Each of the eight areas has a program description, a stated design, a description of expected program outcomes, an explanation of national skill standards and a description of how they were integrated into the courses in that area, a description of national curriculum standards and how they were incorporated into the courses in that area, a list (if applicable) of certifying organizations and a description of the unique features of that area's programs.

In addition to the Programs of Study and Support Service Guide, the State Board of Education has also adopted a document entitled Workforce Development -- High School and Postsecondary Education Opportunities.

The first section of Workforce Development -- High School and Postsecondary Education Opportunities charts 11 occupational clusters and identifies an educational pathway for careers in those occupations beginning with a focus for high school studies leading to identified community college associate degrees and four year college majors.

The second section of Workforce Development -- High School and Postsecondary Education Opportunities contains information regarding 43 high school courses of study within the 11 occupational clusters. For each course of study, this section describes the type of work performed by persons who have the knowledge and skills developed through that course of study. It lists examples of careers options for persons with that knowledge and skill. It sets out a secondary career development plan which includes the courses from the Standard Course of Study that a person interested in pursuing a career in that field should take. It lists work-based experience that would be helpful for a high school student interested in that field. It lists enhancement courses that a student might take, if available, to increase his knowledge or skill in the area. It lists community college and university degrees that a student could pursue after completing the high school course of study. Finally, it lists the registered apprenticeships available in the State for students with the requisite education. The charts demonstrate how the State Board's workforce development program in conjunction with the North Carolina Community College System and the UNC system offers the opportunity for an integrated continuous programs of study that lead to real careers related to the student's interests and abilities. Atkinson, Nov. 17, 1999, at 20-22.

The Programs of Study and Support Service Guide provides extensive guidance on the issues that local school boards should consider when constructing their workforce development programs. Dr. Atkinson, the Director of Instructional Services responsible for overseeing the revisions to the Standard Course of Study and the workforce development curriculum, conducts statewide meetings

of local workforce development coordinators three times a year and holds regional meetings every other month to discuss support, new programs, funding and other issues related to workforce development.

In addition to vocation and technical courses offered in the high school curriculum, local school boards can enter into cooperative agreements with community colleges under the Huskins Bill and the concurrent enrollment program to provide high school students the opportunity to enroll in community college courses for which there might be insufficient demand at the high school level. The most recent data show that approximately 10,700 high school juniors or seniors (about 8% of the student population in those grades across the State) earn college credits every year by taking community college courses through cooperative agreements. Atkinson, Nov. 17, 1999, at 19.

The Court finds that the content of The Standard Course of Study for vocational training in North Carolina public schools as described in the Programs of Study and Support Services Guide is more than sufficient to provide career-bound students with the equal opportunity to acquire sufficient academic and vocational skills to successfully engage in vocational training or compete with others on an equal basis in gainful employment in a contemporary society provided those students are being taught by competent and qualified teachers.

In conclusion, the Court finds that the entire curriculum contained in and provided by The Standard Course of Study meets and exceeds the ***Leandro*** standards so long as the curriculum is being properly implemented and taught by competent and qualified teachers. However, the Court having

determined that The Standard Course of Study has a more than adequate constitutional content does not answer the complete inquiry. The existence of a constitutionally sound and valid SCOS and curriculum, standing alone, does not constitute clear evidence that the SCOS is being implemented in each and every classroom in such a manner as to provide each child with an equal opportunity to receive a sound basic education.

Put another way, the North Carolina SCOS and curriculum is quite sound and more than adequate, but that alone does not establish that the State is meeting the ***Leandro*** standards in terms of the overall instructional delivery system and its curriculum.

II. NORTH CAROLINA'S STANDARDS AND STRUCTURE FOR LICENSING AND CERTIFYING TEACHERS IS SOUND, VALID AND MEETS CONSTITUTIONAL STANDARDS.

North Carolina's standards for certifying or licensing teachers are prescribed in laws enacted by the General Assembly and in rules adopted by the State Board of Education. *See generally* Articles 18-24, Chapter 115C.

The General Assembly has determined that persons who do not meet these standards may not be employed as classroom teachers in the public schools. N.C.G.S. § 115C-295.

The State Board is charged with the responsibility for certifying all professional school personnel. N.C.G.S. §§ 115C-12(9a) and 115C-295; N.C.G.S. §§ 115C-296 and 115C-315(c), (d) and (f).

The State's program for certifying and licensing professional school personnel has four essential components: (1) The State sets minimum criteria for the approval or accreditation of teacher education programs; (2) The State establishes minimum criteria for entry level teacher licenses or certificates, including minimum scores on standardized tests; (3) The State requires local boards of education to monitor closely the performance of initially licensed teachers for three years and issues continuing licenses only upon recommendation of the school system in which they are employed; and (4) The State requires teachers who enter the profession after other careers, i.e., lateral entry teachers, to complete the requirements for full certification within five years after they begin to teach. Defendants Exh. 111. It is the responsibility of local boards of education, through their staff, to ensure that employees are appropriately certified. N.C.G.S. § 115C-315(f).

It is the responsibility of local boards of education to employ, reemploy and evaluate teachers and other licensed personnel. N.C.G.S. §§ 115C-47, 325 and 335.

Accreditation of Teacher Education Programs

State standards have long applied to the accreditation of the college and university programs that train teachers. The General Assembly has directed the State Board to "develop a plan to provide a focused review of teacher education programs and the current process of accrediting [those] programs in order to ensure that the programs produce graduates that are well prepared to teach." N.C.G.S. § 115C-296(b1). As directed by the General Assembly, the State Board, working

with the Board of Governors of The University of North Carolina, has put this plan in place.

The General Assembly has established a Professional Teaching Standards Commission to advise the Board on issues relating to the preparation and licensing of public school personnel. N.C.G.S. § 115C-295.2.

The State Board has set very specific requirements for institutions of higher education that wish to offer a teacher education program as part of their curriculum. North Carolina has forty-seven (47) teacher education programs. One important requirement imposed by the State is that each teacher education program must be approved by the National Council for the Accreditation of Teacher Education ("NCATE"). NCATE is the nationally recognized organization that has the authority to accredit teacher education programs. NCATE partners with 46 states; North Carolina is one of those states. Each institution in North Carolina that offers a teacher education program goes though a rigorous approval process by both the State and NCATE. NCATE imposes certain standards on teacher education programs that the programs must meet in order to be accredited.

In North Carolina, all 47 institutions offering teacher education programs have been accredited by NCATE and maintain that accreditation. In order to maintain NCATE accreditation, an institution must have an on-site visit from an NCATE team every five years. Sullivan, Nov. 19, 1999, at 117. Each institution must also undergo an on-site review by the DPI every five years. DPI visits are arranged to coincide with the on-site visits by NCATE. DPI's review includes the following: the institution must prepare a report that documents that it is in compliance with all State standards

for teacher education programs; DPI teams consisting of trained representatives from institutions of higher education as well as from the public schools conduct on-site reviews; the reviews consist of examinations of documents, interviews with students, faculty, administrators, and others, visits to clinical sites, observations of actual classes, and examination of facilities and libraries. The teams then prepare reports that document whether the institutions have met State standards or not.

The State also considers the performance of students in an institution's teaching program on the teaching licensing tests as well as the performance of graduates of the program during their three-year initial licensure program. Sullivan, Nov. 19, 1999, at 110.

Both the State Board and NCATE are moving toward new standards for evaluation of teacher education programs. The new standards will be performance-based. Rather than limiting their focus to inputs such as the number of books in the library, the performance-based standard will consider how well the graduates of the program perform in the public schools, and how well the students of those graduates perform.
While the specific course requirements of the teacher education program at each college or university may vary, there are four basic components.

The first component is the general study sequence, which includes math, science and English literature. The second component is the professional study sequence. Professional studies includes the knowledge and skills that all teachers need, such as foundations of education, human

growth and development, educational psychology, and the teaching of reading.

The State Board has adopted a specific set of competencies or guidelines for the professional studies sequence that institutions must meet in order to train prospective teachers. As part of their professional studies, and in recognition of the fact that children do not all have the same learning styles, prospective teachers study different learning styles and are supposed to be taught how to match instructional strategies to different learning styles. Sullivan, Nov. 19, 1999, at 104, 144-45; Defendants' Exhibit 85. The competencies for professional studies specifically include instruction in the knowledge and skills necessary to understand and address the needs of a developmentally, intellectually, culturally and socio-economically diverse student body.

Consistent with NCATE standards, North Carolina teacher education programs also address issues that arise with at-risk student populations. Sullivan, Nov. 19, 1999, at 143-44.

To help assure that professional instruction reflects actual classroom experience, the State requires all faculty who teach professional methods, *i.e.*, teaching techniques, procedures or organization, including supervising student teaching, to hold current teaching licenses.

The third component is a specialty study sequence, which focuses on the specific content area the teacher is preparing to teach, including, *e.g.*, math, English, science or social studies. Institutions with approved teacher education programs are required to introduce the prospective teachers to the Standard Course of Study. The

students must take objectives from the Standard Course of Study and develop lesson plans and materials to show how they would teach those objectives.

For each of the areas in which the State offers teacher education programs, the State Board has adopted a set of competencies that institutions must meet in order to train prospective teachers. The competencies for each program area also emphasize training in addressing the needs of a racially, culturally and socio-economically diverse student body. Defendants' Exhibit 93, pp. 3-1 and 3-2; Defendants' Exhibit 94, p. S 50551, Guideline I; Defendants' Exhibit 95, p. 1, Guideline I. The fourth component includes the electives the teacher candidate must complete to round out his or her four-year degree.

Individual institutions and programs often have additional requirements. For example, a school may require certain grades in certain courses as a prerequisite to remaining in the program, or it may require that the teacher candidate submit references prior to entering a program.

There are also a number of other requirements that teacher candidates must meet. They must first have a cumulative 2.5 grade point average just to be admitted to a teacher education program. They also must pass PRAXIS I, the pre-professional skills tests ("PPST"), which test the areas of reading, writing and mathematics.

Once in the program, the prospective teacher must also maintain a cumulative 2.5 average in order to continue in the program.

In addition to these academic standards, the State Board requires that all prospective teachers

complete a student teaching experience that is at least ten weeks long. Prospective teachers must now also complete a technology portfolio. North Carolina is the only state that requires beginning teachers to demonstrate their technology skills in this way. Sullivan, Nov. 19, 1999, at 106, 122-23.

Finally, the institution of higher education at which the prospective teacher studied, and the school system in which he or she student taught must recommend the teacher to DPI in order to qualify for a license.

Only when all of the above standards have been met does a student in an approved program qualify for an initial license to teach in North Carolina public schools.

The Court finds that these standards, and the State's standards for teacher education programs are both sufficient when properly and competently implemented by an accredited education program within an institution of higher learning, to provide the students in North Carolina, including Hoke County, with well trained, competent and qualified teachers capable of delivering to North Carolina students classroom instruction sufficient to provide them with an equal opportunity to obtain a sound basic education.

To provide a measure of accountability so as to ensure that teachers have been provided with the knowledge and tools to be successful in the classroom, the State of North Carolina requires that prospective teachers meet performance levels on standardized teacher examinations.

Standardized Teacher Examinations

To help ensure that each teacher has the knowledge necessary to teach in the public schools, the State has also developed standards prescribing the minimum scores that each applicant for a teaching certificate in North Carolina must earn on standardized teacher examinations. N.C.G.S. § 115C-296(a) provides:

> [t]he State Board of Education shall require each applicant for an initial bachelor's degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose.
>
> The State Board of Education shall make the standard initial certification exam sufficiently rigorous, and raise the prescribed minimum score as necessary, to ensure that each applicant has adequate academic and professional preparation to teach.

The State Board has adopted the National Teacher Examinations ("NTE") and their successors, the PRAXIS Examinations, as the standardized tests to ensure adequate academic preparation of those persons who want to teach in the public schools. NTE and PRAXIS are developed by the Educational Testing Service ("ETS") and are used in most states for licensing teachers.

To be licensed as a teacher in North Carolina, a teacher program candidate must take and pass two different standardized teacher examinations. In making this finding, the Court is aware of lateral

entry programs and conditional licensing, but as a general matter a licensed teacher must take and pass two different standardized teacher exams. PRAXIS I is the pre-professional skills test ("PPST"). It is a reading, writing and math test that a student must take and pass to qualify for admission into a teacher education program. Before they are licensed, graduates of teacher programs must also pass area specialty tests that test a graduate's knowledge of a particular subject area, *e.g.*, middle grades language arts or middle grades mathematics. At this time, some of those specialty area tests are NTE and some are PRAXIS II tests.

Using procedures designed and validated for estimating the score that a minimally competent beginning teacher would achieve, the State Board has established minimum score requirements for all the standardized teacher examinations. Sullivan, Nov. 19, 1999, at 131-35; Defendants' Exhibits 116, 149.

The passing scores adopted by the State Board for the PRAXIS II and NTE exams are set by panels of practitioners who estimate the score a beginning teacher, who is minimally competent to teach, would earn on a particular test.

The State Board believes that the passing scores set a standard that complies with the General Assembly's mandate that the minimum scores on standard teacher examinations "ensure that each applicant has adequate academic and professional preparation to teach." N.C.G.S. § 115C-296(a).

The Court readily acknowledges that there are many who believe the standards are too low and that many believe they are too high. The debate over the sufficiency of the passing score's level will

continue until the end of the world. Having said this, the Court will not substitute its judgment for that of the State Board as to the sufficiency of the minimum score and there has not been clear evidence presented that the scores are too low to comply with N.C.G.S. 115C-296(a).

The minimum scores required to pass the PRAXIS II and NTE exams vary from exam area to exam area, and the absolute scores on the various exams are not equivalent. All required scores are available to prospective teachers through publications distributed by DPI.

North Carolina's minimum scores are comparable to the passing scores established by other states. ETS publishes the national median scores and the average performance ranges of each of the PRAXIS examinations.

According to ETS's 1998-99 Spring Edition, North Carolina's minimum passing scores are typically in the mid-range of minimum scores required by other states. Defendants' Exhibit 115.

For some tests North Carolina's passing score approximates the average score of all prospective teachers in the nation, which means that in those areas nearly half of those taking those particular tests would not obtain a satisfactory score for North Carolina and would not qualify to teach in North Carolina based on their test score. For example, the North Carolina passing scores for the PRAXIS I pre-professional tests in math, reading and writing are all within the national average performance range. Defendants' Exhibit 115.

In making these and other findings relating to teacher licensure and certification, the Court is aware that there a certain conditional licenses

where a person is permitted to teach on a short term basis without having passed the tests required by the State Board and that there are teachers who are not licensed in the "normal" sense of the word teaching in North Carolina Public Schools, including Hoke County.

The North Carolina passing scores for the following PRAXIS II exams are also within the national average performance ranges: high school math, high school chemistry, high school physics, high school social studies, middle school science, English, Reading, and German. Defendants' Exhibit 115.

Although most new teachers in North Carolina each year are graduates of in-state programs, approximately 40% come from out-of state-programs. North Carolina has reciprocity agreements with other states that have approved teacher education programs. Teachers coming directly from teacher education programs out of North Carolina must still meet North Carolina's PRAXIS requirements. Sullivan, Nov. 19, 1999, at 123-24.

Although North Carolina's minimum teacher examination standards are designed and implemented to attempt to ensure, insofar as the tests results, that beginning teachers will have adequate academic and professional preparation to teach, those same standards may be one factor contributing to the relative shortage of teachers in some specialties.

It is logical to conclude that were North Carolina to lower its passing scores, more teachers would qualify to teach North Carolina's public school students. Defendants' Exhibit 115.

The Court finds that the State of North Carolina's standards for teacher certification and

the minimum teacher examination scores are sufficient to provide North Carolina and Hoke County students with certified teachers that have exhibited sufficient educational achievement and training to be able to teach students in such a manner as to provide them with the equal opportunity to receive a sound basic education.

Caveat. This finding relates **only** to the process and standards for certification and the minimum teacher examination scores for a teacher to become certified to teach. The fact that the State standards for certification are sound and meet the constitutional standard, standing alone, does not answer the issues in this case. Teacher certification alone does not ensure or guarantee that once in the classroom each certified teacher will utilize their training and education in such a manner as to competently implement the Standard Course of Study sufficient to provide each child with the equal opportunity to receive a sound basic education.

As with the legal profession, passing the bar examination and being licensed does not ensure that the lawyer will utilize the training and education in such a manner that the clients will receive competent legal services. The bottom line is that the Court finds the standards for teacher certification and minimum teacher examination scores, as a condition of certification and entry, to the teaching profession, to be sound and meet the constitutional mandate of ***Leandro*** in this regard.

Types of Teacher Licenses

The State Board issues several types of teacher licenses. While all the licenses permit an individual to teach, each license has distinct

requirements. The initial license is valid for three years. It is the entry level license given to a teacher with less than three years experience.

The performance of teachers who hold initial licenses must be mentored and evaluated in an initial licensing program operated by the hiring school system.

A school system that hires a teacher with an initial license must provide that teacher with a mentor teacher who has more than three years of experience. The State provides a $100 a month salary supplement for mentor teachers.

A teacher with an initial license must be evaluated by the employing school system during those three years. A person teaching on an initial license must be observed at least four times every year, three times by a qualified school administrator, usually the principal, and once by another teacher.

At the end of the three-year period, the employing school system must decide whether the teacher is qualified for a continuing license. At the end of the three years, the local school system must determine whether to recommend a teacher in the initial licensing program for a continuing license. A continuing license is also known as a "clear" license. If an individual is denied a continuing license, he or she must return to an approved teacher education program for remediation. Sullivan, Nov. 19, 1999, at 127. A continuing license must be renewed every five years. Renewal is earned by obtaining continuing education credits.

Either an initial or a continuing license may also be a provisional license. For an initial

licensee, a provisional license may indicate that the person has not passed some required PRAXIS test. For a continuing licensee, a provisional license indicates that the person already has a clear license in some other area, but has not completed all of the course work or other requirements necessary for a "clear" license in the new provisional field. The provisionally licensed teacher must affiliate with a college or university to complete an appropriate course of study within five years, involving -- among other things -- a minimum of six hours of course work per year.

Lateral entry license. A lateral entry license may be issued to a person who has not completed an approved teacher education program. The General Assembly encourages lateral entry to ensure that pools of potentially competent teachers are not overlooked. N.C.G.S. § 115C-296(c) ("It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector.")

A lateral entry license is valid for only two years initially. During that two year period, the individual must: (1) meet the minimum specialty area testing (PRAXIS II) requirements; (2) complete a minimum of six hours of coursework per year; and (3) be evaluated by the school system as having performed satisfactorily. Upon successful completion of these conditions, the teacher may then be issued three one-year licenses during which he or she must complete all the coursework that would have been required by the teacher education program with which they are affiliated.

Under this program, an individual who has been a carpenter for several years might qualify for a lateral entry certificate that would allow him or her to teach carpentry in the schools. Similarly,

an individual who has been a chemist, or perhaps a college professor, could qualify for a lateral entry certificate in the appropriate area. N.C.G.S. § 115C-296.1 also provides that a local board of education which has or anticipates having a shortage of certified teachers may employ under a provisional certificate persons who do not meet the State Board licensing requirements so long as they have a bachelor's degree and meet one or more other specified criteria, *e.g.*, have at least one year teaching experience in an institution of higher education or hold an out-of-State certificate to teach the grade or subject to be taught and have one year of classroom teaching experience.

The Court finds that North Carolina's standards and process for granting the various types of teacher certifications are Constitutionally sufficient.

The Court finds that North Carolina' standards for monitoring and evaluating the performance and qualifications of teachers, prior to issuing continuing teaching licenses, are sufficient to ensure that a teacher who receives a continuing license has minimum education, experience and training sufficient to enable that teacher to provide the students of North Carolina and Hoke County with the equal opportunity to receive a sound basic education provided the teacher, once in the classroom, competently implements and delivers the SCOS to the students..

State Programs To Attract and Retain Qualified Teachers

In addition to requiring sufficient and valid standards for teacher licensing and certification, North Carolina has adopted many programs to attract

and retain qualified teachers for the public schools. It is undisputed that North Carolina, as well as the entire nation is facing a crisis with respect to providing qualified teaching professionals to fill the classrooms in the State. Under the leadership of Governor Hunt and the encouragement of the General Assembly, North Carolina has charted a course to meet this crisis and to attempt to retain the qualified teaching professionals already here.

To attract and retain a quality teacher force in North Carolina's public schools, the State has set an ambitious goal to raise the average teacher salary to the national average. Between the 1996-97 and the 1999-00 school years, nearly half of the gap between the average teacher salary in North Carolina and the average teacher salary in the United States was eliminated. This gap was narrowed by salary increases at a rate over and above those provided to other State Employees. The State of North Carolina, by taking this step, acknowledged that teaching is a profession, not just a job. Plaintiffs' Exhibit 65; Price, Nov. 18, 1999, at 35-36.

Part of the increase in the public school budgets approved during that period has been due to steady efforts to meet that goal, efforts that since 1997 have cost the State $250 million per year. As a result of increasing teachers' salaries, North Carolina's national ranking has increased to twenty-seventh (27^{th}) in terms of average teacher salary. Price, Nov. 18, 1999, at 35-36.

Although the State cannot prevent teachers from changing school systems, North Carolina has implemented a number of initiatives to attract and keep teachers and other personnel in the public schools of the State. Sullivan, Nov. 19, 1999, at 162-64.

One initiative is the Teaching Fellows Program, which provides 400 high school seniors each year with $26,000 if they attend a North Carolina institution that has an approved teacher education program and become licensed as a teacher. The teacher then repays this investment by teaching in North Carolina for four years.

Another initiative is the Prospective Teacher Scholarship Loan. It provides up to $2,500 a year to pursue teacher licensure. There are also loans available to teacher assistants to enable them to attend a community college or a four-year institution working toward a license. Recipients repay the loans by teaching in North Carolina's public schools.

The Principal Fellows program is similar to the Teaching Fellows program and provides prospective administrators with two $20,000 stipends for the

two years they are enrolled full time in that program.

The Model Teacher Consortium, in the northeast part of North Carolina, encourages school employees who are not licensed to become licensed and employees who do have licenses to obtain a graduate license.

In addition, DPI maintains an applicant database into which any person wanting to teach in North Carolina may submit his/her application electronically. The database is downloaded to all school systems weekly.

National Board Certification permits North Carolina teachers to earn themselves a pay raise. Teachers who earn National Board certification receive a 12% pay increase. National Board Certification is voluntary and is over and above the requirements of State-required certification. Teachers seeking National Board Certification must put together a portfolio that demonstrates certain competencies and must then undergo a lengthy assessment. The process takes about a year. The State encourages teachers to obtain the certification.

To the credit of North Carolina teachers, North Carolina has the highest number of teachers holding National Board Certification in the nation.

Despite all the efforts to attract and retain qualified teachers, a teacher shortage exists and will continue to exist throughout various school districts in North Carolina, including Hoke County.

There are many factors that affect the problem of attracting and retaining qualified teachers that

are beyond the control of the State of North Carolina or any individual LEA. The Court can take judicial notice of the fact that our Constitution and the Constitution of the United States prohibit involuntary servitude. Teachers, like any group of people, are free to live where they want to and they are free to move from location to location. When a teacher's spouse is transferred to another location, the teacher is free to move. When a teacher decides to move to another area because the teacher can get a job in an environment more enjoyable than the one the teacher is in, the teacher is free to move. When a teacher gets worn out with the lack of respect, discipline problems, low pay, and poor conditions in a school and decides to leave the profession altogether, the teacher is free to do so.

When the teacher making $30,000 a year is able to take a job in the private sector making $50,000 a year, the teacher is free to leave. When a teacher has taught for many years and elects to retire, the teacher is free to leave. Fortunately, the great majority of teachers are dedicated to their profession and their students - they teach for the love of teaching. They stay put and serve with distinction doing the best they can in conditions which may be great or which may be terrible. They do this in spite of a low supplement, or a high supplement, or whether they can get a "better job" in the private sector or in the LEA next door.

The Court takes judicial notice of the fact that all teachers, even though they meet the standards for certification, are not the same in terms of temperament, education level, training or skill in the delivery of educational services to

their students. That goal is unattainable, people being as different as they are.

Having said this, the political diatribes about hiring only the "brightest and the best" teachers is merely that. Based on the evidence in this case, the Court is convinced that the great majority of teachers, although they vary in skill levels and ability to deliver educational services, are professionals who teach for the love of teaching and do the best that they can, in Hoke County and elsewhere in the State, to teach their students. However, a teacher can only do so much in a single year. The teacher must take the students assigned where he or she finds them on the performance scale and teach to that level and attempt to achieve growth with the individual student for the year. It's not an easy task, especially when the State of North Carolina and the public at large expect students to achieve grade level or above performance on the EOG and EOC tests under the ABCs program.

Whether one likes it or not, accountability is here to stay so that the State can measure the performance of all of its students using a uniform standard of testing statewide to measure whether the child in Clay County is learning the same material as the child in Bertie County.

In conclusion, the Court finds that North Carolina's standards for licensing, certifying and employing teachers throughout the State, including Hoke County, are valid and constitutionally sufficient to ensure that its licensed and certified teachers are qualified through education and training to provide their students with an equal opportunity to receive a sound basic education.

III. THE STATE OF NORTH CAROLINA'S FUNDING DELIVERY SYSTEM FOR THE PUBLIC SCHOOLS IS STRUCTURALLY SUFFICIENT TO ENABLE SCHOOL SYSTEMS TO DISTRIBUTE AND ALLOCATE FUNDS FOR EVERY CHILD TO HAVE AN EQUAL OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION.

General Findings

The State's general and uniform system of free public schools is neither designed nor funded to provide only a fundamental sound basic education to North Carolina students. Rather, from the broad input goals of the BEP to the accountability emphasis of the ABC program, the goal of the system is to provide a variety of quality educational opportunities to North Carolina students.

The public school system, which provides advanced course work in all core academic areas, plus art and music studies, foreign language instruction and other enriching school experiences for North Carolina school students that are performing at scholastic levels that they can successfully take advantage of the instruction, offers educational opportunities to many of its students that are in excess of the sound basic education required by the Constitution.

Plaintiffs complain that the Hoke County School System ("HCSS") lacks the resources to provide its students the opportunity for a sound basic education and that the present system of funding statewide is unconstitutional because it is a "one size fits all" system that does not take the varying educational needs of children into account in terms of providing funding and thus, is arbitrary and capricious in its application.

However, Dr. Jay Robinson, former Chairman of the State Board, former Superintendent of the Charlotte-Mecklenburg School System, and former Vice-President of the UNC system, testified that if properly utilized, there is enough money in every school system in North Carolina to give every student a sound basic education. Robinson, Nov. 16, 1999, at 59.

Similarly, Darlene Clark, the principal at West Hoke Middle School, testified that her school went from low-performing to exemplary in one academic year under her leadership and that this was accomplished with no additional resources. When specifically asked how much extra money she had during that school year to raise student performance, she responded, "We didn't do it with money. We did it with heart and soul. That is what we did it with." She went on to elaborate that it simply took everybody working harder and smarter. Clark, April 14, 1999 deposition, Dec. 3, 1999, at 75.

The parties clash on the question of the adequacy of the present public school funding scheme. The Court will now proceed to examine the funding delivery system to determine whether it meets the Constitutional mandate of ***Leandro***. The Court's analysis of the funding delivery system component will not address, at this point, whether the State is spending enough on education, but rather, whether the system to provide funding is constitutionally sufficient.

BURDENS OF PROOF PERTAINING TO PUBLIC SCHOOL FUNDING

The State presented detailed evidence about the system in place for provision of State funds for public schools generally, and to HCSS in

particular. Philip Price, Director of the School Business Division of DPI at time of trial, was generally cross-examined about whether he thought that particular categories of State funds were sufficient. In that regard he could not state whether any particular allotment provided enough money to provide all students with everything they might need to receive a sound basic education. Price, Nov. 19, 1999, at 75.

It is not the State's burden to show whether the funds allotted for any particular purpose are sufficient. Rather, plaintiffs have the burden to prove by clear evidence that a particular educational program is a necessary component of the opportunity for a sound basic education; that the program is not provided; and that all available financial resources -- State, federal and local -- have been exhausted to provide other programs necessary to provide the children with an equal opportunity to obtain a sound basic education.

Never forget that this case focuses on the constitutional mandate, which is that all children have an equal opportunity to receive a sound basic education. The requirement that all children in every county have an equal opportunity to receive a sound basic education mandates that the funds appropriated and applied from whatever source, be first used to satisfy the equal opportunity to receive a sound basic education mandate before funds are spent on programs not mandated by the constitutional threshold set forth in ***Leandro***.

THE STATE BUDGET PROCESS

To understand the funding delivery system for public school education in North Carolina, it is

necessary to have a basic understanding of the State Budget Process.

The Biennial budget. North Carolina operates on a biennial budget. The budget process for the public school system begins 14 months in advance of each two-year cycle. After developing a budget proposal, the State Board submits its proposed budget to the Governor. Proposed budget revisions in the second year of the two-year cycle are completed four months before the start of the school year. Price, Nov. 18, 1999, at 9-10. However, there is no guarantee that the General Assembly will adopt the proposed revisions in full or within 4 months before the start of the school year. This is so because in recent years the General Assembly has generally adopted the budget in late June, or early July, or sometimes later.

The Continuation budget. One feature of the North Carolina budget and budgeting process that differs from budgeting in other states is the continuation budget. The continuation budget takes the preceding year's expenses for public education and increases that amount based upon student population growth and upon inflation-adjusted formulas. The goal of this process is to try to ensure that the relative level of educational support continues undiminished from year to year, except in years of significant budget crisis.

In budget year 1999-00, the continuation budget alone accounted for $140 million of the increase in State public school funding. Among other things, the continuation budget included an inflationary adjustment of 5% for supplies and textbooks, provision for 783 additional teacher positions, and $13 million in increased funds for at-risk students

because of growth in the State's low-income population. Price, Nov. 18, 1999, at 11-12.

The Expansion budget. Unlike the continuation budget which funds existing programs, the expansion budget adds new budget items to the public school system. Funding for new programs begins as part of an expansion budget. Typically, items funded in an expansion budget become funded in later years in the continuation budget. However, non-recurring items identified as such in an expansion budget are not, by definition, typically continued in the next continuation budget. Price, Nov. 18 pp. 12,13; Nov. 19, p. 64.

The Governor submits a budget. The Governor submits a budget for the General Assembly to consider which contains requests for education. The Governor does not normally include all the items requested by the State Board in his budget to the General Assembly.

Even when the Governor includes an item requested by the State Board, the General Assembly often will appropriate funds in a way different from that requested by the State Board. For example, for FYs 1999-01 the General Assembly provided over $31 million for student accountability generally instead of the funds that had been requested by the State Board specifically for other programs such as NC HELPS. Price, Nov. 18, 1999, at 13; Price, Nov. 19, 1999, at 67-71.

Sometimes the General Assembly will authorize the expenditures from undesignated funds already appropriated for something requested by State Board without specifically making an appropriation for that purpose. For example, for FYs 1999-01 the General Assembly did not specifically appropriate

$5 million for assistance teams as requested, but instead permitted DPI to use undesignated public school funds for that purpose. Price, Nov. 19, 1999, at 71-72.

Sometimes the General Assembly will appropriate funds for something not included in State Board's budget request, such as the $3 million additional small-county supplemental funding in the 1999-01 budget. It is clear from the evidence that the General Assembly, the State Board and the Governor , and other components of State government have different ideas about how to use funds for public education and how much money to spend for public education.

AN OVERVIEW OF STATE FUNDING FOR THE INSTRUCTIONAL PROGRAM

Since 1993, public school enrollment has increased by about 140,000 students, an increase of 15%. Price, Nov. 18, 1999, at 34; Plaintiffs' Exhibit 65. However, compared to the percent increase in student population, the increase in school funding has been even larger.
State funding for public schools has increased from $1.9 billion in 1984-85 to $2.9 billion in 1988-89, $3.4 billion in 1992-93, $4.0 billion in 1994-95, $4.3 billion in 1996-97, and $5.6 billion in 1999-00. Since this litigation began in 1994, State funding for the public schools has increased by 40%. During this litigation nearly half of the gap between the average teacher salary in North Carolina and the average teacher salary in the United States has been eliminated. The number of teachers in North Carolina public schools has increased from approximately 71,000 to approximately 77,000. Low-wealth supplemental funding for qualifying poor county LEAs has increased from under $40 million to over $60

million. Plaintiffs' Exhibit 65; Price, Nov. 18, 1999, at 23.

In HCSS, the student population has grown from 5,596 in 1993-94 to 6,158 in 1998-99, an increase of about 10%. State funding for HCSS since 1993 has increased much more, from $18.2 million to at least $27.6 million -- an increase of over 50%. Plaintiffs' Exhibit 481; Price, Nov. 18, 1999, at 23.

As observed by the Supreme Court, since 1969-70 the General Assembly has dedicated more than 40% of its general fund operating appropriations to the public primary and secondary schools. State spending on public schools has constituted some 40 to 45% of the total State operating budget since 1984, and it was at 42.6% for 1999-00. *Leandro*, 346 N.C. at 356-57, 488 S.E.2d at 260; Price, Nov. 18, 1999, at 23, 38, 229; Defendants' Exhibit 694.

It is important to keep in mind when looking at educational spending that the inquiry in this case is whether or not the State of North Carolina is providing every child with an equal opportunity to receive a sound basic education. This constitutional mandate requires that funding be sufficient to meet the ***Leandro*** standard in each LEA. This case will ultimately require the Court to determine, regardless of the total dollars spent by the State of North Carolina, whether every child in North Carolina is being provided with an equal opportunity to receive a sound basic education.

If that is not being done, then the State of North Carolina will have to re-adjust its spending patterns in education and re-allocate the resources so as to satisfy the constitutional mandate. It may well be, if such is the case, that the present

dollar amount spent is sufficient to meet the constitutional mandate or it may not be. It may well be that 42.6% of the State's operating budget is too little to provide students in public schools with a constitutionally adequate educational opportunity in North Carolina, but that remains to be seen as the Court goes through its analysis of the evidence in this case.

On average, State funds comprise about 69% of the operating funds spent by North Carolina public schools, local funds comprise about 23%, and federal funds 7.8%. If funds for child nutrition are excluded, the State's percentage rises to 74%.

In HCSS, State funds pay for 83% of operating costs. Excluding nutrition, federal funds comprise about 8% of operating funds in HCSS, and local funds 9%.

FUNDING PER STUDENT (OR PER ADM) CAN BE MISLEADING

Average Daily Membership ("ADM"). Educational spending is often expressed in terms of dollars per-pupil or "average daily membership" ("ADM"). ADM is the sum of the number of days that each student is on the current roll of a class during a term or year, divided by the number of school days in that term or year. Plaintiffs' Exhibit 356.

ADM is the usual way that student population in North Carolina is counted for funding purposes. North Carolina's per-ADM expenditures do not fully or properly describe the extent to which the State provides educational opportunities among the many LEAs in part because the State provides guaranteed teacher positions based on ADM and the salary and benefits paid to each teacher authorized by the ADM

will vary depending on the teachers' length of service, certification status and degree level.

A guaranteed teacher position allotment based on ADM is one for which the State will pay a teacher whatever the teacher is entitled to on the State salary scale. For example, if a system hires a $45,000 teacher to fill a guaranteed position, the teacher is paid $45,000 at no expense to the LEA. If the system hires a $30,000 teacher, the teacher is paid $30,000 at no expense to the LEA.

The LEA would also pay the teacher whatever local supplement it decides to fund. The amount of the local supplement will vary from LEA to LEA and impacts on total teacher pay without question. Pay for teachers in guaranteed positions accounts for 45% of the total public school fund. Price, Nov. 18, 1999, at 44-47.

Personnel expense is by far the largest component of the costs of operating the public schools. Therefore, under North Carolina's system of public school funding, school systems with equal student populations and an equal number of teachers will never have identical teacher salaries unless the teachers have exactly the same experience, education and certifications. Because of this, it is undisputed that the funds paid by the State for guaranteed teacher positions will vary between school systems with equal student populations and equal teachers. Defendants' Exhibit 694. This is so because any given system will have teachers with more or less experience or more or less education than any other system with which it is compared.

The teacher cost per student in two systems will not be the same even though the primary resource provided by the State -teachers generated

by ADM – may be the same number of teachers. Price, Nov. 18, 1999, at 113-18.

Hoke County Schools are a good example.

The same is true within HCSS and the Court will use HCSS as an example of the varying costs using ADM. The range of cost per ADM in HCSS in 1998-99 from teacher salary alone is quite striking, and illustrates the point about varying costs of guaranteed positions in each school based on per ADM comparisons.

The following self-explanatory chart clearly proves the point that schools within one school district that have the same number of ADM allocated positions will have varying salary costs to provide teacher positions in those schools based on the factors of teacher certification, tenure and level of degree:

School	# Teachers x Avg. Salary = Payroll	ADM	Payroll per ADM
J.W. McLauchlin	19 x $32,972 = $ 626,468	326	$1,921.68
West Hoke Elementary	29 x $31,635 = $ 917,415	458	$2,003.09
Rockfish Elementary	31 x $29,781 = $ 923,211	674	$1,369.75
South Hoke Elementary	37 x $29,510 = $1,091,870	638	$1,711.39

Scurlock Elementary	37 x $30,884 $1,142,708	=	490	$2,332.06
Upchurch Elementary	40 x $29,574 $1,182,960	=	705	$1,677.96
East Hoke Middle	45 x $29,344 $1,320,480	=	797	$1,656.81
West Hoke Middle	45 x $29,378 $1,322,010	=	612	$2,181.82
Hoke High School	98 x $31,859 $3,122,182	=	1,431	$2,180.29
Turlington	12 x $34,335 412,020	= $	55	$7,491.27

Plaintiffs' Exhibit 492; Plaintiffs' Exhibit 175, pp. 1, 8, 15, 22, 29, 36, 43, 50, 57, 64.

In 1998-99 the highest average teacher salary in HCSS was $34,335 at Turlington, the alternative school. HCSS does not contend that the middle school students attending Turlington received better educational opportunities than the middle school students at East Hoke Middle School or at West Hoke Middle School, whose teachers on average earned 16% less.

On a per ADM salary basis, HCSS spends far more to educate children at Turlington than at any other school. Not only does Turlington have the highest average salary in HCSS, it has an average salary per ADM of nearly $7,500. Even discounting Turlington as an outlier, HCSS spends $2,332 per ADM to provide teachers for students at Scurlock,

but only $1,370 at Rockfish. Yet, HCSS does not claim that it provides superior educational opportunities to students at Scurlock, even though it spends nearly $1,000 per student more there in teacher salaries than on students at Rockfish. In 1999-00, average teacher salary in North Carolina was just under $2,000 per ADM. In the previous year, half of the schools in Hoke County already had an average teacher salary greater than $2,000 per ADM.

While the Data from HCSS clearly illustrates that there are salary variances between schools with identical numbers of teachers within public school systems, this variance standing alone does not answer the question of whether there is any correlation between average teacher salary and the equal opportunity of any of the children attending those schools to receive a sound basic education.

This variance is a factor that may be considered in analyzing the educational structure but it proves little, if anything, standing alone. Comparing spending per ADM between LEAs of different size should be done with great caution because of the economy of scale generated by the ADM. Large systems enjoy an economy of scale greater than a small system such as HCSS. Irrespective of the salary paid, the salary of the superintendent in a small system is going to influence spending per ADM more than the superintendent's salary in a large system because the cost of administration is going to be spread over many more students in the larger system. Price, Nov. 18, 1999, at 118-19.

Funding for other administrative positions also makes it appear on a per ADM basis that smaller

systems are receiving additional resources per student.

An alternate way to compare school systems is to assume that all teachers are paid at the State average. This eliminates much of the distortion that results when salary differences are taken into account. Using average salaries for the 1999-00 school year State spending per ADM averaged $4,017 in North Carolina, and was $4,341 per ADM in Hoke. Price, Nov. 18, 1999, at 120; Defendants' Exhibit 694.

This fact, standing alone, does not answer the questions at issue in this case because the Court must also look at the results of these and other available expenditures in the delivering of educational services to the students of Hoke County.

The following is a comparison of funding per ADM for certain categories of state funding between HCSS and the state average for 1999-00. In 1999-00 HCSS' funding exceeded the State average funding for: central office ($101.00 v. $76.00); staff development ($5.45 v. $4.62); vocational education ($218.71 v. $216.02); at-risk students ($133.28 v. $116.03); regional technical centers ($8.66 v. $5.33); special education ($338.87 v. $318.80); low-wealth funding ($313.00 v. $61.38); and student accountability ($31.51 v. $24.68). Price, Nov. 18, 1999, at 122-28, 133; Defendants' Exhibit 694.

Based upon precedents from other states having different systems for funding public education, the Supreme Court suggested that spending per pupil might be a relevant factor in this case. *Leandro*, 346 N.C. at 355-57, 488 S.E.2d at 260. However, this Court finds -- notwithstanding the Supreme Court's suggestion -- that the North Carolina funding delivery system based on ADM, although important for an understanding of the entire system for the delivery of educational services, is not a major factor upon which the Court may rely in evaluating whether or not the State of North Carolina is providing every child with the equal opportunity to receive a sound basic education.

State Oversight Of Instructional Funds

Every LEA has an account at the State Treasurer's Office upon which it can draw funds. DPI tells the Treasurer how much State and federal funds to put into each LEA's account at any given time and, if it is not spent, how much to remove. DPI also informs the LEAs how much they can spend, and the LEAs report back to DPI as they spend funds. If DPI does not authorize the Treasurer to make funds available, then the banks that seek to collect on LEA checks will not be paid by the State. If the LEAs do not properly notify DPI that they have spent money that was made available to them, DPI has the Treasurer withdraw the unspent funds. At the end of each month DPI is required to "zero out" each LEA's account in order to minimize the cash balance and to enable the State Treasurer to keep funds in higher earning, long-term investments.

As part of the cash management system, LEAs report expenditure of State and federal funds by categories, which permits DPI to monitor how funds are being used.

State Funding Of School Personnel And Other Things

For the most part, instructional positions are allocated based upon student population at the beginning of each school year. LEAs have more students at the beginning of the school year than at the end in most instances. Despite this observation, the LEAs' funding generated by ADM is based upon the usually higher enrollment at the beginning of school. The State takes the highest enrollment during the first two months of the school year, statistically projects growth in the following year based upon that number, and then allots positions based upon the higher of the projection or the actual enrollment. Price, Nov. 18, 1999, at 29-30. There is no deduction for the decrease during the year.

In school year 1999-00 this policy provided HCSS with teacher positions based upon 342 more students than its actual enrollment. Price, Nov. 18, 1999, at 31.

In the event that an LEA experiences growth only in specific grades, the State system allows additional resources based upon that particular growth. In 1998-99 HCSS received an additional teacher allotment solely because of kindergarten enrollment growth.

Teacher Allotments

The State funding system uses three kinds of allotments -- guaranteed position allotments,

dollar allotments and categorical allotments. As stated previously, a guaranteed teacher position allotment is one for which the State will pay a teacher whatever the teacher is entitled to on the State salary scale and teacher pay is 45% of the school funds. Each allotted teacher position generated by ADM constitutes a guarantee by the State to pay ten months salary for a certified teacher. Although referred to as a position allotment, what is actually allotted is months of employment. If 3 LEAs are each allotted 120 months of teachers, 1 LEA could hire 10 teachers for 12 months and another could hire 12 teachers for 10 months.

There are maximum individual class sizes for the various grades in North Carolina public schools, which were prescribed by the BEP. In 1999-00, in kindergarten through second grade, the maximum class size was 26. In third through ninth grade, maximum class size was 29, and in tenth through twelfth grade it was 32. In addition, the average class size for each LEA is limited. It was 26 in kindergarten through ninth grade and 29 in grades ten through twelve. These class sizes drive the teacher allotment system. N.C.G.S. § 115C-301; Price, Nov. 18, 1999, at 48-53.

The number of guaranteed teacher positions (months of employment) is generally based upon student grade populations within an LEA. For kindergarten through second grade a position is allotted for every 20 students, for third grade a position is allotted for every 22.23 students, for fourth through sixth grades a position is allotted for every 22 students, for seventh and eighth grades a position is allotted for every 21 students, for ninth grade a position is allotted for every 24.5 students, and for tenth through

twelfth grades a position is allotted for every 26.64 students. These allotments are supposed to enable the LEAs to meet the class size restrictions imposed by the State. Price, Nov. 18, 1999, at 48-54.

The allotted teacher positions (months of employment) are not provided to LEAs by grade. Instead, each LEA is allotted a total number of months of employment. The actual decision as to how many teachers to hire and to what grades those teachers will be assigned is made by the individual LEA. Price, Nov. 18, 1999, at 56-57.
Vocational education is funded both with a dollar allotment and a guaranteed allotment. Every LEA receives a guaranteed base allotment of $10,000 and 5 teachers (50 months of employment). In addition to the base allotment, the State provides a 10 month position (10 months of teacher employment) for every 95 students enrolled in grades seven through twelve.

In addition to the teaching positions, the State provides general vocational program support of approximately $28 per student.

Each LEA also is allotted one extra position for a math/science/ computer teacher. Price, Nov. 18, 1999, at 54.

Student Teacher Ratio.

The term **student teacher ratio** is defined as the number of students in the public school system (LEA) divided by the number of teachers (classroom, support or administrative) in the entire system. Thus, the use of student teacher ratio to prove much, if anything, about what is actually going on in terms of the actual number of students enrolled

to the actual numbers of classroom teachers teaching them is not useful. A comparison of student teacher ratios for a system as compared to the maximum class size teacher ratio mandated by the General Assembly has the Court wondering if there are not too many former teachers in administrative positions and not teaching children.

Each time an experienced classroom teacher is "promoted" to an administrative position such as Assistant Principal, the result is a loss of an experienced teacher where the teacher is most needed -- in the classroom. With this caveat in mind, let's look at the student teacher ratio data.

In school year 1999-2000 on average there was 1 teacher for every 15.6 students in North Carolina. In HCSS there was 1 teacher for every 17 students. Price, Nov. 18, 1999, at 47, 195-200.

Moreover, two Hoke County teachers were paid from local non-appropriated funds, such as Smart Start. Price, Nov. 18, 1999, at 235.

Smart Start funds could just as easily be considered State funds as local funds, albeit State funds that are not part of the public school appropriations. Like Federal Impact Aid and locally-raised funds such as parental and business contributions, Smart Start funds are not part of DPI's funding process, but they are used for school purposes in HCSS (and elsewhere).

Smart Start funds are used in Charlotte-Mecklenburg to assist with pre-kindergarten education for at-risk children in a program known as "Bright Beginnings."

Average class sizes in some grades in HCSS are only slightly larger than the State averages. In 1998-99, the State average third grade class had 22 students and the average HCSS class had 23. In 1998-99, the State average class in fourth through ninth grades had 21 students and the average HCSS class had 23. In 1998-99, the State average ninth grade class had 19 students and the average HCSS class was 22. Price, Nov. 18, 1999, at 196-97. However, average class size, standing alone, does not tell the Court much about the educational opportunities, or the quality of instruction, being provided in the classroom itself. Depending on the performance levels of the students in the classroom and the quality of instruction, class size may, or may not, make a difference in whether a child is being provided with the equal opportunity to receive a sound basic education.

Superintendents And Central Office

The State funds central office administration with specific, guaranteed dollar allotments. The only State funds that can be spent for superintendents, associate superintendents, finance officers, directors and supervisors are those allotted in this category. The amount allotted is based upon a formula that takes into account that all systems have certain administrative needs regardless of size, but that larger systems will require more administrators. Unlike most allotments, pay raises for administrators come out of this allotment in amounts that are determined locally.

Principals, Assistant Principals And Instructional Support Personnel

Principals, assistant principals and instructional support personnel are also guaranteed allotments. Every school within an LEA that has a minimum of 7 State-paid teachers and 100 students is entitled to the allotment of a principal position. LEAs are allotted an assistant principal month for every 72.64 ADM. As with guaranteed teacher allotments, the State will pay for employment of each principal and assistant principal hired on their level on the salary scale at no cost to the LEA.

In the case of instructional support, one position is allotted for every 2001 students. A system with 2001 students would be allotted 100 months of instructional support, which can be used to employ guidance counselors, social workers, psychologists, and media specialists.

Teacher Assistants

Unlike teacher position allotments, teacher assistants are funded by a dollar allotment. In 1999-00, LEAs received $778.36 for every child in kindergarten through third grade, but the number of assistants that LEAs hire using this allotment will depend on how much the LEAs decide to pay teacher assistants. Price, Nov. 18, 1999, at 55.

Other Support Personnel

Another dollar allotment provides funds for substitute teachers, clerical support positions and custodians. LEAs received $206.59 per ADM in 1999-00 in this allotment category. Price, Nov. 18, 1999, at 63-64.

Except for substitute teachers, this allotment is not intended to pay for all non-instructional

personnel that a school system elects to employ. Price, Nov. 19, 1999, at 36-40.

Textbooks

The State's system for funding textbooks is in a vacuum unless one has some understanding of the State's standards for textbooks and the textbook selection process.

The State Board is required by law to select textbooks that conform to the Standard Course of Study. The law requires that a Textbook Commission be appointed to review and evaluate textbooks that are submitted by publishers and to recommend to the State Board those that meet the standards and criteria. The primary criteria is that the textbooks must be aligned with the Standard Course of Study. N.C.G.S. §§ 115C-85 through 115C-88.

For most subjects, the State Board adopts multiple series of textbooks, thereby permitting local boards to choose which series is best suited for the needs of their teachers and students. N.C.G.S. §§ 115C-89 through 90.

Textbooks are adopted annually; however, an adoption of textbooks in a given subject is on a five-year cycle, so that one adoption lasts for five years. The Standard Course of Study is revised every five years and the criteria for textbook selection changes accordingly. N.C.G.S. §§ 115C-85 through 86.

The State Board purchases the books and stores them at the Textbook Warehouse. Local boards submit orders for necessary books and pay for them out of one or more allotments, including but not limited to the allotment for textbooks and the allotment for supplies and equipment. N.C.G.S. §§ 115C-96, -98; N.C.G.S. § 115C-105.25; Atkinson, Nov. 16, 1999, at 204, 207; Price, Nov. 18, 1999, at 60, 101.

Local boards are not required to purchase textbooks from the list of those adopted by the State Board, but may choose any textbooks they deem appropriate. N.C.G S. 115C-98.

The textbook allotment is a dollar allotment. The State allotted $49.11 per ADM for textbooks in school year 1999-00. The annual amount is based upon $20 per ADM in the 1985 BEP base year adjusted for inflation. The inflation adjustment is based upon actual changes in the cost of high school textbooks, not on inflation generally. Price, Nov. 18, 1999, at 60, 253; Price, Nov. 19, 1999, at 52-53, 88-89.

In the 1998-99 school year, $58.5 million was allotted for textbooks in North Carolina. In fact, the LEAs spent only $57.9 million for textbooks. Price, Nov. 18, 1999, at 61.

From its $1.3 million low-wealth county allotment in 1997-98, HCSS spent only $311.47 on textbooks. Consistent with its schools' improvement plans, HCSS used some of its textbook allotment for instructional supplies and equipment in 1998-99. Price, Nov. 18, 1999, at 113. No principal in HCSS requested funds for textbooks in 1998-99. Plaintiffs' Exhibit 488.

Transportation

State funding for transportation is based in part on how efficiently an LEA is deemed to use its transportation resources. The State funded all of HCSS transportation costs in 1999-2000 because the LEA is considered to operate its transportation system at 100% efficiency. Price, Nov. 18, 1999, at 94-95. HCSS received $127.83 per ADM for transportation, less than the State average of $151.15. Price, Nov. 18, 1999, at 130-31.

At-Risk Funds and Student Accountability

Categorical allotments provide State funds over and above the funding for teachers, administrators, books and supplies. Categorical allotments are used to provide funds to LEAs for at-risk students, including both low-income students and low-performing students. In 1999-2000 categorical allotments included, among other things, funds for academically gifted children and at-risk student services. Funds for at-risk students formerly were

allotted in separate categories, such as drop-out prevention, summer school, and pre-school. Funds for at-risk students in 1999-2000 included $52 per ADM plus $286.40 per low-income student. Therefore, LEAs with more low-income students received more at-risk funds. The LEAs can use these funds as they see fit to meet the particular needs of all their students, including hiring additional teachers and providing supplies and materials. Price, Nov. 18, 1999, at 64-67, 79.

Fund for improving student accountability

A new categorical fund for 1999-00 was for improving student accountability. It included funds formerly used for NC HELPS and for a middle school pilot program. In addition to all other funding for teachers, equipment, supplies, books, and funding specifically provided for dealing with at-risk students, LEAs also received $173.34 for every student who scored below grade level in grades three through eight. Price, Nov. 18, 1999, at 75. These funds can be used for supplies, materials, equipment and tutors for these students. Funds for students with limited English proficiency ("LEP") are allotted so as to provide more funds to systems having greater concentrations of LEP students. LEP funding results in LEAs having at least an additional $4,951 for each LEP student. Price, Nov. 18, 1999, at 77-78.

Using Hoke as an example, HCSS uses these funds to implement specific plans for providing for the needs of at-risk students. For example, the 1999-00 Scurlock Elementary School Improvement Plan describes its at-risk program as follows:

> Specific procedures and programs have been developed and implemented to identify and

to meet the needs of Scurlock's academically and behaviorally at-risk students. In addition to our regular education kindergarten through fifth grade program, our school serves a special needs population as well.

Scurlock realizes the importance of early identification and remediation of at-risk students. In conjunction with the Exceptional Children, Smart Start, and Title One Programs, our school offers pre-kindergarten, kindergarten, and developmentally delayed classes. Referrals to these programs are made by the parent and outside agencies. Students qualify based on criteria set forth by the specific program.

School personnel are encouraged and expected to refer potentially at-risk students to the school's child study team, Core Team. Core Team; along with parents, teachers, students, and community agencies; work together better to assist the student. For example, strategies may include counseling, modifying instruction and/or environment, attendance counseling, peer mediation, or referral to a community agency.

If strategies demonstrate to be effective, the students will be monitored and no referral to the Exceptional Children's program will be made. However, if the strategies prove to be ineffective and the student continues to demonstrate concerns, the student may be referred to the

Exceptional Children's program for additional evaluation.

Students who qualify for services from the Exceptional Children's program will receive specific services to meet their individual needs. This program provides services and instruction to students who have been identified as Speech/Hearing Impaired, EMD, BEH, SLD, ESL, and/or OHI. Homebound students receive their instruction in a timely manner from appropriate personnel.

Referred students who do not qualify for services from the Exceptional Children's program, will be monitored by teachers and Core Team. If appropriate, a student may be classified "504" and an accommodation plan developed.

Defendants' Exhibit 389.

School improvement plans exist for all other HCSS schools. Defendants' Exhibits 391, 393, 397, 401.

Low-Wealth Supplemental Funding

A major State categorical allotment is low-wealth supplemental funding for low wealth county LEAs. In addition to all other funding for teachers, equipment, supplies, books, and funding specifically for at-risk students and for students performing below grade level, eligible LEAs, such as HCSS, also receive low-wealth supplemental funds. In 1999-00 HCSS, received $1,992,330 in low-wealth funds. These funds can be used for instructional support, including salary supplements, clerical support, and supplies and materials. HCSS's low-wealth funds increased from $1,627,000 in 1998-99 to $1,992,330 in 1999-00.

Low-wealth funding is not allotted based upon the population of poor students in the schools, but is distributed to school systems based on their county's relative ability to generate revenue to support public schools. Various factors are used to determine a county's ability to generate revenue. The first factor is the property value in a county, which is the primary basis for generating revenue. The State attempts to make all counties' property values comparable. Because the counties evaluate property values at different times, the Department of Revenue uses a sales-assessment ratio, which looks at how property is actually selling compared to its value on the books. If property is selling at 80% of the book value, the State formula says that the sales assessment ratio is 80%. Some property is revalued every year, such as utility property and agricultural use value property.

After adding all the revenue available to the counties for taxing, the State average tax rate is computed. The State average tax rate does not

reflect the true value of how much money a county can generate from tax revenue because the value of property fluctuates among counties. To account for this, the State takes the tax rate and multiplies it by the sales-assessment ratio, and the result is called the State average effective tax rate. That number is used to compare one county's ability to generate revenue with another's. After that number is decided, the State divides it by the number of students in the county. The result is how much money the county can generate per student.
The value per square mile of property is the second calculation. It is used for the "density" adjustment. Some property has very little value for tax purposes. The formula accounts for this by taking total property value and dividing it by the square miles in the county. Price, Nov. 18, 1999, at 83-84.

The third part accounts for per capita income in a county. It uses the past three years of county income and calculates an average per capita income. That is then compared to the State average per capita income, and each county's percentage of the average is computed.

In 1999-00, Hoke County's revenue per student was 49.69% of the State average. Hoke's density adjustment was 25.92%. Hoke's per capita income was 57.78% of the State average.

The low-wealth formula next computes a county's wealth percentage, which is a county's ability to generate revenue percentage. The property value percentage is weighted 40% in the formula. Density is weighted at 10%. Half of the formula is weighted on per capita income. The total is added, and if a county is less than 100%, it is eligible for low-wealth supplemental funding. Hoke's low-

wealth formula percentage in 1999-00 was 51.36%, the highest in the State. Therefore, Hoke received the highest allocation of low-wealth funds per student in the State.

If the State average were $933.81, the formula would provide that Hoke County could generate $479.60, which is 51.36% of $933.81. The formula takes $479.60 away from $933.81, and $454.21 is the difference. The product of multiplying that difference by the local school system's ADM is the additional money that the formula directs to the county. The low-wealth formula was actually funded at about 66% in 1999-00. Price, Nov. 18, 1999, at 86-88.

There is also an "effort" provision in the formula, but it does not impact Hoke County. If a county is not taxing at the State average, or if it is not contributing local appropriations at what the formula says it should be able to contribute, then it does not receive 100% of what it could receive under the funding formula. A county taxing at the State average or higher gets full low-wealth funding. Price, Nov. 18, 1999, at 86.

Small County Supplemental Funding

Small county supplemental funds attempt to provide additional resources for systems that lack economy of scale due to their small size (small refers to the size of the system not necessarily land size, such as Bertie County). Small county supplemental funds are provided to 25 LEAs having less than 3,000 students, and to those having between 3,000 and 4,000 students that also have low property value per student. Price, Nov. 18, 1999, at 92, 95-96.

The theory behind the allotment is that resources received for a small ADM may strain the ability of a system to support the Standard Course of Study. Because small systems do not generate a lot of money in allotment categories that are based upon ADM, the purpose is to permit small school systems to better fund their education programs. Price, Nov. 18, 1999, at 95-96. Hoke County does not qualify for Small County Supplemental funding.

Funds for Staff Development

Staff development is funded as a categorical allotment. Staff development is a critical component of keeping teachers and staff up to date and abreast of educational changes. The staff development allotment amount was approximately $123 per teacher in the 1999-00 school year. Price, Nov. 18, 1999, at 94; Price, Nov. 19, 1999, at 56-57. However, staff development can be funded from other allotments as well.

Using Hoke as an example, in 1998-99 HCSS used its entire regional education and technical assistance fund allotment for staff development. In 1999-00, HCSS has over $60,000 available from the regional education and technical assistance fund to pay for staff development, textbooks, remediation or other things. Price, Nov. 18, 1999, at 89-90. This is about $10 per ADM. In 1999-00 HCSS received $5.45 per ADM for staff development, compared to the State average of $4.62. Price, Nov. 18, 1999, at 124; Defendants' Exhibit 694. If HCSS uses its regional education and technical assistance funds for staff development again in 1999-00, as it did in 1998-99, that alone would raise HCSS's funds for staff development to about $15 per ADM, over three times the average State allotment for staff development.

Both Dr. Leak and Dr. Sullivan testified that staff development and other assistance to schools and teachers is available free of charge to HCSS staff from DPI and from UNC-Pembroke. Sullivan, Nov. 19, 1999, at 140-41; Leak, Dec. 2, 1999, at 157-61.

Special Technology Funding

In 1995, the General Assembly established the School Technology Trust fund as a dedicated source for funding educational software computers, and other equipment. HCSS has received $1.2 million from the fund since 1995. Brumback, Nov. 30, 1999, at 92-94; Price, Nov. 18, 1999, at 90-91. During the trial there were a myriad of witnesses who complained of lack of working computers in the HCSS and who testified that they did not have access to up dated and working computers. The computer is a useful tool and computer literacy is becoming increasingly more important in today's society. North Carolina high school students must pass a computer competency test in order to graduate from high school. Accordingly, there can be no question that computers and links to the internet are important and becoming increasingly necessary for doing business in the 21st Century.

Despite this, the Court must keep in mind that its analysis must focus on the issue of whether the State is providing every child with the equal opportunity for a sound basic education. The Court, based on its own experience, notes that in order to use a computer to write and communicate, the person undertaking to use the computer must be able to read, write and competently type on the keyboard using the English language in a manner that is comprehensible as well as knowing how to properly use the machine. Each child could have a brand new laptop computer on the desk but if the child cannot read, understand the instructions and use the keyboard to produce written communication, this expensive tool is extremely limited except for video games.

This point was driven home when the Court made its "unaccompanied" visit to Hoke County in January, 2000, all elementary schools were visited. In one elementary school, children were present for a remediation session during the three week break from the year round schedule. The Court found a number of young, elementary school children in the "computer lab" in the Media Center. All the computers were on and a child was in front of each.

The Court spoke with one little girl whose computer screen was on but no program was operating. She had absolutely no clue as to what was going on. The Court got a keyboard learning tutorial program on the screen. The tutorial program placed English instructions about which fingers to use on the keyboard on the screen. The tutorial program required that the person using the program be able to **read the instructions and understand them.** The student was not able to read the screen and thus, she was not learning anything at all. The teacher's assistant was across the room eating a snack. The other children who were also propped up in front of their computers did not seem to be doing much better than the girl whose tutorial was not even on.

The point of this aside is that it seems a "no brainer" that the children must learn to read and understand English sufficiently to be able to use a computer for a tutorial program. The computer is a wonderful machine, but it is not a substitute for teaching a child to read, write and think before the child starts using the computer. One should learn to crawl before learning to walk. Staring mindlessly at a computer screen without being able to read and write and use the instrument is a waste of a child's mind.

LEA Flexibility In Using Allotted Funds

The ABCs shifted the focus of State level quality control to defining educational goals and measuring student achievement of those goals and shifted substantial control over the expenditure of educational resources to achieve those goals to individual schools. Robinson, Nov. 16, 1999, at 11-14.

The State's funding delivery system is designed to facilitate local control by permitting LEAs great flexibility in using the funds provided under the various allotment categories. Price, Nov. 18, 1999, at 98-113. For example, an LEA can transfer funds for central office administration and for instructional support personnel for any school purpose. Funds for teacher assistants can be converted to K-3 teachers. Non-instructional support funds can be transferred to hire teachers, and teacher positions can be converted to funds to purchase textbooks or supplies. For example, a vacant principal's position generates $6,165 per month in discretionary funds, and a vacant assistant principal's position generates $5,375 per month in discretionary funds. Price, Nov. 18, 1999, at 98-113.

Systems can also move funds allotted for supplies, materials and equipment to buy textbooks. The same is true for funds allotted for textbooks; systems can use that money to buy supplies and materials.

Federal Funds

The Federal Government also provides funds for LEAs in North Carolina. In addition to funding for teachers, equipment, supplies, books, transportation, funding specifically intended to deal with at-risk students and to improve student accountability, and its sizeable low-wealth allotment, HCSS also received $2.3 million in federal funds in the 1999-00 school year. Price, Nov. 18, 1999, at 136.

Federal support made available to individual schools in Hoke County in 1998-99 or 1999-00 included: West Hoke Elementary $224,186, Defendants' Exhibit 386, p. HO 08180; J.W. McLauchlin Elementary $184,301, Defendants' Exhibit 387, p. HO 08218; Rockfish Elementary, $184,301, Defendants' Exhibit 388, p. HO 08260; Scurlock Elementary $224,186, Defendants' Exhibit 389, p. HO 08294; South Hoke Elementary $193,801, Defendants' Exhibit 390, p. HO 08344; Upchurch Elementary, $184,302, Defendants' Exhibit 391; p. HO 08391; East Hoke Middle School, $13,439, Defendants' Exhibit 395, p. HO 08436; and West Hoke Middle School $13,439. Defendants' Exhibit 397, p. HO 08525.

These federal funds may be used for a variety of things. The enhanced learning opportunities which the schools in HCSS are able to provide disadvantaged students and poor academic performers through Title I funds and other funds are described in the most recent School Improvement Plans. Among the enhanced learning opportunities are (1) small group instruction, (2) after-school and before-school tutorial programs, (3) peer tutoring, and (4) mandatory summer remedial programs for students scoring at Levels 1 and 2 on the State's EOG and

EOC tests. Defendants' Exhibits 386, 387, 388, 389, 390, 391, 395, 397.

LOCAL FUNDS

There are many kinds of local funds, only some of which are reported to DPI. The largest category of local funds is county appropriations. In 1997-98 only 14% of Hoke County's budget was for public schools. Plaintiffs' Exhibit 471. For the 1998-99 school year it increased to 17% of the Hoke County budget. Defendants' Exhibit 360.
Some money is raised locally for the benefit of schools. This money may include funds raised for schools or by clubs, by corporate and individual gifts, and by grants obtained in cash or kind. For example, one of the Hoke County teachers, Ms. Jackson, testified that she had applied for and received several grants, including one for a classroom computer and several aquariums. She also was awarded an arts grant that brought two performances to the school that would otherwise not have been possible. D. Jackson, Sep. 23, 1999, at 890, 936 While these funds are certainly helpful, there is nothing on the record to show that this type of fund raising is either consistent or large enough to be considered a substantial source of additional funding for HCSS.

Individual schools also have funds. The funds for individual schools in Hoke County are included in the school system's audited financial statement. At the end of the 1997-98 school year, the schools had fund balances between $1,830 at Turlington and $44,513 at the Hoke High School. Plaintiffs' Exhibit 299, p. HO 06277.

CORRELATIONS BETWEEN EXPENDITURES AND STUDENT ACHIEVEMENT

The Supreme Court questioned whether there is any demonstrable correlation between educational expenditures and the quality of education. *Leandro*, 346 N.C. at 355, 488 S.E.2d at 260. To assist the Court in probing that question defendants called Dr. Eric Hanushek, a distinguished economist and expert on public school finance and school finance policy issues. He testified that based upon his knowledge of educational research literature and his own research, he has found little systematic evidence of a correlation between spending on schools and student achievement. While he does not discount the possibility that there are effective practices that enhance student achievement, he is convinced that merely spending more money on education is unlikely to result in improved student performance. Hanushek, Nov. 30, 1999, at 217-36.

This Court understood Dr. Hanushek quite clearly. Although plaintiff's counsel described Dr. Hanushek as the witness who was going to testify that "money does not matter" the Court finds Dr. Hanushek to be very credible. His testimony was logical and full of common sense. Put in plain English, the thrust of Dr. Hanushek's opinion is that throwing money at an educational problem without having goals in place for the spending and a system of accountability to measure the effectiveness of the spending is wasteful and not likely to result in improving student performance. The Court is of the same opinion. Dr. Hanushek believes that money matters provided the money is spent in a way that is logical and the results of the expenditures measured to see if the expected goals are achieved.

Dr. Hanushek's opinions are based on facts. Over the past 30 years or so, nationally student performance has remained constant at best, whereas expenditures on public education have risen substantially. In the twentieth century, spending per pupil has increased 3.5% per year after adjusting for inflation. Among the reasons for the cost increase has been a reduction in pupil-teacher ratios. Hanushek, Nov. 30, 1999, at 217.

Despite this, the National Assessment of Educational Progress ("NAEP") reading scores were essentially unchanged from the early 1970s to 1996. Math scores have improved only slightly over 20 years. In 1996 science scores were actually lower than in 1970. Hanushek, Nov. 30, 1999, at 217.

Students have changed as well. In the 1990s students were more likely to live in poverty and to come from a single-parent home. Hanushek, Nov. 30, 1999, at 218-19.

In 1994, Dr. Hanushek studied 377 estimates of how various resources affect student performance. Few of these studies demonstrated a statistically significant correlation between resources and achievement. Hanushek, Nov. 30, 1999, at 221-24. Dr. Hanushek is of the opinion the most likely kind of program or policy that will enhance student achievement is one based upon incentives for better student performance. Typically in the United States neither teachers' careers nor principals' careers are dependent upon student success. Without incentives, merely adding resources is unlikely to make a difference. Hanushek, Nov. 30, 1999, at 236.

This does not mean that "money does not matter." Only a fool would find that money does

not matter in education. The point is that money should be spent with specific goals in mind and with a method of accountability in place to measure whether or not the money that is spent is being appropriately spent to obtain the results desired.

In this case, the Court must review the funding practices to determine if the State is spending taxpayer dollars in a manner so as to meet the ***Leandro*** mandate that every child has an equal opportunity to receive a sound basic education. The ABC system is a system that requires accountability. Therefore, it is reasonable to expect better student performance under the State's ABC system of financial rewards than under input-driven systems.

The Court finds that the State of North Carolina's educational funding delivery system, including ADM, low wealth, small county and other areas of funding as described above, is valid, sound and flexible enough to provide for the delivery of adequate funding to all school systems in North Carolina, including the Hoke County schools, so that they may provide each child with the equal opportunity to obtain a sound basic education.

In these respects, the structure of funding delivery system meets the constitutional mandate. One of the most impressive and strongest aspects of the North Carolina educational funding delivery system is that it is flexible and may be easily changed to meet new funding needs and programs in education. The General Assembly has clearly shown that it has the ability to create new funding allocations to meet the changing needs of education and to be able to focus resource funding on areas of need such as at risk funding. So long as this

flexibility exists, the structure of the system will remain sound.

Caveat.

The Court's determination that North Carolina's educational funding delivery system is sound and flexible enough to provide for the delivery of funding to all school systems so that they may provide each child with a sound basic education does not answer the issue of whether or not the State of North Carolina, is providing sufficient funding to HCSS or any other LEA in a manner that ensures that all children are receiving an equal opportunity to obtain a sound basic education.

IV. NORTH CAROLINA'S SCHOOL BASED ACCOUNTABILITY PROGRAM (THE NEW ABCs OF PUBLIC EDUCATION) IS A VALID AND NECESSARY PROGRAM WITH WHICH TO MEASURE AND ANALYZE THE ACADEMIC PERFORMANCE OF THE CHILDREN IN NORTH CAROLINA'S PUBLIC SCHOOLS.

When Jay Robinson became Chairman of the State Board in 1993, he was satisfied from the evidence available to him, including the opinions of experts in the field, that North Carolina's Standard Course of Study was a broad and deep curriculum that, if properly taught, would insure a good education for all children.

He was also satisfied that the North Carolina standards for teacher licensing struck the proper balance between high teacher licensing standards and the need for a sufficient supply of qualified teachers to staff North Carolina schools.

However, both Dr. Robinson and the leadership in the General Assembly were concerned, and believed the public was concerned, that despite all the money that was being poured into the schools through the BEP and other educational reform initiatives there had been a lack of student improvement in North Carolina schools.

The leaders in both the Senate and the House of Representatives asked Dr. Robinson for a plan for improving North Carolina's pubic schools.

In response to that request, Dr. Robinson and the State Board proposed what has come to be known as "The New ABCs of Public Education or the ABCs." The "ABCs" stood for "Accountability," "Basics," and local "Control." The accountability portion of the ABC's attempts to quantify a school's testing result in two areas: absolute performance on the current year's tests and growth or gain over time. The term "growth" is used when referring to elementary and middle schools and "gain" is used when referring to high schools.

At the request of Dr. Robinson and the State Board, the General Assembly adopted and funded the ABCs. Under the ABC's program, end-of-grade ("EOG") and end-of-course ("EOC") tests measure student knowledge of competencies and objectives contained in the Standard Course of Study ("SCOS"). These tests provide information regarding the students' overall proficiency but are not particularly useful assessing students' individual needs in specific skill areas. For that, much longer tests would be required.

Unlike prior education reforms that primarily focused on mandating or prescribing how schools were run, the ABCs shifted the focus of State control. Under the ABCs, the State defines educational goals and measures student achievement of those goals, but shifts substantial control over the expenditure of educational resources to achieve those goals to individual schools and school systems. Robinson, Nov. 16, 1999, at 11, 12 -14.

Most importantly, the ABCs shifted the unit of accountability. Prior accountability reform initiatives had focused on the overall performance of an LEA. In some cases, these accountability models gave the impression that an LEA was

generally performing well when, in fact, the high performance of some schools was masking the poor performance of other schools. Put another way, schools that had large numbers of students performing at unacceptable levels could be "hidden" from view because the LEA's "average" as a system would not reveal the unacceptable performance of a low performing school or groups of students within a school

To correct the problem of low-performing schools being able to escape public exposure by being hidden from view by overall "averages", the ABCs holds individual schools accountable for student performance. Under the ABCs, the unit of accountability is an individual school. Robinson, Nov. 16, 1999, at 13-14; Johnson, Dec. 1, 1999, at 203. As a result, an individual school cannot "hide" the results of poor performance by students. This constituted a much needed "breath of fresh air."

By holding individual schools accountable for student performance, the ABCs reduces the ability of poor performing schools to hide under the veneer of adequate district wide performance. One advantage of holding individual schools accountable for student performance is that schools quickly learn whether they have left groups of students out of the education process. If those students are not making progress, then schools must give more attention to those groups or they can never make the achievement goals set for the school. Robinson, Nov. 16, 1999, at 13-14.

Although teachers and administrators may not do it consciously, they often assume that certain students will not learn as rapidly or as much as others. As a result of that kind of attitude,

those students will not do as well as others. The ABCs provides teachers and administrators with an incentive to have higher expectations of all students. Robinson, Nov. 16, 1999, at 20.

In Dr. Robinson's opinion, that change was one of the healthiest things the State has ever done and this Court agrees with Dr. Robinson. It simply does not make sense to pour billions of dollars into the educational delivery system without having accountability for those dollars on the academic performance side of the ledger. In addition to making individual schools accountable for performance - to show how students are doing in terms of learning the SCOS - the ABCs lets the North Carolina public know how the individual schools are doing. This is how it should be.

In the elementary and middle schools, the General Assembly requires the ABCs to focus on reading, writing and mathematics, the building blocks of an education. But the State Board takes care to inform principals that other academic areas are important, that ABCs does not exclude anything from the SCOS and that LEA are free to test other subjects or measure progress in areas their communities deem important.

In high school, the General Assembly requires ABCs to focus on student performance in courses required for graduation but permits the State Board to include additional measures of performance. The intent of the ABCs is to hold schools accountable for the educational growth of their students.

To that end, the General Assembly mandated that "the State Board [of Education] shall design and implement an accountability system that sets annual

performance standards for each school in the State in order to measure the growth in performance of the students in each individual school."
The accountability model for elementary and middle schools is different from the high schools model. The State uses student performance on the EOG tests for math, reading and writing to set the goal for educational improvement in elementary and middle schools for a particular year and to determine whether the students in a school have achieved that goal.

The EOG tests were designed to measure the implementation of the Standard Course of Study at the school level and to measure the individual student's knowledge of the Standard Course of Study. Johnson, Dec. 1, 1999, at 191-92.

Scores on EOG tests are classified into one of four levels: (a.) Level I: Insufficient mastery of knowledge and skills to be successful in the next grade level; (b.) Level II: Inconsistent mastery of knowledge and skills; minimally prepared to be successful at the next grade level; (c.) Level III: Consistent demonstration of mastery of the grade level subject matter and skills; well prepared for the next grade level; (d.) Level IV: Consistent performance in a superior manner clearly beyond that required to be proficient at grade level.

A student must score at Level III or above to be considered "proficient" or "at grade level" on both EOG tests administered in grades 3-8 and "End of Course" (EOC) tests administered in high school.

The EOG test is aligned with the Standard Course of Study for those grades three through eight. The EOG tests for math and reading are not

only valid measures of a student's knowledge of the academic objectives in the Standard Course of Study but they are also developmentally scaled. Using developmentally scaled tests in reading and math permits the State Board to determine a growth in a group of students' reading and mathematics skills over time and between grades three through eight. The developmentally scaled scores on those tests permits the State Board to set standards for how much a student's knowledge should grow for each additional year of school. Robinson, Nov. 16, 1999, at 102; Johnson, Dec. 1, 1999, at 204-06.

EOG writing tests are only given in grades four and seven. These tests are not developmentally scaled over that period. In order to include growth writing performance in the ABCs school accountability program, student performance on the writing test in any particular year is compared to a two-year baseline score.

Each year the State sets an expected growth/gain standard for each North Carolina public elementary school and middle schools. That expected growth/gain standard is based on: (a) using the school's present students' performance on EOG tests on reading and math from the prior year, no matter what North Carolina public school those students attended the prior year; (b) expected gain on the EOG writing tests in grades four and seven; (c) the State's average rate of growth on the EOG tests; and (d) a constant which is necessary to account for the statistical tendency to the mean. Defendants' Exhibit 209, p. 2; Johnson, Dec. 1, 1999, at 205-16.

The students in schools that have a large percentage of low performing students must improve their knowledge of reading, writing and mathematics

by more than an average year's worth of growth for the school to meet its expected growth standard. Johnson, Dec. 1, 1999, at 213-15.

Although the elementary and middle school accountability model does not include tests in history and science, the General Assembly requires the ABCs model in those schools to focus on reading, mathematics and writing. N.C.G.S § 115C-105.35. The wisdom in the General Assembly's judgment is aptly summarized in Dr. Robinson's observation that "if you can't read and do basic math you can't do science."

In high school, students do not take the same courses year after year. Consequently, the EOC tests cannot be developmentally scaled and cannot be used to directly measure student academic growth over time or between grades.

To measure academic growth in the performance of high school students, the State Board compares the average performance of students on a particular EOC test for the preceding two years to the performance of students on that test in the current year. Thus, like the writing test, the high school accountability model does not directly compare the performance of the same students on the EOC test from one year to the next. Consequently, the high school accountability model refers to student improvement as "gain" rather than "growth."

The components of the elementary and middle school accountability model have always been reading, writing and mathematics. The components of the high school accountability model have changed over time. In 1999-00, the high school model included the results from eleven EOC tests, including six courses required for graduation from

high school -- Algebra I, Biology, English I and II, ELPS, and United States History -- and five college preparatory courses -- Algebra II, Chemistry, Physical Science, Geometry and Physics.

It also included student performance on the High School Competency Test and student performance on a high school comprehensive reading and mathematics test. The high school comprehensive reading and mathematics test is a tenth-grade level reading and mathematics test that is developmentally scaled to permit comparison to student performance on the eighth-grade EOG reading and mathematics test. Finally, the high school accountability model included increases in student completion of the college preparatory course of study and the college/tech preparatory course of study.

The high school model compares the performance of a school's current students to the performance of students in that school from the two prior years.

Using those expected growth/gain formulas, the State Board sets expected growth/gain standards for each of the 1,800 or so schools in the state every year. The growth/gain formula used by the State Board requires schools that have a majority of students below grade level to realize more than one year's growth for one year of schooling to meet their expected growth standard.

At the end of each year, the performance of students in a school on the EOG tests, EOC tests and other measures is fed into a formula to determine whether the students in that school met the educational goal the State had set for that school. P-I 82 A school's absolute performance is evaluated through the calculation of a "performance

composite." The performance composite for a school is the number of valid test scores at or above Level III divided by the total number of test scores. The formula for determining the performance composite counts the number of test scores at or above grade level, regardless of whether the student generating that score tests at or above grade level in other subject areas. Therefore a 50% performance composite does not mean that 50% of the students at a particular school are proficient on all of the ABC tests they have taken that year.

The State's elementary and middle school reading and math performance standards (the cut-off scores for Level I through IV) are based on scores obtained by students in grades 3 through 8 on tests administered during the 1992-93 school year. The State also uses the ABCs tests to evaluate each school's growth or gain over time. A school can do very poorly on its performance composite but very well in terms of growth. Growth and absolute performance on the ABCs tests are not completely related. For example, Hoke County High School was classified as having achieved "exemplary gain" following the 1998-1999 school year despite having a performance composite of 38.4%, lower than the year before. It is possible that in some instances, an individual student can continue to meet growth while never achieving Level III proficiency over time. Similarly, a school that meets its growth benchmarks for many years in a row does not necessarily reach a point where all students in that school are performing at grade level.

The growth calculation for elementary and middle schools is based on matched groups of students. The gain calculation for high schools is

a rolling average based on different groups of students each year. Determining whether a school has achieved expected growth requires complex mathematical calculations. In order to evaluate a school's growth, both actual and expected growth must be calculated and compared.

In any event, the growth and gain scores, standing alone, are not an adequate indicator of the quality of education being provided. They are, however, a factor the Court can consider in determining whether or not students are receiving a sound basic education. The growth calculation allows a school to be below standard in some areas but above standard in other areas and still reach the exemplary growth standard overall.

Similarly, there is no requirement that a certain percentage of students in a school be performing at grade level in order for that school to receive an exemplary ranking under the ABC program. This allows for a "masking" effect that can be a problem. One of the reasons for the testing is to be able to find those students who are having problems, identify them and try to assist them in improving their performance.

DPI staff and the State Testing Compliance Commission have studied issues and concerns about the ABCs including the correlation between race and low socio-economic status and student performance on the ABCs. The Commission concluded that, although race and low-socio-economic status are negatively correlated with absolute performance on the tests, *i.e.*, how high a student scores on the EOG and EOC tests, they are not well correlated with the growth in student scores over time, *i.e.*, how much higher a students' scores on this year's test compared to his or her score on last year's

test. This low correlation is due to the fact that one factor in the expected growth standard for a school is the actual performance of this year's students on the prior year's EOG test or, in the case of writing and EOC tests, a two-year baseline for students in that school.

The ABCs provide a fair and effective means for establishing growth standards for schools whether they have many low-performing students or have many high- performing students. Johnson, Dec. 1, 1999, at 206-10; Plaintiffs' Exhibit 490, pp. 3, 7.

The State has a system of recognition and rewards for schools based on their students performance on the ABCs school accountability model. Based on the outcome of both the performance and growth/gain calculations, schools are classified into a recognition category. If the school meets its growth standard, then it is classified as "Expected Growth." If it exceeds its growth standard by more than 10%, it is classified as "Exemplary Growth." The 25 elementary or middle schools and the 10 high schools that exceeded their growth standard by the greatest amount are recognized as the "Most Improved Schools in Academic Growth." Schools that meet their growth standard and have 80% of their students performing at or above Level III on the EOG/EOC tests are recognized as "Schools of Distinction." Schools that meet their growth standard and have 90% of their students performing at or above Level III on the EOG/EOC tests are recognized as "Schools of Excellence." Defendants' Exhibit 246; Johnson, Dec. 1, 1999, at 216.

The General Assembly has also authorized monetary bonuses for personnel in those schools that achieve "Expected Growth" and "Exemplary

Growth." In the first year, the General Assembly appropriated $1,000 for personnel in "Exemplary Growth" schools. The next year the General Assembly appropriated $1,500 for personnel in "Exemplary Growth" schools and $750 for personnel in "Expected Growth" schools. General Assembly appropriations for bonuses for personnel in the ABCs program for 1997-98 totaled $140 million -- the largest teacher incentive program in the nation.

In addition to the recognitions and monetary bonuses awarded to schools that meet or exceed their expected growth, the General Assembly has directed that the State Board identify "low-performing" schools, which the General Assembly defined as "schools in which there is a failure to meet the minimum growth standards . . . and a majority of students are performing below grade level." N.C.G.S. § 115C-105.37.

Low-performing schools are those with performance composites lower than one standard deviation below 50 percent and which have not met their growth goals. No Recognition schools are those that do not meet their expected growth or gain and have a performance composite within one standard deviation below 50%.

In the first year of the implementation of the ABCs testing, 1996-97, 7.6% of North Carolina's elementary and middle schools were designated as low-performing. In 1997-1998, only 0.9 % of the elementary and middle schools statewide were designated as low-performing. In fact, in the first two years of the ABC's program, the number of schools designated low- performing fell from 123 to 30. In 1998-1999, 0.7% of all schools statewide were designated as low performing. The General

Assembly required that certain remedial programs be implemented in those low-performing schools. Johnson, Dec. 1, 1999, at 220-23.

First, the General Assembly provided funds to the State Board to train assistance teams comprised of experienced teachers and administrators. The State Board was authorized to send assistance teams to low-performing schools to improve instruction in the low-performing school. Facts pertaining to the specific training and activities of these assistance teams are set out in a separate section on Assistance and Assessment Teams.

The first year the State Board only had the funds to select and train 15 assistance teams for 123 low-performing schools. Therefore, only 15 low- performing schools received assistance teams. The next year, 1997-98, 12 of the 15 low-performing schools had improved to "Exemplary Growth" schools, meaning that those schools exceeded their expected growth standard by more than 10%.

In 1997-98, the number of low-performing elementary and middle schools fell to 15. By 1998-99, there were only 13 low-performing elementary and middle schools and 6 of those were charter schools. Part of the drop in the number of low-performing schools was the result of a change in reporting standards for 1998-99 through the addition by the State Board of a confidence interval to the performance calculation. This confidence interval is known as a "confidence band." The confidence band for each school varied depending on the number of students and the variance in the test scores.

In 1998-99, schools that did not meet their expected growth standard and did not have at least

50% of their students at or above grade level would nevertheless not be identified as low-performing if their performance composite fell within a confidence band for that school.

The drop in low-performing schools was noted by the State Board in its report to the Joint Legislative Education Oversight Committee in October, 1998. At that time the State Board said, "Since so many schools made either expected or exemplary growth during the 1997-98 school year the question being asked is 'are the standards too low?' The Board asked the same question in its 1999 report to the committee. It is undisputed that the composite score "allows a school to be below standard in some areas but above standard in other areas and still reach the expected/exemplary growth standard overall." PX 440, S39324. A school could be below the exemplary standard for fifth-grade reading, but above the exemplary standard in other grades and subjects. " Because the composite includes performance across all grades and subjects, this school could still reach the exemplary standard overall and therefore be eligible for incentive awards." DX209.

The confidence band was used only for reporting low-performing schools and did not affect the reporting of the performance composite scores or the use of performance composite in school designations other than "low-performing." In 1998-99, Hoke County had no schools with performance composites below 50%. Therefore, the confidence band had no effect on the reporting of the performance of Hoke County schools in the 1998-99 ABCs Report. Defendants' Exhibit 246.

The ABC's mathematics and reading tests for elementary and middle school students are scored on

a developmental scale; that is, it is expected that a student will obtain a higher score that he or she did the previous year. An example of developmental scale scoring is that a child capable of multiplying larger numbers should score higher on the developmental scale than a child not capable of multiplying numbers at large. Each point in the developmental scale can represent a range of between 16% to 25% of a year's worth of instruction. DX 226, PIX 80, p. 7.

Math and reading scale scores are different. There is a range of developmental scale scores for each achievement level (I-IV) for each grade (3-10) in both reading and math. While there is no overlap in the ranges of developmental scale scores for the various achievement levels within a particular grade, the scores within a particular achievement level do overlap as a student moves from grade to grade. Therefore, it is possible for a student scoring at Level III one year to receive a lower developmental scale score in a subsequent year but still fall within the range for Level III. The focus of the ABCs tests, especially in the elementary and middle grades, is narrower than the SCOS.

In 1998-99, ABCs tests for elementary and middle school students included multiple choice end-of-grade tests in reading and math for grades 3-8 and a writing test in grades 4 and 7. The scores on these tests are used on both the performance and growth calculations. The high school tests (EOC) were included in both the performance and gain calculations. The high school tests that were included in both the performance and gain calculations were Algebra I, Biology, English I, English II (the high school writing test), ELPS, and U.S. History. DPI has developed

and administers tests in Algebra II, Geometry, Physical Science, Chemistry, and Physics as well, but they were not used in the gain calculation in 1998-99. These five tests were, however, used in the performance calculation in 1998-99 for high schools.

Through 1998-99, the ABC's evaluation system did not include a factor for the dropout rate. Additionally, some categories of students that might be expected to depress the scores are exempt from ABC testing. These categories include certain Limited English Proficient (LEP) students who may be exempt under certain circumstances for up to two years, if they first enrolled in North Carolina public schools during or after third grade. Also Exceptional Children not following the revised SCOS may be exempt based on their Individual Educational Programs (IEP). Highly transient students are also excluded.

The State Board is authorized to intervene in the administration of low-performing schools. The State Board may dismiss the principal in a low-performing school to which it has assigned an assistance team. N.C.G.S. § 115C-325(q)(1). If an assistance team makes two evaluations of a teacher or principal that include written findings and recommendations regarding inadequate performance, then the principal or teacher can be dismissed.

If an assistance team determines that part of the reason for student performance in a low-performing school is the teachers' inadequate general knowledge, the assistance team can recommend that the teacher take a general knowledge test. A teacher who fails this test must engage in a remediation plan. If after completion of that

remediation plan, the teacher fails the test again, the teacher is dismissed and the State Board could revoke his or her license.

In order to assure that principals in low-performing schools are adequately addressing the educational problems in their schools, the ABCs require local superintendents to take a series of specific administrative actions to review the performance of those principals and make appropriate recommendations to the local board regarding the principal's continued service in that school. The local board of education and the State Board must be notified of the actions taken regarding the principal, including any remediation plan that has been developed for the principal. The State Board can take appropriate steps to modify the proposed remediation plan or can take steps to dismiss the principal from employment.

As part of ABCs, the General Assembly also requires local officials to evaluate and address the performance of other certified employees in a low- performing school. Employees who are not performing at a satisfactory level must receive "action plans" for remediation of deficiencies or be dismissed. If after completion of the action plan the employee's performance is still not satisfactory, then the employee must be dismissed or demoted. N.C.G.S. § 115C-333.

Under the ABCs, LEAs are required to create their own assessment teams to work in low-performing schools that were not assigned an assistance team by the State. Facts pertaining to the specific training and activities of these assistance teams are set out in a separate section on Assistance and Assessment Teams.

If more than half the schools in an LEA are low-performing, the State Board has the authority to terminate the superintendent's contract and appoint an interim superintendent. If the local board does not cooperate with the interim superintendent, then the State Board can suspend the powers and duties of the local board and operate the schools in that system itself. Dr. Triplett, an expert in student and educational assessment and education program development and evaluation, testified that one of the strengths of the ABCs program is that it includes all students, both high and low performers, in the accountability model.

In Dr. Robinson's opinion, ABCs "is by far the best thing we've done to insure that every child gets a good, basic education." However, one weakness in the ABCs occurs when the test result data is not disaggregated (analyzed among racial and socioeconomic groups) at the individual school level to be sure that all students' needs are being met. A masking effect can occur where one sub-population within a school is not growing but a large percentage of students routinely score very well on the tests. Seemingly good test results, when broken down, may show that certain subgroups are making little progress and falling behind. The school systems that have done the best on the ABC's are those that disaggregate test data according to race and socioeconomic status to compare the performance of different groups of students. Robinson, Nov. 16, 1999, at 16,17, 19. Suffice it to say that the ABCs program is a work in progress and heading in the right direction for the benefit of the school children of North Carolina.

Experts and national organizations have recognized the ABCs as one of the strongest accountability programs in the country and the National Alliance of Business has recognized North Carolina as the 1999 Education State of the Year for the improvements in the public school system. North Carolina is one of only two states that Education Week has recognized as having a comprehensive accountability program, *i.e.*, it has report cards, ratings, monetary rewards, ultimate sanctions for failing schools and identifies low as well as high performing schools. North Carolina's program is ranked as one of the top ten state standards and assessments programs.

Under the ABCs program, teachers have an incentive to improve the performance of all the students in their class because it is the improvement in their performance that will determine whether the school meets its growth expectations and whether the teacher will qualify for a bonus.

Dr. Hanushek, an expert in educational finance and educational policy as it relates to finance, testified that in his opinion teacher incentive programs such as the ABCs which are based on student outcomes provide the most hope for improving student performance in schools. In fact, in Dr. Hanushek's opinion, merely adding resources to a school without incentives is unlikely to make a difference in student performance. Throwing money into an educational system without accountability and incentives is like throwing money down a deep hole.

The plaintiffs are critical of the ABCs in the areas of test design and analysis methods, EOG

performance standards, exemption of certain sub-groups of students, too much emphasis on multiple choice and not enough open-ended tests. It is true that most of the tests used in the ABCs program are multiple choice.

The State has sometimes used open-ended assessments in which students are required to write out answers, rather than choose one answer from a list of choices, for grades 5 and 8. These open-ended assessments in which students are designed to emphasize "higher level thinking skills—the ability of students to access, organize, process, analyze, evaluate and apply information to solve real-world problems and make informed decisions." Students are expected to "demonstrate skills and knowledge beyond the recall level on challenging subject matter" and to integrate" knowledge and skills from more than one curricular area." PX 61, p.1.

These open ended tests were administered in the first two years of the program, but discontinued in 1998-99. The lack of performance testing has been criticized by the North Carolina Standards and Accountability Commission. The plaintiffs also criticize the ABCs system's focus on individual schools, claiming that the focus on individual schools tends to mask systematic problems statewide, particularly performance gaps between poor counties and economically advantaged counties.

This criticism is not justified. By using the information on performance in " The Green Book" and the information in Volume II of the "ABCs Annual Report Card," one can easily determine that there is a performance disparity between groups of students by race, by economic status and by levels of parent education. In addition, the information

provided permits a cohort (group of students in grade 3 for a particular year) to be followed in their academic performance on the EOG tests through the 8th grade on a yearly basis.

Having studied this data, the Court is very much aware of the student achievement gaps between different socioeconomic and racial groups and poor and "rich" counties. This information is important in this Court's ultimate determination of the question as to whether the State of North Carolina is providing an equal opportunity to receive a sound basic education to all children in North Carolina regardless of wealth or circumstance and regardless of where the children live.

While the ABCs program is subject to criticisms and is not perfect in all respects, it is a giant step in the right direction because the ABCs provides a standard of accountability which is uniform throughout the state.

All students get the same test instruments in each LEA and each elementary and high school statewide when the tests are given. Thus, students in each LEA are being uniformly tested on the same content. And, there is more than one test form in use in each classroom. This is a little known fact. The EOG test instrument for each grade has more than one test form. This means that the classroom teacher will have several different forms of the EOG test scattered among the students taking the test in the classroom. By using different forms of the test in each classroom, the risk of cheating is reduced as well as criticism that the teacher is teaching to the Test. By using multi form tests, the students are being tested on their knowledge of content and subject matter. This is a good practice.

By analyzing the ABCs' results, the State (and thus the public) has learned that " schools with historically higher percentages of students applying for free or reduced lunch tended to have lower performance composites (percentage of students at or above grade level) on the ABCs. Without this type of analysis, the application of resources to address the problems of disparities would not be so effective. In short, schools that are not doing the job of delivering quality educational services can no longer "hide" behind an LEA's average.

Despite the criticism and the fact that the ABCs is not perfect and is a work in progress, the Court finds that the ABCs program's positives are so great as to far override any negatives. An educational system without such an accountability component is like a ship drifting in the night.

The ABCs' lets the sun shine in on problem schools and exposes schools where children are not performing at grade level so that corrective action and attention can be provided to assist in raising the children's performance and increasing their chances for success in the education process.

Based on the clear and convincing evidence in the record in this case, the Court finds that (a) the ABCs program is specifically constructed to provide incentives to teachers to teach all children regardless of performance level; (b) under the ABCs program previously low-performing schools and schools that were, and are, not providing their students with a year's worth of academic growth for a year's worth of school have turned their educational programs around and are now providing their students with more educational opportunities

to learn the SCOS than they previously received; (c) the ABCs program identifies low-performing schools and provides additional assistance to them; and (d) the ABCs program enhances the State's ability to analyze each individual school with a view towards determining if that school is providing each child with the opportunity to receive a sound basic education and towards determining if the children in each school are receiving a sound basic education.

If the ABCs program were not in place, a similar accountability program would, in the Court's opinion, be required so the State, and the public, could have a statewide accountability system to measure educational progress and to assist in measuring whether or not each child is receiving the equal opportunity to obtain a sound basic education as the Constitution requires.

In conclusion, the Court finds that the North Carolina's ABC's program is a valid, appropriate and necessary program with which to measure and improve the academic performance of the public school children of North Carolina and thus, it is a valid and appropriate process to assist the Court in determining whether or not the State of North Carolina is meeting its constitutional obligations required by ***Leandro***.

IV. (a) THE ASSISTANCE AND ASSESSMENT TEAMS ARE A CRITICAL AND IMPORTANT COMPONENT OF THE ABCS PROGRAM FOR EVALUATING, ASSESSING AND ASSISTING SCHOOLS THAT ARE LOW-PERFORMING OR IN NEED OF ASSISTANCE UNDER THE ABCS' PERFORMANCE CRITERIA AND THE TEAMS ASSIST SCHOOLS TO IMPROVE THEIR METHODS AND STANDARDS SO THAT ALL CHILDREN CAN BE PROVIDED AN EQUAL OPPORTUNITY TO RECEIVE A SOUND BASIC EDUCATION.

As a part of the ABCs' Program, the General Assembly has directed the State Board of Education and LEAs to provide intensive professional intervention to improve teaching and administration in low-performing schools.

Pursuant to N.C.G.S. § 115C-105.38, the State Board of Education "may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team."

DPI is required to provide the staff for the assistance teams. An assistance team's duties are to:

(1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.

(2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.

(3) Collaborate with school staff, central offices, and local boards of

education in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.

(4) Make recommendations as the school develops and implements this plan.

(5) Review the school's progress.

(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.

N.C.G.S. § 115C-105.38.

DPI, through the Division of School Improvement, supervises the creation, training and duties of the assistance teams. Leak, Dec. 2, 1999, at 156-58. The State assistance teams are made up of educators selected from all over the State. They can consist of teachers, principals, central office staff, college professors, and retired teachers. Leak, Dec. 2, 1999, at 162-64. To be eligible for selection to an assistance team, a candidate must have had at least four years of teaching experience. While there may be teachers with less experience who could do the job, for

purposes of credibility and effectiveness in evaluating the performance of more experienced teachers and administrators, the four-year requirement was deemed necessary. Leak, Dec. 2, 1999, at 231.

To be selected a candidate must possess strong interpersonal skills, knowledge of the Standard Course of Study, the ability to communicate well both orally and in writing, mastery of their content area, and a proven track record in the classroom. Leak, Dec. 2, 1999, at 165.

All team members must undergo a rigorous four-week training course. Leak, Dec. 2, 1999, at 163-64. The training is conducted by local, State, and national consultants. Leak, Dec. 2, 1999, at 162. A critical piece of the training is the emphasis on the Effective School Correlates. Based on research conducted on high achieving schools with large percentages of low socio-economic students, researchers have found certain common factors, including strong instructional leadership, high expectations of students, high time on task, and a warm and accepting climate. Leak, Dec. 2, 1999, at 166, 180-81.

The training also includes work on team-building, the importance of parental involvement in schools, and multi-cultural sensitivity. Leak, Dec. 2, 1999, at 166-68.

All team members must be trained in the proper use of the Teacher Performance Appraisal instrument and must be updated on any revisions to the Standard Course of Study. Leak, Dec. 2, 1999, at 167.

As a result of the legislation creating assistance teams, there are two types of assistance teams at the State level that may be assigned to schools, "mandatory" and "voluntary." Leak, Dec. 2, 1999, at 168; N.C.G.S. § 115C-105.38.

"Mandatory" assistance teams are those that are assigned to the low-performing schools designated by the State Board of Education. These teams are made up of anywhere from three to five team members who are in the school every day for the entire school year. These teams must evaluate teachers, place them in various categories according to their performance and give those who need it additional help. Leak, Dec. 2, 1999, at 168, 190-91.

"Voluntary" assistance teams are assigned to those schools which performed just above the category of "low-performing" and which request such a team. Team members may include staff members from the Division of School Improvement and also the "on-loan" educators who make up the cadre of State assistance teams. "Voluntary" assistance teams do not have the authority to evaluate the performance of any employees at the school, but rather simply offer suggestions. They also are not necessarily at the school every day. Leak, Dec. 2, 1999, at 168-69.

It is critical that the local school system "buy into" the need for and the presence of assistance teams, whether "mandatory" or "voluntary." Assistance teams are there to build capacity. They are not there to teach the classes for the regular teachers. Leak, Dec. 2, 1999, at 172.

When a team goes into a school, the first thing it does is to review all facets of the school's

operation and assist in making recommendations for improving student performance at the school. Leak, Dec. 2, 1999, at 179-80. This is accomplished through a "Needs Assessment." It includes a review of pertinent documents (schedules, test scores, discipline referrals, attendance records, etc.), and interviews with students, teachers, non-professional staff, and parents.

The Team then arranges the information along the lines of the Effective School Correlates. The findings, both strengths and areas needing improvement, are shared with the principal and the School Improvement Team. The findings are compared to the School Improvement Plan and the latter adjusted if needed. Leak, Dec. 2, 1999, at 179-80, 184-87.

The Needs Assessment also addresses the teachers' expectations of student performance, which is another key piece of the school's likelihood of success. If expectations of the students are low, and if teachers continue to "blame" their students for their poor performance, low performance becomes a self-fulfilling prophecy. Leak, Dec. 2, 1999, at 187-88.

The assistant team next evaluates the teaching staff. Those needing assistance are assigned a mentor from the team and also receive an action plan. The entire team, however, will work with the teacher in areas needing improvement. The team may co-teach with the teacher, do demonstration lessons, and recommend staff development. Leak, Dec. 2, 1999, at 191-92.

In her entire career as a teacher and administrator, Dr. Leak had never encountered a teacher who could not teach; on the other hand, she

had encountered teachers who would not put forth the effort. Leak, Dec. 2, 1999, at 193. Dr. Leak agrees with State policy that "all children can learn," regardless of socio-economic background. Leak, Dec. 2, 1999, at 193.

Some of the common factors found in low-performing schools include weak instructional leadership, low expectations, lack of focus, and poor decision-making about use of resources. Leak, Dec. 2, 1999, at 195-96.

There are many things that can be done to improve student performance that do not require additional resources. For example, teachers can have grade level meetings to share strategies that work for their students. Staff can make better use of the school day, scheduling students for tutoring before or after school or during lunch. Schools could take better advantage of volunteer tutors, such as college students and retired teachers. Schools and school systems can make better decisions on how to utilize the staff development funds provided by the State. Schools can also partner with local businesses to obtain additional support. There are also numerous grants, both private and public, available that schools and school systems can apply for. Seeking out these extra means of improving the schools performance, however, depends in large part on how much energy and commitment the local school officials and teachers have. Leak, Dec. 2, 1999, at 197-201, 260-62.

When an assistance team concludes its work with the school, it makes a final report that includes recommendations for the next year. The report goes to the school principal, the School Improvement Team and to the superintendent. Also the assistance team leaves plans for individual teachers if they need continued support. Whether to follow the assistance teams' recommendations is a local decision. Assistance teams have no authority to mandate that the school or the teachers follow any recommendations. Leak, Dec. 2, 1999, at 224.

It is critical when the team leaves a school that the principal and central office staff take over the support of the school. It is the duty of

central office instructional support staff to do exactly what the Team had been doing for the school. Leak, Dec. 2, 1999, at 225-29.

In 1998, the General Assembly enacted legislation requiring local boards of education to assign "assessment teams" to every low-performing school to which the State Board has not assigned an assistance team. N.C.G.S. § 115C-334.

By law, the assessment teams are required to:

(1) Conduct evaluations of certified employees in low-performing schools;

(2) Provide technical assistance and training to principals, assistant principals, superintendents, and superintendents' designees who conduct evaluations of certified employees;

(3) Develop action plans for certified employees; and

(4) Assist principals, assistant principals, superintendents, and superintendents' designees in the development and implementation of action plans.

N.C.G.S. § 115C-334.

During the summer months, the Division of School Improvement offers professional training to assessment teams at the request of any school system. The training consists of three days of training delivered by staff at the school system. This training allows professionals at the local

level to help their own schools that may be struggling. Leak, Dec. 2, 1999, at 159-61.

The training for local assessment teams is not as lengthy or intensive as that for the assistance teams that the State provides to low-performing schools under the ABCs. Leak, Dec. 2, 1999, at 210-11. The Court finds that the structure in place for training and providing Assistance and Assessment Teams to low performing and other schools in need under the ABCs performance criteria is sound, valid and that Assistance and Assessment Teams are critical and valuable tools with which to assist low performing schools in meeting their goal to provide children with an equal opportunity to receive a sound basic education.

V. STUDENT PERFORMANCE STANDARDS

The Supreme Court has specifically determined that educational "outputs," such as student performance on standardized tests, may be more reliable evidence of educational opportunity than measurements of "input" such as per-pupil funding or general educational funding provided by the State. *Leandro*, 346 N.C. at 355, 488 S.E.2d at 260.

The Supreme Court's determination on this issue acknowledges that academic achievement cannot exist without opportunity and that the Court may consider the actual achievement of students on a variety of "output" measures of academic achievement as evidence of underlying educational opportunity. In this regard, a student's academic achievements, i.e., educational outputs, may be affected by a myriad of factors other than the educational opportunities available to a student during the 5

or 6 hours of the 180 days the student is actually in school.

Just as academic achievement may be affected by a myriad of factors in a student's life outside of school, as well as the educational opportunities provided to the student in the classroom 5 or 6 hours a day, academic achievement also depends on the student's ability, maturity, effort and attitude towards learning.

Moreover, a wide variety of factors outside of school can and do affect a student's academic achievement. Those factors include: nutrition, parental interest in education, parental education, parental income, homelessness, homework, television habits, single parenthood, brain development, sleep patterns, etc. Reduced to essentials, there can be no dispute that the environment that the student comes from each morning and goes home to each afternoon can have an effect, adverse or positive, on a student's academic performance and achievement, as well as their attitude towards education.

The students who come to the public schools of North Carolina arrive from diverse and varied economic and cultural backgrounds. The students arrive with different learning abilities, different social skills and different levels of maturity.

Based on these factors and others, children will learn at different paces and at different levels. It is undisputed that all children can learn. The public schools are charged with providing these children with an equal opportunity to receive a sound basic education as they move through the public school system attended.

To reiterate, under the definition of a "sound basic education," the *Leandro* Court included four distinct educational achievements. They are:

> (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of *fundamental* mathematics and physical science to enable the student to *function* in a complex and rapidly changing society;
>
> (2) *sufficient fundamental* knowledge of geography, history, and *basic* economic and political systems to enable the student to *make informed choices* with regard to issues that affect the student personally or affect the student's community, state, and nation;
>
> (3) *sufficient* academic and vocational skills to *enable* the student to *successfully engage* in post-secondary education or vocational training; and
>
> (4) *sufficient* academic and vocational skills to *enable* the student *to compete on an equal basis* with others in *further formal education or gainful employment* in contemporary society.

Leandro, 346 N.C. at 347, 488 S.E.2d at 255.

These are not empty words. Let there be no mistake that the Supreme Court has declared that ultimate goal of a child's receiving a sound basic education, regardless of which academic path the child ultimately chooses, is that he or she has been afforded the opportunity to achieve "**sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.**"

This means, in Plain English, that if a child chooses not to go on to a technical school or college after high school, that child should possess sufficient academic (educational skills) and vocational (job skills) to compete in the job market with others who have received a high school education. That means, in Plain English, that the high school education must meet the sound basic education test for real life employment. A sound basic education evidenced by a high school diploma means more than being able to add, subtract, multiply and divide or make change at a fast food restaurant. The same educational substance applies to those children who elect to go on to community college or the university setting after high school.

It is undisputed that each student will bring unique abilities, effort and out of school experiences to the educational opportunities available in his or her school. Given the equal opportunity to acquire a sound basic education, some students will acquire the components of a sound basic education sooner than others and some will never do so.

Because students will learn different things at different times depending on their ability, effort and opportunity to obtain a sound basic education, the fact that a student fails to demonstrate a satisfactory level of academic achievement, *e.g.*, a

level of performance that indicates that the student is receiving a sound basic education (performing at grade level or above Level III, or above) does not, in and of itself, prove that the State has failed to provide that student the equal opportunity for a sound basic education or that the opportunity to obtain a sound basic education does not exist in the student's school or school system.

Depending on the student's individual circumstances, however, it is certainly evidence that can be considered that the student is not obtaining a sound basic education at that point in the student's education. The fact that many students fail to demonstrate a satisfactory level of academic achievement within a school, or school system, may provide clear evidence that those students are not receiving the opportunity for a sound basic education.

Determining where this performance line should be is part of the Court's analysis in the area of student performance or "outputs." It also follows that measures of educational "outputs" which show that a large number of students in a school system are performing at a satisfactory level of academic achievement would be substantial evidence that the equal opportunity to obtain a sound basic education is present in that school system.

The foregoing has a caveat. It must be kept in mind that the Supreme Court declared that educational "outputs" are not the sole measuring stick for the inquiry of whether the equal opportunity to receive a sound basic education exists in a school system.

The question of whether students within an LEA have been provided with the equal opportunity to

receive a sound basic education, of necessity, must include an examination of the State of North Carolina's performance standards that purport to measure the academic achievement of its students over their public school career as part of determining whether the State has fulfilled its constitutional obligations. In this regard, a brief discussion of the length of time a student has a right to the academic opportunity provided by North Carolina is appropriate.

At present, a student who has not been expelled or received a diploma has the right to attend public school from kindergarten through twelfth grade to the age of 21. At age 21, the right ceases and the student must leave the public school system. N.C.G.S. § 115C-366.

A student who ages out of the public school system before earning a high school diploma still has the right to continue free education through the community college system.

As stated earlier the level of student academic achievement, as measured by performance on standardized tests and other outcome standards, of those students who remain in HCSS, or any other LEA, until they earn a diploma or reach the age of 21 can be significant evidence of whether the opportunity to receive a sound basic education is in fact present in HCSS, or any other LEA.

This Court is expressly bound to "grant every reasonable deference to legislative and executive decision branches when considering whether they have established and are administering a system that provides children of the various school districts of the state a sound basic education." *Leandro*, 346 N.C. at 357, 388 S.E.2d at 261.

Therefore, the Court must consider the evidence regarding those outcome measures that are legally part of the public school system established and administered by the General Assembly and the State Board of Education.

THE STATE'S STANDARDS FOR AWARDING HIGH SCHOOL DIPLOMAS ARE SUFFICIENT TO PROVIDE THE EQUAL OPPORTUNITY FOR A SOUND BASIC EDUCATION

Under North Carolina law, the constitutionally mandated general and uniform system of free public schools is available only to those persons of the State less than 21 years old "who [have] not completed a standard high school course of study." N.C.G.S. § 115C-1.

The General Assembly has specifically stated that students are not entitled to the privileges and advantages of the public schools once they have "obtained a high school diploma." N.C.G.S. § 115C-366.

Furthermore, the Constitution itself recognizes a parent's right to home school their children or to enroll them in non-public schools. N.C. Const. Art. IX, Sec. 3 ("every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means."); *Delconte v. State*, 313 N.C. 384, 329 S.E.2d 636 (1985). Thus, the Constitution expressly recognizes a student's right to pursue educational opportunities outside the North Carolina public school system.

However, consistent with that constitutional right, the General Assembly limits access to the free public schools to those students who have not obtained a diploma from any legal high school. N.C.G.S. § 115C-366.

In light of the Constitution and these statutory provisions, the Court finds that it is the policy of the State of North Carolina that a high school education should be one in which each student, while performing at a satisfactory level (grade level or above), has acquired those academic and vocational skills reflected by each student's abilities, including those academic and vocational skills encompassed by the Supreme Court's definition of a sound basic education.

The High School Diploma is not, standing alone, evidence that a child has received a sound basic education.

A high school diploma that is awarded when the student has not performed at a satisfactory level while taking the required courses is not worth much more than the paper it is written on if the student cannot function in society according to the goals

of ***Leandro***. The Constitution can accept no less an objective from North Carolina's general and uniform system of free public schools.

Experts for both the plaintiff parties and the defendants agree that acquiring a high school diploma is a better indicator of educational achievement and future personal success, both economically and socially, than performance on competency tests. Dr. Triplett opined that a North Carolina high school diploma is the ticket to opportunity in higher education and employment. If all this is true, the Court wonders why students with diplomas from Hoke County High School ("HCHS"), and other high schools are taking remedial courses before getting into mainstream education at the University and Community College level? Triplett, Nov. 22, 1999, at 33-40, 161-63; Triplett, Nov. 23, 1999, at 178-80; Jaeger, Sep. 22, 1999, at 840-84.

While we are on the subject of expert witness testimony, the Court notes that this is a non-jury case in which the Court is the fact finder. With respect to the testimony of expert witnesses, the Court, like the jury, is not required to accept the testimony of expert witnesses to the exclusion of facts and circumstances disclosed by other evidence. Put another way, the Court should consider an expert witness' testimony but it is not bound by it.

Dr. Suzanne Triplett, the State's expert in educational assessment and educational program evaluation, testified that a student who has satisfied all the requirements for a North Carolina diploma, including passing the required courses in the Standard Course of Study (including algebra I) and passing the required North Carolina High School

Competency Test has acquired a sound basic education. Triplett, Nov. 22, 1999, at 32-38. With all due respect to Dr. Triplett, this may be true in some cases, but it is certainly not true as to those students who have performed below grade level as evidenced by their grades, EOG and EOC tests, SAT scores and other measurements of academic output achievement. Another valid reason for questioning the prima facie validity of a high school diploma can be found in the present North Carolina Competency Standard.

In 1994, having received evidence that " North Carolina high school graduates lack the mathematics, science, language arts, information-processing and problem-solving skills that are essential for success in the workplace," the North Carolina Education and Standards Accountability Commission recommended that a legitimate 12th grade level assessment be developed and administered to determine if North Carolina's graduating high school students actually were qualified to receive a diploma.

At that time, the competency test in use by the State of North Carolina for high school graduation tested only 6th grade level skills. After receiving the Commission's recommendation, the State Board considered adopting a test that would actually test 12th grade level skills (those that a high school senior should have mastered in order to show that he or she had obtained a sound basic education), but elected not to adopt so rigorous (and in light of ***Leandro*** , July, 1997) a standard and instead adopted an 8th grade level test as the minimum competency standard. Had the real 12th grade skill level test been implemented, data provided the State Board at the time indicated that at least one third (1/3) of North Carolina high school students

would **fail a test that actually measured 12th grade skills.** The State Board was not happy about the decision to only elevate the test from the 6th grade to the 8th grade skill level. "No one is really happy about awarding a bonus to students who might only have eighth grade skills.." T. 11/23 p. 185.

Rather than stand up and face a known, but disagreeable truth, the North Carolina Competency Standard for high school students was revised for 1995. The standard was "lifted" from the bottom of the educational barrel to about 1/3 of the way to the top. Thus, the competency standard which is presently in place requires that North Carolina students demonstrate mastery of educational skills and competencies that one would expect in the 8th grade in order to receive a high school diploma. The Court notes that passing this test is not the only requirement for a high school diploma because in addition to being able to show one has mastered the equivalent of an 8th grade education, the student must have "passed" the core high school curriculum in the subjects required for graduation.

A student, in order to "pass" the competency test must demonstrate performance at Level III or higher. The student who fails to do so the first time, has other opportunities as they progress through the 12th grade to show that they have mastered 8th grade level skills. This is a sorry picture indeed. While we are on this subject, low-performing students (students who are, like all other students, entitled to the equal opportunity to receive a sound basic education) dropping out of school may account, to a significant extent, for the apparent increase in passing rates from those students taking the test in the 8th grade to those taking it in the 12th.

The Court views with great caution data relating to the present competency standard. It is important to analyze not only the number of students that are meeting the 8th grade standard, but also **the time in their high school education process that they are meeting the standard.** Students that pass the test their senior year cannot realistically be said to have acquired a high school diploma that meets the definition encompassed in a sound basic education.

Additionally, there are a number of students who, for lack of being provided with the equal opportunity for a sound basic education, drop out of high school and go on to other careers. In this regard, the Court notes that 82% of the people in prison in North Carolina are high school dropouts.

Accordingly, the Court finds that the (eventual) passage of the 8th grade level competency test fails to prove much, if anything. It certainly does not prove that a student has been offered the opportunity to receive a sound basic education and depending on what year it was "passed" tends to show more likely than not that the student has failed to obtain one.
In addition to her own study and knowledge of educational assessments, Dr. Triplett cited other experts in the field, including Dr. Richard Jaeger, the plaintiffs' expert in the fields of education and psychological measurement, to support her opinion that a high school diploma is a superior measure of educational attainment and that a diploma is in fact a better measure than performance on competency tests. Triplett, Nov. 23, 1999, at 178-80.

This is a red herring that has been out of the water for several days. A high school diploma

awarded to a student that has been provided with the equal opportunity to receive, and has in fact received a sound basic education, is certainly a superior measure of educational attainment than performance on a competency test, especially if the competency test only measures academic performance at the eight grade level like North Carolina's present high school competency test does.

Students who stay in school and obtain high school diplomas are not only likely to earn substantially higher incomes than students who drop out of school but are less likely to engage in criminal activities and have fewer children out-of-wedlock than dropouts. Jaeger, Sep. 22, 1999, at 840-41. While this may be so, it does not answer the inquiry as to whether the student has in fact been offered the opportunity to receive a sound basic education. Having a high school diploma and not be able to make change does not meet the constitutional standard.

Reduced to essentials, the Court finds that the High School Competency Test which measures achievement at the 8th grade level offers little, if any proof that a student has been offered the opportunity to receive a sound basic education when the student graduates from high school.

Having said that, the Court finds that the State standards for courses and course content required for obtaining a high school diploma (excluding the North Carolina High School Competency Test) more than meet the ***Leandro*** standard in terms of content and subject matter **provided** the student earning the diploma is performing at grade level or above (Level III and IV) and has been taught by competent and qualified teachers. The Court finds that the ***Leandro*** goal

would be achieved when each student who receives a high school diploma has received a sound basic education evidenced by performance at grade level or above. If that standard of performance constitutes the basis underlying the award of a high school diploma, the student would have received the sound basic education mandated by the Constitution.

Simply passing the North Carolina High School Competency test and passing the required courses while not performing at grade level or above does not measure up and falls far short of the standard mandated by the Constitution.

TEACHER GRADES ARE ONE IMPORTANT MEASURE OF STUDENT PERFORMANCE

Pursuant to State law, the principals in individual schools are statutorily authorized to grade and classify students. N.C.G.S. § 115C-288(a); Jacobs, Nov. 15, 1999, at 113. It is the policy of the State of North Carolina to entrust the decisions to promote a student or to award them a passing grade in a course to the principals in individual schools.

Absent a "clear showing" that this policy is constitutionally deficient, the Court will consider the principals' professional judgment to grade and classify students as one important factor in assessment of a student's academic knowledge and skill. Grades in a course are important measures of academic achievement of students in and of themselves. However, there are other measures, including the tests contained within the ABCs program, which serve to validate the grading process and to ensure that the student is being

offered the opportunity to receive a sound basic education.

There is no evidence that principals in Hoke County have raised student grades, promoted students or issued diplomas to students contrary to the professional judgment of the teachers responsible for the students' education.

In the years 1993-94 through 1997-98, HCSS deemed 1,147 students to be sufficiently educated in the required components of the Standard Course of Study to award them diplomas from Hoke County High School. Plaintiffs' Exhibit 291. This fact does not answer the question as to whether or nor all those students left school having acquired, or been provided the opportunity to acquire, a sound basic education.

The Court acknowledges, as did the Supreme Court, that a debate rages as to whether a standardized test is a better indicator of the student's knowledge and skill than the classroom teacher's assessment, *i.e.*, the grade the teacher gives the student at the end of the course. Defendants' Exhibit 226, p. 3; A. Jackson, Sep. 20, 1999, at 130-34; D'Annunzio, Sep. 20, 1999, at 221-22; Calhoun, Sep. 21, 1999, at 246, 331-34, 360; Ross, Sep. 30, 1999, at 201-02; Jacobs, Nov. 15, 1999, at 109-11; Keim, Nov 15, 1999, at 167-72. Hoke County schools grade students according to the following standards: 100 to 93 is an "A"; 92 to 85 is a "B"; 84 to 77 is a "C"; 76 to 70 is a "D"; and scores below 70 are "F's" or failing. Defendants' Exhibit 614; Keim, Nov. 15, 1999, at 200-03.

A student must have at least an average grade of 70 or a "D" at the end of the course in order to pass and receive credit for a course or graduate.

Keim, Nov. 15, 1999, at 167-68, 200. A student who achieves a "D" may pass but that student has not performed at the level expected to obtain a sound basic education.

Students who pass a course or are promoted have, in the professional judgment of the teacher, acquired a minimal level of proficiency in that academic material covered in that grade or course. Calhoun, Sep. 21, 1999, at 333-34; Keim, Nov. 15, 1999, at 167-72. This does not, standing alone, ensure that the student has acquired, or been given the opportunity to acquire, that level of academic proficiency sufficient to provide that student with the knowledge and skills required for receipt of a sound basic education if that subject is one included in the definition of sound basic education. A "D" does not meet the minimal standards for a sound basic education.

The ABCs testing program, however, can provide corroboration of the teacher's judgment with respect to the level of academic proficiency in the course, or provide information that the child has not reached a level of proficiency as evidenced by the grade in the course. The test scores are no substitute for teacher judgment but when used in conjunction with the teacher's judgment, are a valuable objective tool. After all, it was the judgment of thousands of teachers that helped set the performance standards for the EOG tests in the first place.

When setting standards for student performance on the EOG tests, the State Board of Education chose to rely on teachers' knowledge of student achievement and performance outside the domain of standardized testing to set the benchmarks for student performance on the EOG tests. Triplett,

Nov. 22, 1999, at 63-67; Plaintiffs' Exhibit 119, p. 5.

Dr. Triplett, an expert in educational assessment and education program development and evaluation, Triplett, Nov. 22, 1999, at 30-32, testified that such reliance is justified because teachers know their course content and what they have taught; they have a concept of what is required for a student to demonstrate proficiency in a subject area; and they have 170 to 180 days of instructional experience with the individual student. Therefore, in the end, a teachers' evaluation of a student's academic performance is the single best measure of actual student performance. Triplett, Nov. 22, 1999, at 63.

The State Board of Education has adopted new Student Accountability Standards that require teachers and principals to place increased emphasis on student performance on EOG and EOC tests in promotion and retention decision.

But while the Student Accountability Standards set Level III performance on EOG tests as the benchmark for promotion, the Standards recognize the principal's authority to make the final promotion/retention decision based upon documented evidence of a student's performance other than the EOG test results. *E.g.*, Plaintiffs' Exhibit 52, pp. 1-6; N.C.G.S. § 115C-288(a). A principal may promote a student who does not score Level III or Level IV on the EOG tests or a principal may retain a student who has scored Level III or Level IV on the EOG tests. The final decision remains the principal's based upon his or her professional judgment of student's documented performance throughout the academic year. However, promotion in this manner, in the absence of valid proof of

performance at or above grade level as established by Level III or above performance, does not necessarily mean the student has obtained, or been offered the opportunity to obtain, a sound basic education for that year.

A teacher's professional observation and assessment of the student's performance during the academic year, when endorsed by the professional judgment of the principal, is a constitutionally sufficient measure of a student's acquisition of a sound basic education provided that the student is actually performing at an achievement level that is not less than grade level as defined by Level III.

With the foregoing in mind and considering all the evidence, the Court finds that the professional observation and assessment of a student's performance made by a qualified and competent teacher is a more accurate measure of a student's actual knowledge and ability than any other single measure of a student's academic ability, including performance on standardized tests.

Furthermore, teacher grades are the only output measure of student performance which encompass all the subjects and courses that may be included in a sound basic education.

STUDENT PERFORMANCE AS MEASURED ON STANDARDIZED TESTS

The Supreme Court has specifically stated that:

> Another factor which may properly be considered in this determination [whether any of the state's children are being denied their right to a sound basic

> education] is the level of performance of the children of the state and its various districts on standard achievement tests. In fact, such "output" measurements may be more reliable than measurements of "input" such as per-pupil funding or general educational funding provided by the state. It must be recognized, however, that the value of standardized tests is the subject of much debate. Therefore, they may not be treated as absolutely authoritative on this issue.

Leandro, 346 N.C. at 355, 488 S.E.2d at 259-60 (citations omitted).

The results of standardized testing provide a snap shot of an individual student's knowledge and skill on a particular day. The Court agrees that a single student's performance on a single standardized test should never be the sole measure of a student's academic achievement. Defendants' Exhibit 226, p. 2. However, the Court finds, from all the evidence presented on this issue, that the results of standardized tests are to be considered as reliable markers of student achievement and not discounted as unreliable as some "pundits" in the education arena would do.

When aggregated, students' performance on standardized tests can permit comparisons between the demonstrated abilities of groups of students. Like other output measures, standardized tests are approximate measures of a student's knowledge and skill in the areas measured by the test on the day the test is given.

The fact that the Supreme Court has directed this Court not to treat student performance on standardized tests as "authoritative on this issue [*i.e.*, whether any of the state's children are being denied their right to a sound basic education]" does not mean that test results should be ignored or that student performance on all tests are entitled to equal weight on this issue.

There are a variety of standardized test results for Hoke County students in the record, *e.g.*, SAT, ASSET, NC Early Mathematics Placement Examination, North Carolina EOG and North Carolina EOC. The probative value of student performance on any standardized test, as well as any other measure of student performance, depends upon its reliability and the validity of the test results.

Reliability can generally be described as the degree to which performance on a standardized test will vary irrespective of the student's knowledge of the subject matter being tested. Validity can generally be described as the degree to which the results of the standardized test accurately measures the student's knowledge of the subject that the test purports to test. Defendants' Exhibit 226, pp. 2-3, 16, 17.

One large factor in the validity of any standardized test is the degree to which the knowledge required to answer the questions on the test correlates with the knowledge that the students must have of the subject matter to achieve the desired academic objective, *e.g.*, read at a certain level, pass a course, earn a diploma.

THE STATE'S END-OF-GRADE AND END-OF-COURSE TESTS ARE REASONABLE AND VALID MEASURES OF STUDENT PERFORMANCE

The record contains extensive evidence regarding the EOG and EOC tests.
The EOG and EOC tests were specifically developed to correlate to the knowledge and skills described in the Standard Course of Study.
The EOG and EOC tests are aligned with the Standard Course of Study and national curricula standards and were specifically designed to measure student knowledge of curricula objectives in the Standard Course of Study. Plaintiffs' Exhibit 119, p. 1; Defendants' Exhibit 234, p. EOGiii; Defendants' Exhibit 239, p. iii; Johnson, Dec. 1, 1999, at 189-92.

A student's scores on the EOG and EOC tests have been determined to be valid measures of a student's knowledge of the material covered in the Standard Course of Study. Defendants' Exhibits 232, 234, p. EOGiii; Defendants' Exhibit 235, p. iii; Johnson, Dec. 1, 1999, at 191-92.
Both the EOC and EOG tests were designed to measure achievement of curricula objectives which have a strong emphasis on higher-order thinking skills. Defendants' Exhibit 234, p. EOGiii; Defendants' Exhibit 235, p. iii.

The Court has previously found that the educational content and requirements encompassed by the Standard Course of Study exceed what is required for a student to obtain a sound basic education provided the student is being taught the SCOS by a competent and qualified teacher.

Student performance on the EOG and EOC tests is a valid measure of the student's knowledge of objectives in the Standard Course of Study.
Because the EOG and EOC tests are valid measures of a student's knowledge of the material in the

Standard Course of Study, the Court finds that the performance of North Carolina public school students, including Hoke County students, on the EOG and EOC tests are highly probative on the issues (a) of whether students are being provided with the equal opportunity to receive a sound basic education and (b) are receiving a sound basic education.

Because performance on the EOG and EOC tests are highly probative on the critical issues in this case, more so than any other standardized test being used at present, if an examination of the performance of the Hoke County students on EOG and EOC tests, or for that matter any LEA in North Carolina, demonstrates that a significant percentage of a cross section of the students are performing at a level which indicate they are being provided with the opportunity to receive and are receiving a sound basic education, then that would be substantial evidence that the equal opportunity to obtain a sound basic education is present in the Hoke County schools, or any other LEA under scrutiny.

The other side of the coin is also true. If an examination of the performance of students on the ABCs' tests demonstrates that a significant percentage of a cross section of students are performing at a level which indicates they are not receiving a sound basic education, then that would be substantial evidence that the equal opportunity to obtain a sound basic education is not present in the Hoke County schools, or any other LEA under scrutiny.

Development of the EOC and EOG Tests

The State Board of Education used student performance on the EOG tests in the 1992-93 school year as the standard or norm year for future test administrations. Defendants' Exhibit 226, pp. iii, 4, 7; Defendants' Exhibit 234, p. EOGiii. The plaintiffs complain that this norm was too low and that the tests have not been re-normed to up date them. The Court is aware of these complaints when making these findings.

The State Board of Education used the "contrasting groups method" to set standards for achievement on the EOG tests. In the "contrasting groups method," experts use their external judgment (*i.e.*, their judgment about student performance unrelated to results on the standardized test for which standards are being set) to categorize student performance in accordance with established definitions of performance, *e.g.*, highly competent, competent, incompetent, etc. Once all the student performances have been categorized the percentages of all students in each category are determined. The results of student performance on the test are then arranged from lowest to highest on a progressive scale. The percentage of students scoring at each point on the scale as well as the total percentage of students scoring below that point are then determined. The percentage of students previously determined to be in the lowest category is then matched to the same percentages of students who scored at the bottom in the frequency distribution of all the student results arranged in ascending scale scores. The scale score below which that percentage of students fell is thus designated as the top score of the bottom category.

The process is repeated for each percentage of students in each defined category until 100% of the

students are accounted for. In this manner, the external judgment of the experts is used to identify the range of scale scores associated with a particular definition of performance. Plaintiffs' Exhibit 119, pp. 5-13; Defendants' Exhibit 245, Glossary, p. 2; Triplett, Nov. 22, 1999, at 63-81.

In the case of the EOG test, the State Board called upon 5,000 North Carolina teachers to use their professional judgment of their students' performance over 160 to 170 days of instruction and to assign more than 160,000 students to one of the following five categories of performance in reading and mathematics:

- Fails to achieve at a basic level: Students performing at this level do not have sufficient mastery of knowledge and skills in this subject area to be successful at the next grade level.

- Achieves at a basic level: Students performing at this level demonstrate inconsistent mastery of knowledge and skills that are fundamental in this subject area and that are minimally sufficient to be successful at the next grade level.

- Achieves at a proficient level: Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared for the next grade level.

- Achieves at an advanced level: Students performing at this level consistently perform in a superior manner clearly beyond that required to be proficient at grade level work.

- Not a clear example of any of these achievement levels.

Plaintiffs' Exhibit 119, pp. 5-6; Triplett, Nov. 22, 1999, at 66-81.

During this "field test," teachers were able to place 95% of all students into one of the four specified achievement levels. The results are included in Plaintiffs' Exhibit 119 at pages 5-6. The teachers professional judgment of the percentage of students performing at the specified levels was fairly consistent over grades three through eight with the largest range occurring in teacher judgments over time of the percentage of students failing reading (5.3%) and the smallest range being teacher judgments over time of the percentage of students achieving at an advanced level in mathematics (1.3%). Plaintiffs' Exhibit 119; Triplett, Nov. 22, 1999, at 79.

In an attempt to measure the accuracy of the teachers' professional judgments in 1992, teachers of a random sample of fifth and eighth grade students selected to take the Iowa Test of Basic Skills ("ITBS") were asked to again assign their students to achievement levels under the same instructions used in the 1992 survey. Plaintiffs' Exhibit 119, p. 7. Comparing the performance on the ITBS with performance on the EOG tests, the State Board of Education determined that Level IV performance was equivalent to students who scored

two grades above grade level on the ITBS. Triplett, Nov. 22, 1999, at 147-48; Plaintiffs' Exhibit 119, p. 11.

A significant consistency was found to exist between the teachers' judgments of the students' ability and their performance on the ITBS. No discrepancy was greater than 3% points. This was evidence that the teachers had not deliberately deflated their expectations of their students' abilities in order to improve the appearance of their test scores in 1992. Plaintiffs' Exhibit 119, p. 7; Triplett, Nov. 22, 1999, at 81-82.

The teachers' professional judgments as recorded in the 1992 field test were then used in conjunction with the students actual performance on the 1992-93 EOG tests to set the achievement standards for the EOG tests. Plaintiffs' Exhibit 119, pp. 5-13; Defendants' Exhibit 226; Triplett, Nov. 22, 1999, at 63-81.

The State Board of Education describes the official levels of performance on the EOG tests as:

> **Level I:** Students performing at this level do not have sufficient mastery of knowledge and skills in this subject areas to be successful at the next grade level.
>
> **Level II:** Students performing at this level demonstrate inconsistent mastery of knowledge and skills in this

subject areas and are minimally prepared to be successful at the next grade level.

Level III: Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared for the next grade level.

Level IV: Students performing at this level consistently perform in a superior manner clearly beyond that required to be proficient at grade level work.

Based upon the 1992 field test, the actual performance of students on the 1992-93 EOG tests and the specified definitions of Level I, II, III, and IV performance, the State Board of Education classified the full range of scores on the EOG tests into one of the four Levels of performance. The upper limit of the range of scale scores in each Level for each grade in reading and mathematics was based upon the percentage of students that the teachers in the 1992 study placed in each category as applied to the students' actual performance on the 1992-93 EOG tests. Plaintiffs' Exhibit 119, p. 6; Defendants' Exhibit 226, pp. 4-5.

For example, the teachers in the 1992 field test believed that 14.3% of their third grade students were failing to achieve at a basic level in reading. Plaintiffs' Exhibit 119, p. 6. Of the students who took the 1993 reading EOG test, 13.58% had a scale score of 130 or below and 15.73% had a scale score of 131 or below. Defendants' Exhibit 226, p. 24. Therefore, the State Board of Education established a scale score of 130 as the top scale score for Level I performance on the fourth grade reading EOG test. Defendants' Exhibit 226, p. 5.

The teachers in the 1992 field test believed that 26.9% of their third grade students achieved at a basic level in reading, *i.e.*, above failing but below proficient. Plaintiffs' Exhibit 119, p. 6. When added to the students who were deemed to be failing, that means that 41.2% of third grade students in 1992 were deemed by their teachers to be achieving at no better than a basic level in reading. Of the students who took the 1993 reading EOG test, 38.82% had a scale score of 140 or below and 42.30% had a scale score of 141 or below. Defendants' Exhibit 226, p. 24. Therefore, the State Board of Education established a scale score of 140 as the top scale score for Level II performance on the fourth grade reading EOG test. Defendants' Exhibit 226, p. 5.

When considered with the fact that the top scale score for Level I performance was established at 130, the State Board therefore recognized a scale score range of 131 to 140 to be Level II performance. Defendants' Exhibit 226, p. 5. Continuing in this manner to apply the results of the 1992 field test to the 1993 student scale scores on the EOG reading and mathematics tests,

the State Board of Education established a range of scale scores that it deemed representative of Level I, II, III or IV performance on those EOG tests.

In addition to establishing achievement levels for performance on the EOG tests, the State Board of Education used the scale scores on the EOG tests to set the mean scores on the 1993 EOG tests as the State standard for grade level performance for purposes of establishing expected growth in student performance in grades three through eight. The State Board of Education can use the EOG test results to establish expected growth standards because the EOG test results are developmentally scaled over grades three through eight. By comparing the difference between a student's developmental scale score from one year to the next to the statewide average differences in developmental scale score on the EOG tests, it is possible to determine how much academic growth a student has achieved over the course of one year and whether that growth is more or less than an average amount of growth for students in that grade.

The standards of performance on the EOC tests were set using a "contrasting groups" method similar to that for the EOG tests.

Again, the State Board of Education relied on the professional judgment of the teachers who actually taught the subjects being tested to determine the percentage of students deemed to be performing at specified achievement levels. The percentages from those field tests were then applied to the full range of scale scores actually recorded by students taking a particular EOC test in the norming year for that test, i.e., the frequency distribution in the norming year, to

determine the range of scale scores associated with the Levels of performance designated by the State Board.

In each case, the State Board of Education has classified all the scores on the EOC tests into four Levels of performance: Level I, Level II, Level III and Level IV, Defendants' Exhibit 226, p. 13, according to the following definitions:
Level I: Students performing at this level do not have sufficient mastery of knowledge and skills of the course to be successful at a more advanced level in the content area.

Level II: Students performing at this level demonstrate inconsistent mastery of knowledge and skills of the course and are minimally prepared to be successful at a more advanced level in the content area.

Level III: Students performing at this level consistently demonstrate mastery of the course subject matter and skills and are well prepared to be successful at a more advanced level in the content area.

Level IV: Students performing at this level consistently perform in a superior manner clearly beyond that required to be proficient in the course subject matter and skills and are very well prepared for a more advanced level in the content area.

In addition to setting achievement levels, the State Board of Education also used teacher judgment to set its grade level proficiency standard for student performance on the EOC tests. During a field test, teachers were asked to report the

grades they expected to assign to students in their courses.

The EOC test scores are scaled but cannot be developmentally scaled because unlike reading and mathematics in the elementary and middle grades the courses covered by the EOC tests do not build over the years a student is in school. Triplett, Nov. 22, 1999, at 59-60; Defendants' Exhibit 234, EOGv. The State Board of Education's method for setting standards for achievement on the EOG or EOC tests was valid and appropriate.

The Court finds that the standards for achievement on the EOG an EOC tests are valid and appropriate for measuring whether or not a student is performing at a level high enough to evidence that the child is actually receiving a sound basic education in subject matter areas encompassed by the definition of a sound basic education, as well as other subject matter areas outside the specific subject matter of the sound basic education.

There is no credible evidence that the standards were set too low as compared to the standards of achievement sufficient to obtain a sound basic education. The Court acknowledges that there is, and will be, an ongoing debate over whether or not any standard of performance to be measured by testing is too low or too high. There is one thing for sure, however, the standard of performance now in place **may not be lowered.**

The Relation Between Level III Performance on the EOC and EOG Tests and a Sound Basic Education

The educational goals and standards that the State Board of Education has adopted at the

direction of the General Assembly are factors that this Court may consider when deciding whether the State's children are being denied their right to a sound basic education. *Leandro*, 346 N.C. at 354, 488 S.E.2d at 259. However, they are not determinative. And while the State has not developed tests that measure student performance with respect to all subjects and elements of a sound basic education, the ABCs' EOG and EOC tests provide probative evidence of the extent to which public school children in North Carolina, as well as Hoke County, are (or are not) obtaining essential skills and knowledge, and thus whether they are (or are not) obtaining a sound basic education.

Put another way, the SCOS sets content standards for what students in North Carolina should know and be able to do as they progress through their educational journey. The ABCs testing program establishes performance standards which specify the level of proficiency a student must reach and measures the level of proficiency acquired.

Although students performing at Level II on the EOG tests are deemed to be "minimally prepared to be successful at the next grade level," the State Board of Education has adopted Level III performance, *i.e.*, a level performance that teachers accept as "well prepared for the next grade level," to be "grade level" proficiency. This is consistent with the State Board of Education's statutory obligation to "create rigorous student academic performance standards." N.C.G.S. § 115C-105.40.

The State of North Carolina contends in its arguments to this Court that Level II performance "

more closely describes the minimal level of performance which is indicative of a student being on track to acquire the sufficient, fundamental education" envisioned and described in the Supreme Court's definition of a sound basic education.

This argument flunks the smell test. It flies in the face of common sense and reason that the Supreme Court of North Carolina, in defining the goals of a sound basic education, meant that a "sufficient and fundamental" education would be acquired by a student who is not performing at grade level or above.

The State's contention is not supported by either the credible evidence or common sense and is rejected. The Court finds that:

A STUDENT WHO IS PERFORMING BELOW GRADE LEVEL (AS DEFINED BY LEVEL I OR LEVEL II) IS NOT OBTAINING A SOUND BASIC EDUCATION UNDER THE LEANDRO STANDARD.

A STUDENT WHO IS PERFORMING AT GRADE LEVEL OR ABOVE (AS DEFINED BY LEVEL III OR IV) IS OBTAINING A SOUND BASIC EDUCATION UNDER THE LEANDRO STANDARD.

The State Board of Education's decision to designate Level III proficiency on the EOG tests as "grade level" performance fulfills its statutory obligation to "create rigorous student academic performance standards." North Carolinians should expect no less for their children than an educational goal that seeks to have every child perform at Level III proficiency or above in their academic career and the State Board's decision is valid and sound.

The Court, considering all of the evidence in this case, agrees with the State Board's assessment

that Level III is grade level performance and finds that a child who is performing at Level III or above, as those standards are defined by the ABCs, is clear evidence that as to the content and subject matter tested, that child has obtained a sound basic education as defined by the Supreme Court.

Accordingly, those standards (Level III or above as defined in the ABCs) meet or exceed the "sufficient" education that the *Leandro* court described as a sound basic education. *Id.* at 349, 488 S.E.2d at 256.

Level III (performance at grade level as defined by Level III) is the minimum standard that this Court will accept based on the law and the evidence. Expert witness testimony to the contrary is rejected as not credible.

To find otherwise would proclaim that the minimum constitutional standard in this State for a sound basic education is met by C-'s and D's performance, which is what Level II performance encompasses.

For example, the evidence in the record shows that it is generally understood among teachers in Hoke County that Level III performance on the EOC tests is equivalent to a numerical grade of 85 or a letter grade of "B," and Level II on the EOC is "C" to a "D." Keim, Nov. 15, 1999, at 167-68, 200, 200-03; A. Jackson, Sep. 20, 1999, at 115, 145-46.

A score in Level II or below means that a student is below the level expected by the SCOS at that time. Students who fail to reach Level III or IV are considered academically at risk and it is undisputed that they haven't mastered at least part

of the skills required for a sound basic education. Dr. Triplett herself considers performance at Levels I and II to be inadequate.

It is not only Hoke County teachers who understand what Level II or I performance translates into in terms of grades. The State has conducted studies showing the correlation between performance on the EOC tests and the grades that teachers anticipate assigning to their students. Every year, teachers report the anticipated final grades for their students in core courses to DPI. Defendants' Exhibit 234, pp. EOC12 - EOC21; Defendants' Exhibit 235, pp. 90-99; Defendants' Exhibit 239, pp. 105-08; Defendants' Exhibit 243, pp. 143-47; Defendants' Exhibit 244, pp. 223-27. When the data in those reports from 1993 to 1998 is compared to student performance on the core EOC tests over those five years, it shows that Level I performance is closely correlated with a failing, *i.e.* an "F,". Level II includes work teachers rate from a "D" to a middle "C", *i.e.*, passing, Level III bridges the range of grades from a middle "C" to a high "B," and Level IV performance on EOC tests is closely correlated to work teachers would grade as "B+" to "A." Triplett, Nov. 22, 1999, at 84-86; Defendants' Exhibit 543, ex. 26.

This evidence shows that, although students are doing work that their teachers in their best professional judgment would grade as passing, their performance on the EOC tests may be below the level the State Board of Education has designated as grade level performance, *i.e.*, Level III. Common sense and the greater weight of the evidence in the record regarding the meaning of student performance on the EOG and EOC tests proves that Level III performance, or above as described on the EOG tests and the EOC tests are aligned with the

constitutional standard for a minimally sufficient sound basic education as described in ***Leandro*** .

The Court finds that Level II performance *i.e.*, performance described on the EOG tests as "minimally prepared to be successful at the next grade level," Defendants' Exhibit 226, p. 5, and described on the EOC tests as "minimally prepared to be successful at a more advanced level in the content area," is below the constitutional standard for a minimally sufficient sound basic education as described in *Leandro*.

Level III performance is described as "well prepared" to be successful at the next level is the minimum standard. The State of North Carolina can accept no less and expect no less achievement than Level III. The evidence in the record with respect to Level II is that Level II performance is generally deemed by teachers in North Carolina to be at least congruent with an overall average of 70 which is recognized in Hoke County schools as being a passing grade. Keim, Nov. 15, 1999, at 167-68, 200, 200-03; Defendants' Exhibit 543, ex. 26. While students who score Level II are in the judgment of their teachers demonstrating sufficient knowledge and skill in their academic courses to pass their courses and ultimately receive a high school diploma, performance at that level is not sufficient for those students to have mastered "sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training and sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful

employment in a contemporary society" and thus obtain a sound basic education defined by **Leandro.**

As stated earlier, a high school diploma given to a student who has not mastered these skills **does not represent** the high school education which the Supreme Court defined, nor the high school diploma the General Assembly has deemed to be the ultimate standard for a high school education in North Carolina. N.C.G.S. §§ 115C-1 and 115C-366(a).

This finding is not affected by evidence that **some** students who score Level I or II on their math or reading EOG tests in eighth grade go on to receive diplomas from Hoke County High School and gain admission to UNC system institutions. Defendants' Exhibit 693; Barnes, Nov. 30, 1999, at 5-11. There will always be some students who succeed with bad grades, but this is not true for the majority.

In conclusion, the Court finds that students who are performing at grade level or above as defined as Level III and Level IV on the EOC or EOG tests are demonstrating sufficient ability in the subject matters tested to be on track to receive a sound basic education, and those students that are performing below grade level at Level I or Level II are not on track to receive a sound basic education.

This finding does not establish a level of performance that is out of reach of North Carolina children, including those in Hoke County. According to Dr. Triplett (the State's own expert), every school in North Carolina is capable of having **90 percent of its students score at proficient levels (ie, Level III or IV) on EOG and EOC tests**

(except for students with disabilities or LEP who are excused from the tests). In her opinion a student scoring at Level I or II on an EOG test has not mastered the knowledge and skills necessary to be successful at the next grade level; thus, such a student, to that point in their education has not acquired a sound basic education. A school or a school system that has 90% of its children scoring at Level III or above would certainly be found in compliance with ***Leandro*** even as to the 10% who did not achieve the sound basic education standard.

On this basis, Dr. Triplett has concluded that for example, 27,911 North Carolina 3rd grade students had not obtained a sound basic education in reading comprehension to that point in their education because they scored Level I or Level II on the 1998 EOG test. Similarly some 18,052 North Carolina 8th grade students had not obtained a sound basic education in reading comprehension to that point in their education because they scored Level I or II on the 1998 EOG tests.

The bottom line is that the EOC and EOG test results under the ABCs provide highly probative evidence of the extent to which North Carolina students, including Hoke County students, are (or are not) receiving the opportunity to obtain a sound basic education at the point in time they take the tests ("intermediate measures of performance"). Because of this, when the Court examines Hoke County's Performance on the EOG and EOC tests, it will apply the minimum standard of Level III for the reasons set forth above. The Court's analysis of performance when the case focuses on an urban school district will be measured by Level III or above. The children of North Carolina deserve no less.

DISCUSSION AND CONCLUSION

The Court has examined five essential components of the State of North Carolina's Educational Delivery System for its Public Schools in light of the Leandro mandate that every child be provided with an equal opportunity to receive a sound basic education.

After examining the evidence presented and the proposed findings of fact and conclusions of law submitted by the parties, the Court finds as a fact and concludes and declares as a matter of law:

1. *That the State of North Carolina's curriculum contained in and provided by The Standard Course of Study meets and exceeds the Leandro standards so long as the Standard Course of Study is being properly implemented and taught to students by competent and qualified teachers. However, the existence of a constitutionally sound and valid curriculum, standing alone, does not constitute clear evidence that The Standard Course of Study is being properly implemented in each and every classroom in such a manner as to provide each child with an equal opportunity to receive a sound basic education.*
2. *That the State of North Carolina's standards for licensing, certifying and employing teachers throughout the State, including Hoke County, are valid and constitutionally sufficient to ensure that North Carolina's licensed and certified teachers are qualified*

through education and training to provide their students with an equal opportunity to receive a sound basic education. It is then up to each individual teacher to use his or her training and professional knowledge to competently implement and deliver The Standard Course of Study to the children entrusted to their care.

3. *That the State of North Carolina's educational funding delivery system, including ADM, low wealth, small county, at-risk and other areas of funding, is valid, sound and flexible enough to provide for the delivery of adequate funding to all school systems in North Carolina, including Hoke County, so that they may provide each child with the equal opportunity to obtain a sound basic education. One of the most impressive and strongest aspects of North Carolina's educational funding delivery system is its flexibility. The system may be easily changed to meet new funding needs and programs in education. So long as this flexibility exists, the structure of the system will remain sound. This finding does <u>not</u> answer the question of whether or not the State of North Carolina is providing adequate funding to HCSS or any other LEA in a manner that ensures that all children are receiving an equal opportunity to obtain a sound basic education.*

4. *That the State of North Carolina's school based accountability program, The New ABCs of Public Education, is a*

valid, appropriate and necessary program with which to measure and improve the academic performance of the public school children of North Carolina and thus, it is a valid and appropriate process to assist the Court in determining whether or not the State of North Carolina is meeting its constitutional obligations to the children as required by Leandro. Further, that the Assistance and Assessment Teams under the ABCs Accountability Program, are a critical and important component of the ABCs in that those teams assist schools to improve their methods and standards so that all children can be provided an equal opportunity to obtain a sound basic education.

5. *That a student in a public school in the State of North Carolina who is performing below grade level (as defined by Level I or Level II on the End of Grade and End of Course tests)is not on track to obtain a sound education under the Leandro standard and that a student in a public school in North Carolina who is performing at or above grade level (as defined by Level III or Level IV on the End of Grade and End of Course tests) is on track to obtain a sound basic education under the Leandro standard. The bottom line is that the End of Course and End of Grade test results under the ABCs provide highly probative evidence of the extent to which North Carolina students are (or are not) receiving the*

opportunity to obtain a sound basic education.

What has happened to this point? The Court has undertaken to examine the bulk of the core of the North Carolina Educational Delivery System and has determined and declared that as a system it is sound, valid and meets the constitutional standards enumerated by Leandro.

Having completed its fundamental analysis of the educational delivery system in place, the Court can now move forward and consider the structure in place for dealing with the educational needs of at-risk children.

Thereafter, the Court will apply what it has found in determining whether or not the children of Hoke County are enjoying their right to be provided with an equal opportunity to obtain a sound basic education.

This the 12th day of October, 2000.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY: 95 CVS 1158

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WAKE COUNTY, C.S.C.
BY

HOKE COUNTY BOARD OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

MEMORANDUM OF DECISION

SECTION TWO

An Analysis Of the North Carolina Educational Delivery System With Respect To The Educational Needs of At-Risk Children And Each At-Risk Child's Right To An Equal Opportunity to Obtain A Sound Basic Education.

VI. EDUCATIONAL NEEDS OF AT-RISK CHILDREN. EARLY CHILDHOOD INTERVENTION IS NECESSARY FOR THEM TO BE AFFORDED AN EQUAL OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION.

"At-risk students" is a term liberally used to describe students who are at-risk of academic failure. Those students may be performing below expected levels of proficiency; may be engaged in disruptive or non-productive behaviors such as violence, absenteeism, drug/alcohol use and disruptive behavior in the classroom that detracts from the right of the other children in the classroom to be able to enjoy the opportunity to receive a sound basic education. Unfortunately, many of these students come from low-income or low-socioeconomic status and from homes where the father is absent in more ways than one. In many instances these at-risk environments result in at-risk performance in the public schools.

Students who score at Level II or below in the EOC and EOG tests are considered academically at-risk because they have failed to master at least part of the skills required for a sound basic education. Dr. Triplett, the State's expert witness considers performance at Levels I and II inadequate and evidence that the student has not acquired a sound basic education in that subject.

Who are these children and where do they come from? Many are economically disadvantaged, have parent(s) with little education, if any, and have little incentive to do well academically as a result of their socioeconomic status and home environment. They fail to achieve in school, get passed along, become frustrated with school (many drop out) and ultimately enter society without being afforded the constitutional guarantee of the opportunity to receive a sound basic education.

One end result for many of these at-risk children is the criminal justice system - a system that is a gateway to prison rather than a gateway to being a productive member of society. As a result of these criminal activities, many innocent and law-abiding citizens are the victims of these children who have failed to succeed in school.

This Court, as well as the other 330 Superior and District Court Judges in North Carolina, sees the failures of many of our at-risk children every day in the criminal and juvenile courts.

This Court, with first-hand knowledge from presiding over Superior Court in criminal sessions in more than 40 counties throughout Eastern and Central North Carolina, can take judicial notice of the following:

First, of the hundreds of criminal defendants that this Court has dealt with in Superior Court who have pleaded guilty or been convicted by a jury (most pleading guilty) the overwhelming majority are high school dropouts, regardless of race. In fact, 82% of the prison population is made up of high school dropouts.

Second, of the hundreds of criminal defendants this Court has dealt with, most have at least one, if not more, illegitimate children. These children are born into an environment in which education is a little valued commodity.

As an example, this Court was assigned to hold court in Warren, Vance, Granville, and Franklin Counties for the first six months of 2000. In the entire six (6) month period, the Court never encountered a young male defendant who was a father, white or black, who was married. Many had more than one illegitimate child by more than one

female, no high school diploma, no job experience beyond menial work, selling drugs or engaging in drug-related criminal activity and no sound basic education whatsoever.

Most of those going to prison sought work release so they could help support their children. Marriage is a relationship that appears to be obliterated from their vocabulary or society. The majority of these young people were at-risk students when they were in school.

The children that these young men and women bring into this world, more likely than not, will be at-risk before they ever enter a school building and it is not those children's fault. It is the fault of their at-risk, irresponsible parents who bring them into a world of poverty, with no family structure and little hope for success.

Until and unless this vicious cycle is broken by education and better opportunity for this segment of the at-risk population and for the other at-risk children who are not passing through the criminal justice system, there will not be an equal educational opportunity for every child in North Carolina. The generally undisputed facts in evidence bear this premise out. All agree that it is common for children from economically disadvantaged backgrounds to have particular difficulty in gaining proficiency in school. Low income often places children at risk of academic failure.

It is undisputed that socioeconomic and other factors place some students at-risk of educational failure. Schoolchildren who are at risk of educational failure are those who, for a variety of reasons, typically might be expected to have

difficulty completing school successfully or doing well while they are in school.

Among the socioeconomic conditions that place students at risk of educational failure are: (1) poor health, beginning as early as prenatal and continuing through childhood; (2) poverty; (3) family break-up and instability; (4) low parental education; (5) inadequate or unstable housing; (6) racial/ethnic minority status; (7) lack of English language proficiency; (8) criminal activity in the school or neighborhood; and (9) parental unemployment or underemployment.

According to a two-year study conducted in the early 1990s and supervised by Dr. Triplett, the factors having the greatest impact on student performance in North Carolina were minority status, poverty status, (as measured by both free and reduced price lunch and Title I eligibility) absenteeism, parental education, and resources as measured by local spending.

The DPI uses the term at-risk to describe "students who are 'at-risk' of academic failure." Meeting the educational needs of all children who come to school in North Carolina is one of the greatest challenges faced by our educational system. Dr. Hanushek testified that "One of the most, if not the most, important issues facing our society at large and North Carolina society today, is that some kids come ill-prepared and need help in their schools." T.11/30,p. 243.

Critical Risk Characteristics

Low-income families. Children from low-income families are more at-risk of educational failure than children from higher income families. There is

no dispute that poor children typically perform less well in school than families with more resources. Children living in families with incomes below the poverty line are nearly twice as likely to be retained in a grade as children in more affluent families, and also are more likely to drop out of high school.

In North Carolina 82% of individuals in prison are high school dropouts. The income level of one's community is also related to educational performance. Factors affecting at-risk status in education resulting from poverty include the relative absence of family resources that can be devoted to the educational process, including resources in the home to support the child's education. Family poverty undermines residential stability; consequently, families tend to move more frequently and are less able to provide support for educational success. Families under greater stress, including economic stress, more frequently dissolve, break up, or separate for periods of time, causing disruption in their children's lives and making it more difficult for them to do well in school. The deeper the poverty, the more intense these problems become.

Free and Reduced Price Lunch. The most common measure of an economically deprived family background is eligibility for federal free and reduced price ("FRPL") programs that were created to support the nutrition of young people coming from low-income homes. (PX 33, p. 8) The FRPL is a strong predictor of student success, whether the standard is SAT performance or performance on the ABCs tests given to students in North Carolina. It is not disputed that students who receive free or reduced price lunch are more likely than other students to drop out of school.

In 1997-98 (March) 38.9% of all North Carolina public school children were eligible for free/reduced lunch. 38.9% of 1,198,994 (the membership for 1998) is 446,408 children. The previous year the number was (40.1% of 1,171,782) 480,430 children. In contrast, Hoke County's percent of children on FRPL was 61.8% for 1997-98. That translates into (61.8 % of 5,873) 3582 students. There are also sizeable numbers of eligible children in the larger school systems. Take Charlotte for example.

In 1997-98 (March) the Charlotte-Mecklenburg School System ("CMS") had 37.4% of its school children eligible for free/reduced lunch, a total of (37.4% of 94,284) 35,262 children.

Level of Parental Education. Students with parents who never graduated from high school are more at-risk of poor educational performance and school failure. There is a direct correlation between students' performance on State EOG and EOC tests and parent education. Low scores of young children on developmental screening tests are often highly correlated with low maternal education. T. 9/29 p.99. This data is confirmed by "The Green Book" aka ***The North Carolina State Testing Results.*** For 1998-99, (the data is similar for earlier years as well) the percent of Grade 3 students statewide who scored below grade level (Levels II and I) in both reading and mathematics and whose parent(s) had not graduated from high school was 65.7%. That translated into 7,362 children performing below grade level.

For the same year, the percent of Grade 3 students statewide that scored below grade level in reading and mathematics and whose parent(s) were high school graduates was 44.7%. That translated

into 20,676 out of 46,527 performing below grade level in both reading and mathematics.

Contrast that data with the percent of Grade 3 students statewide who scored below grade level in reading and mathematics and whose parent(s) were graduates of a community college. Only 28% of those Grade 3 students, 3744 out of 13,372, were below grade level.

When one looks at the data with respect to college graduate parent(s) and Grade 3 students statewide who scored below grade level in reading and mathematics, the contrast is even greater. Only 13.8% of those Grade 3 students, 2,702 out of 19,580, were below grade level. (Court Exhibit B, p. 82) This data remains essentially the same as the children progress through the eighth grade and in the high school End of Course tests as well.

For example, for students whose parents never finished high school, the percentage who failed to score at grade level (Level III) through the eighth grade never exceeded 57.7% in any one year in math and reading combined. Note: This data does not include students with disabilities or LEP exempt. (The Green Book, pp. 82-87, 1998-99)

The same pattern emerges in high school when looking at academic performance evidenced by the EOC tests for 1998-99. In Algebra I, for students whose parents never finished high school, 48.2% (2738) failed to score at grade level (Level III); for students whose parents had finished high school, 41.7% (10,983) failed to score at grade level (Level III); for students whose parents had completed community/junior college, 34.4%(5,960 out of 17,326) failed to score at grade level (Level III); and for students whose parents had completed

four years of college, 20.3% (4,589 out of 22,608) failed to score at grade level (Level III).

The results for other 1998-99 EOC tests such as Biology, English I, Geometry, Physical Science and U.S. History are similar and bear out the fact that parental education level is reflected in academic performance. For example, there were 24,719 children taking U.S. History whose parents had either not finished high school or had only graduated from high school. For those children whose parents had not graduated from high school, 73.5% (3090) failed to score at grade level (Level III). For those children whose parents had only graduated from high school, 60.9% (12,493) failed to score at grade level (Level III). For those children whose parents graduated from a four-year college, 38.4% (6590) failed to score at grade level (Level III).
Source: ***The Green Book***, 1998-99, pp. 243-252)

The greater weight of the evidence (and it is undisputed) shows that children with parents that have higher levels of education do better in school, and stay in school longer, than children whose parents have not completed high school.

Racial and/or ethnic background. Racial and/or ethnic minority group membership is perhaps the best-known factor associated with being educationally disadvantaged. Many reasons have been identified to explain the generally poorer academic performance of African American and Latino children. The most obvious reason is the inability to able to communicate in the English Language that is the language of the society in which children live and hope to achieve. This barrier can be overcome with education. Contributing to this barrier are the social and economic conditions in which African American and Latino families live,

their language and cultural background, and past social discrimination.

Limited English Proficiency ("LEP") Students whose primary language is not English or who have limited English proficiency ("LEP"), are at risk of school failure and face obstacles to success in school where the language of instruction is English.

Other factors. There are more factors that place students at risk of school failure:

a. The health status of children. The physical health and well-being of children have a clear connection to the ultimate performance of children in school.

b. The composition of the family. Children living in single parent families have been found to score lower on standardized tests, receive lower grades in school and to drop out of high school more frequently.

c. The housing status and environment in which the student lives. Adequate and stable housing is crucial to the foundation that children use as a basis for successful participation in school. A disrupted living environment impedes school performance and presents barriers to educational success.

d. Crime. Higher levels of violence and vandalism often are associated with high concentrations of at-risk students. Crime hurts not only the victims, but also other students who are witnesses to the crime. It follows that when levels of violence and vandalism in a school are high, some students will be afraid to attend.

e. The labor force participation of parents. There are social benefits to children who live in families in which the parents work. Children benefit when they grow up in a home where the parent(s)work and the children see the positive effect of the work ethic.

These environmental factors outside of the school grounds, which place children at risk of educational failure, create barriers to the at-risk child's educational success and to the at-risk child's opportunity to receive a sound basic education

Economically disadvantaged children, more so than economically advantaged children, need opportunities and services over and above those provided to the general student population in order to put them in a position to obtain an equal opportunity to receive a sound basic education. These additional opportunities may include additional time on task, lower class sizes, early childhood education, individual tutoring, early intervention or supplementary instruction and materials. Enabling at-risk children to perform well in school requires more time and more resources.

The educational needs of at-risk children are similar regardless of where they live. The correlation between students' economic status and school performance does not vary between urban and rural school districts. The educational needs of poor and otherwise at-risk children in Mecklenburg and Wake counties are similar to those situated in Hoke County. It is appropriate to consider, at this time, the needs of at-risk children in general rather than focus solely on Hoke County.

The State recognizes and acknowledges the problems of at-risk children in school and allocates some money to assist. The State of North Carolina clearly recognizes the problems that at-risk children face when the school doors open. Each child must be afforded the equal opportunity to receive a sound basic education. The State has devised an analysis to calculate allotments for at-risk student services. This analysis allocates funds under a weighting formula. This weighting formula factors in the school districts' end of grade test failures, the absence rate, the non-promotion rate, the dropout count, the poverty index, and the graduation rate. Hoke County ranked near the bottom of all school districts on a number of those factors.

The State's counsel's theme that at-risk children's low performance is somehow their responsibility is counter to the DPI and State Board's position and actions with respect to at-risk children. The State, through its counsel, suggests that the low academic performance of a great number of at-risk children throughout North Carolina may be due to a lack of desire to learn, lack of effort, too much television, lack of homework and lack of innate ability. The State suggests that it is somehow their fault that they fail, despite the fact that all of the State's witnesses testified that all children can learn.

Placing responsibility for the poor educational performance of at-risk children on the children is inconsistent with positions taken by the State Board of Education and DPI. According to the State Board and DPI, North Carolina's schools are accountable for 100 percent of the students who are following the SCOS. DX 213,p. 13. "High achieving schools accept their responsibility for enhancing student achievement and do not look for

'scapegoats' among the students, parents or other organizations." DX283, p.S28024.

The State's own expert witnesses testified that schools have the power to help disadvantaged students overcome their weaknesses. Schools can improve such problems as absenteeism by providing interesting, high quality programs and by working with parents to try to encourage children to attend schools. Schools can improve the amount of homework that students do. In fact, there is much schools can do to affect motivation, attendance and homework completion.

Furthermore, many of the socioeconomic conditions that place students at risk of educational failure also affect a student's ability to attend school and complete homework. Children from families of greater means generally have more stable residential patterns and are more likely to have two adults in the household supervising homework and school attendance. Moreover, research indicates that low-income children tend to be pulled out of school more often to meet family needs, such as providing child care or caring for a sick relative. A family of greater means would be able to provide professional care and not take a child out of school to perform those tasks.

The socioeconomic factors that place children at-risk of school failure are prevalent throughout North Carolina in counties big and small. Nationwide, the average of all school children that qualify for FRPL is around 31% while in North Carolina the average is around 39 to 40%.

Not all at-risk children will be academic low performers, but the more risk factors present, the harder the task to dig out. Not all at-risk children will have the same set of risk factors.

The more risk factors that affect a child tend to cause the child to perform less well in the classroom than a child affected by fewer risk factors. It is undisputed that some at-risk students can score better on tests and otherwise attain a greater level of educational success than other at-risk students, given equivalent educational opportunities. This difference in scores is the result the severity of individual risk factors and combinations of different risk factors. Taking the risk factors one at a time, the record shows that these factors affect a child's performance on the ABCs' and other output measurements of achievement level such as the SAT.

Looking at risk factors individually clearly shows that each at risk factor can impact on a child's academic performance on the ABCs' and other output measures.

Parental education. This factor has an impact on student performance as previously demonstrated in this decision.

FRPL - low economic status. Using FRPL participation as an indicator of socioeconomic status, it is evident that North Carolina students from impoverished backgrounds have not performed well on the ABC tests. North Carolina reported in 1997 that "schools with historically higher percentages of students applying for free or reduced lunch tended to have lower performance composites (percentage of students at or above grade level) on the ABCs." PX 233.

Title I. Using inclusion of Title I programs as an indicator of low socioeconomic status, it is clear that North Carolina children from impoverished backgrounds have not performed well on the North Carolina Open Ended Assessment. PX 61.

Race. Using race, as opposed to level of parental education, as an indicator of socioeconomic status, it is clear that North Carolina Children from impoverished backgrounds have not performed well on North Carolina ABC's tests. DX234; DX235; DX239; DX243; DX244.

In High School, for Example, 1998-1999, the EOG test results for mathematics and reading combined for the third grade by race showed, in pertinent part:

46.4% (680) of American Indian children scored below Level III; 56.1% (17,728) of Black children scored below Level III; 49.8% (1462) of Hispanic children scored below Level III; and 25.6% (16,068) of White children scored below Level III. (The Green Book, Court Exhibit B, pp 82-87)

Using grades 3-8 as a snapshot for 1998-99 EOG test performance, the same pattern appears. 79.2% of white students in grades 3-8 were performing at grade level (Level III or above) in reading and math as compared to 48.5% of Black students, 55.5% of Native American students and 55.6% of Hispanic Students. PX490, p. 8.

The same patterns appear in the high school EOC tests. For 1998-99, the EOC test results in the following courses revealed by way of example:

U.S. History - 70.5% of American Indian children scored below Level III; 70.6% (13,788) of Black children scored below Level III; and 57.8% of Hispanic children scored below Level III.

Physical Science - 65.4% of American Indian children scored below Level III; 68.4% (13,885) of Black children scored below Level III; 58.3% of

Hispanic children scored below Level III; and 32% (13,750 out of 42,967) of white children scored below Level III.

English I - 53.4% of American Indian children scored below Level III; 55.5% of Black children scored below Level III; 49.5% of Hispanic children scored below Level III; and 25.6% of white children scored below Level III.

Source: The Green Book, 1998-99; pp. 248-252.

Using race/ethnic background as an indicator of socioeconomic status, it is clear that students from impoverished backgrounds have not performed well on the North Carolina ABCs tests.

While these statistics are dismal, there are additional resources to help these students if the resources are provided.

THERE ARE ADDITIONAL RESOURCES FOR AT-RISK STUDENTS THAT CAN IMPROVE THEIR ACADEMIC ACHIEVEMENT

The evidence is clear and convincing that at-risk students require additional help, programs and resources in order to perform at a level satisfactory for them to obtain a sound basic education and to perform at the same educational level as children who are not at risk for academic failure. Pls. 627.

The educational needs of at-risk children can be met. As the educators and education experts for all parties unanimously agreed at trial, given the proper resources, the educational needs of at-risk students (such as students living in poverty) can be met. All children can learn, even children with substantial disadvantages. Many disadvantaged children not only learn, but they break through the disadvantages and do well academically in spite of

their at-risk factors. Unfortunately, there are way too many at-risk children who do not break out and continue to perform poorly and below grade level. It is these children's needs that must be addressed in order to attempt to break the cycle of poverty and disadvantage.

As a general premise, witnesses for all parties agreed as to a number of particular programs and interventions that are effective in improving the scholastic performance of at-risk students, either by increasing the time devoted to instruction or by increasing the intensity of instruction by lowering class size or providing expanded staff development programs.

Reducing class size. Witnesses for all parties agreed that reducing class size is an effective means of improving student achievement and performance for at-risk children. Smaller class sizes are particularly beneficial for at-risk children and in schools that serve a student population with a high percentage of at-risk students.

Tutoring. Witnesses for all parties agreed that tutoring, especially when one-on-one with a trained tutor, is an effective means of increasing the academic performance of students, and especially at-risk students.

More time on task. Witnesses for all parties agreed that providing at-risk students with more instructional time, by increasing the length of the school day or the school year is an effective means of increasing academic performance. Student performance is, to a large extent, a function of time on task. Several State witnesses testified that at-risk students often require more

instructional time than other students to master the SCOS.

The evidence shows that with additional resources applied in a common-sense and practical manner, children with significant disadvantages can receive and take advantage of the equal opportunity for a sound basic education, including, but not limited to preschool programs, tutors and reduced class size.

DPI acknowledges that there are effective methods for improving student performance. According to DPI, preschool programs, use of trained tutors, improving teacher quality, lowering class size and supporting teachers' professional development are effective methods for improving student performance. A large and well-accepted body of research establishes that programs that substantially improve the academic performance of children from poverty and at risk backgrounds (of course these programs would improve any child's performance) include early childhood intervention, more instruction, tutoring and lower class size, and recruitment and retention of good teachers.

Competent and well-trained teachers with updated professional development. It goes without saying that competent, well-trained teachers who are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above.

Early childhood intervention for at-risk children. The Smart Start Evaluation Team reported

to the Department of Human Resources in 1997, "Children from poor families had fewer skills than those from non-poor families, supporting long standing research that 'poverty is a component of school failure'." PX 396,p.2.

Kindergarteners from low-income families consistently demonstrate fewer cognitive, language and social skills than children from non-poverty families. The evidence with respect to Hoke County kindergarten students supports this conclusion. Many Hoke County kindergarten students have not been exposed to colors, print, or had experiences outside of their front yards, a lack of exposure which detracts from their ability to relate to, or comprehend and learn what is expected in kindergarten. Since kindergarten is a building block for success in the first grade, the at-risk five-year old child is behind from the first day that child enters kindergarten as compared with the child's non-poverty counterparts. Despite this fact, Hoke County has only 3 pre-kindergarten classrooms that can accommodate 18 children--a total of 54. It is a "no brainer" that smaller classes taught by qualified and competent teachers are effective in helping children from at-risk backgrounds.

Reduction in class size. Smaller classes make the greatest impact in early grades for disadvantaged and minority students. Also, class size is especially important where there is a school with a concentration of at-risk students. When a school has a high concentration of at-risk students, those students bring all the risk factors with them into the classroom, imposing additional demands on their teachers. Reducing class size for students who are below proficiency would permit one-on-one instruction. Small group teaching would assist those students in reaching proficiency.

No one single program will meet all needs. The bottom line is that there is not necessarily one single program that is going to meet all the needs of at-risk students. Effective solutions are those that build upon one another as the child progresses through school. Having said that, however, the Court is convinced, by the greater weight of the evidence, that the earlier there is an opportunity to intervene in the at-risk child's educational ladder, the better chance that child will have to take advantage of its constitutional right to an equal opportunity to receive a sound basic education.

This Court has previously ruled that the right of every child in North Carolina to the opportunity to receive a sound basic education may not be conditioned on age, but is to be conditioned on the needs of the individual child. The evidence in this record supports this conclusion.

Early childhood intervention is critical for at-risk children so they may have an equal opportunity to participate in obtaining a sound basic education. After examining the evidence and weighing the credibility of the witnesses, the Court is convinced that the most common sense and practical approach to the problem of providing at-risk children with an equal opportunity to obtain a sound basic education is for them to begin their opportunity to receive that education earlier than age (5) five so that those children can reach the end of the third grade able to read, do math, or achieve academic performance at or above grade level (Level III or above). More is needed sooner to give these children a chance to start their education on an equal level with their non at-risk counterparts.

The evidence in this case shows that when a child reaches the third grade (the first year that the EOG tests are given) and is performing below grade level (Level I or II on the EOG tests) that child is at-risk of academic failure. The same evidence also shows that the educational system has failed to provide too many at-risk children with the equal opportunity to obtain a sound basic education in their first 4 years of school.

Using third graders (because the third grade is the earliest academic grade that the EOG tests are given, the Court has examined third grade (3rd grade) student EOG performance each year for six years - from 1993-94 until 1998-99 - using black and white student performance data (which makes up about 95% of all students). The examination results are disturbing in terms of the actual numbers of black and white children failing to perform at grade level or above by the end of the third grade at which point they have been in school for four years.

93-94 results for 3rd grade reading. There were 28,133, black (15,583), and white (12,550), students who scored below grade level in reading. That was 33% of all black and white third graders statewide.

93-94 results for 3rd grade mathematics. There were 32,226 black, (15,970), and white (16,256), students who scored below grade level in math. That was 38% of all black and white third graders statewide.

94-95 results for 3rd grade reading. There were 30,776, black (14,738), and white (16,038), students who scored below grade level in reading. That was 36% of all black and white third graders statewide.

94-95 results for 3rd grade mathematics. There were 29,416, black (15,023), and white (14,393), students who scored below grade level in math. That was 34.7% of all black and white third graders statewide.

95-96 results for 3rd grade reading. There were 29,941, black (14,826), and white (15,115), students who scored below grade level in reading. That was 35% of all black and white third graders statewide.

95-96 results for 3rd grade mathematics. There were 27,673, black (14,506), and white (13,167), students who scored below grade level in math. That was 32% of all black and white third graders statewide.

96-97 results for 3rd grade reading. There were 30,278, black (15,367), and white (14,911), students who scored below grade level in reading. That was 33.6% of all black and white third graders statewide.

96-97 results for 3rd grade mathematics. There were 26,460, black (14,310), and white (12,150), students who scored below grade level in math. That was 29% of all black and white third graders statewide.

97-98 results for 3rd grade reading. There were 25,780, black (13,676), and white (12,104), students who scored below grade level in reading. That was 28% of all black and white third graders statewide.

97-98 results of 3rd grade mathematics. There were 29,046, black (15,711), and white (13,335), students who scored below grade level in math. That

was 31.4% of all black and white third graders statewide.

98-99 results of 3rd grade reading. There were 24,173, black (12,937), and white (11,236), students who scored below grade level in reading. That was 26% of all black and white third graders statewide.

98-99 results of 3rd grade mathematics. There were 28,298, black (15,870), and white (12,428), students who scored below grade level in math. That was 30.3% of all third graders statewide.

Grade 3 Pretest results provide a snapshot of performance when children enter the third grade. Those results generally mirror the 3rd grade EOG test results as well in terms of the number of below grade level performance in black and white children.

The Grade 3 Pretest was implemented in 1996-97 and is a multiple-choice reading and math test given to students the first three weeks of the third grade. The test measures knowledge and skills specified for grade 2 against the SCOS in reading and math.

For 1998-99, 32.6 % of all students entering the 3rd grade scored below grade level (Level III) in reading and 25.3% of all students scored below grade level in math. This was a 2.1% gain in reading and 3.2% gain in math from 1997-98.

Disaggregating these results by race and looking only at black and white performance on the Grade 3 Pretests in reading and math reveals a similar picture in terms of the number of children entering third grade with below grade level performance in second grade reading and math.

97-98 Grade 3 Pretest in reading. 49.7% of black children (15,214), and 26.7% (16,726) of white children scored below grade level (Level III). The total is 31,940 children (B&W) below Level III in reading after the second grade and at the beginning of the third grade. At the end of the third grade, there were 25,780 children (B&W) below grade level on the 3rd grade EOG test in reading, 28% of the total of 3rd grade black and white children in 97-98.

97-98 Grade 3 Pretest in math. 43.9% of black children (13,471), and 20.4% (12,831) of white children scored below grade level (Level III). The total is 26,302 children (B&W) below Level III in math after the second grade and at the beginning of the third grade. At the end of the third grade there were 29,046 children (B&W) below grade level on the EOG test in math, 31.4% of the total of 3rd grade black and white children in 97-98.

98-99 Grade 3 Pretest in reading. 46.2% of black children (14,304), and 25.2% of white children (15,947) scored below grade level (Level III). The total is 30,251 children (B&W) below Level III in reading after the second grade and at the beginning of the third grade. At the end of the third grade there were 24,173 children (B&W) below Level III on the EOG test in reading, 26% of the total of 3rd grade black and white children in 98-99.

98-99 Grade 3 Pretest in math. 39.2% of black children (12,213), and 17.9%(11,299) of white children scored below grade level (Level III). The total is 23,512 children (B&W) below Level III in math after the second grade and at the beginning of the third grade. At the end of the third grade there were 28,298 children (B&W) below Level III on

the EOG test in math, 30.3% of the total of 3rd grade black and white children in 98-99.

These results are unacceptable. They clearly and convincingly show that more than 25% of our third graders are at-risk of academic failure after four years of education in the public schools. The only logical conclusion that one can draw is that these children who are at-risk for academic failure in the third grade have "missed the boat" in their first four (4) years in their respective schools. They are not on track to receive a sound basic education. For reasons not their fault, they have not had the equal opportunity to receive a sound basic education. The evidence of educational "outputs" on the 3rd grade EOG tests and the Grade 3 Pretests clearly and convincingly proves this.

The Court is convinced that the answer to the question as to why these at-risk children are sorely lagging behind the majority is simple. When these children came to kindergarten at age 5, they were at-risk, already behind, not ready to learn and certainly not in a position to take advantage of the opportunity to begin the process to obtain a sound basic education on an equal footing with their fellow five year old students who were not encumbered by outside at-risk factors.

Children should not leave the first grade unable to read and all should be ready to read to learn by the end of the third grade. That is not the case with the low performing children. At trial, all experts agreed with the Court that children should not leave the first grade unable to read and that they should be ready, by the end of the third grade, to "read to learn." While this seems to be occurring in the majority of children throughout the State, this is not occurring in the minority who are at-risk.

The fact that more than one-fourth of our children are academically at-risk in reading and math in the third grade is clear evidence that something more needs to be done to provide them with an equal opportunity to obtain a sound basic education. If they are not on track by the 3rd grade, a great many of these children are not going to be on track by the 8th grade. The evidence bears this out.

Tracking the 93-94 black and white 3rd graders through the 8th grade shows that a majority of those performing below grade level in the 3rd grade continued to perform below grade level through the 8th grade.

Pursuing this line of inquiry to see if the children at-risk at the end of the third grade ever got on track to obtain a sound basic education, the Court followed the 1993-94 "cohort" of black and white third graders through the end of the eighth grade in 1998-99.

In 1998-99 there were 88,878 black and white students in the eighth grade. These students were in the third grade during the school year 1993-94.

8th Grade Reading - 16,623, black (9226), and white (7397), students scored below grade level (Level III) in reading. This was 20% of all black and white 8th graders statewide performing below grade level.

8th Grade Mathematics - 18,763, black (10,537), and white (8,226), students scored below grade level in math. This was 22% of all black and white 8th graders statewide performing below grade level.

Comparing the 8th graders' reading performance to the 3rd grade students (B&W) that were below grade level in the 3rd grade in 93-94, 59% of those children who were below grade level in reading in the 3rd grade were still below grade level in reading in the eighth grade.

Comparing the 8th graders' mathematics performance to the third grade students (B&W) that were below grade level in math in the 3rd grade in 93-94, 66% of those children who were below grade level in the 3rd grade were still below grade level in math in the eighth grade.

Source: "***The Green Book***" years 93-94; 98-99.

Taking such clear and convincing evidence into account, educational intervention for these at-risk children must occur earlier than age 5, the age that children now enter the public school system via five-year old kindergarten. That is, unless they are already in a pre-kindergarten program operated by an LEA such as exists in Hoke and Charlotte-Mecklenburg.

Setting aside the poor output performance of large numbers of at-risk 3rd graders, the evidence at trial with respect to the deficit that these at-risk children suffer when they arrive at the school doorstep at age 5 supports early educational intervention for the at-risk group, regardless of race. "When young children enter kindergarten they bring with them a range of learning inequalities that staggers the imagination…. Some walk into kindergarten already reading; others have rarely heard an adult read from a book, much less coach them on their ABCs." T. 10/1/99,pp. 196-97, PX 183.

The clear logical, common-sense solution to this problem is to offer at-risk children a pre-

kindergarten educational opportunity so that they can have the opportunity to start kindergarten on a level close to, if not equal to, those children who are not at-risk.

There are sound programs already in place that are accomplishing the job, but they are few and far between. What do we know about pre-kindergarten programs for children? The credible and convincing evidence presented in this case tells us that pre-kindergarten programs are effective. Effective pre-kindergarten programs exist in North Carolina but these programs do not reach sufficient numbers of at-risk children.

Pre-Kindergarten Programs that work exist in North Carolina, but do not reach sufficient numbers of at-risk children.

Witnesses for all parties agreed that providing a quality pre-kindergarten program is an effective means of increasing the performance of low-income and otherwise at-risk students.

State Board Chairman Phil Kirk remarked that it is a "no brainer" that pre-kindergarten education would be a helpful way to address the needs of disadvantaged students. Pre-kindergarten education is particularly helpful for economically disadvantaged children and can help them to progress as fast as middle class children.

In addition, a large body of research supports the efficacy of quality pre-kindergarten programs. In the early 1990s, the State Board identified as one of its objectives the establishment of pre-kindergarten programs "in all LEAs so that all children will enter school ready to learn." (PX 141) Pre-kindergarten would be a helpful way to address the needs of disadvantaged children.

The State of North Carolina does not provide pre-kindergarten programs to students, although pre-kindergarten programs are authorized for LEAs that wish to establish them.

The State of North Carolina does provide some early childhood education through the Smart Start program and some Smart Start programs provide funding for some pre-kindergarten programs in some LEAs such as Hoke and Charlotte-Mecklenburg. Also, the Federal Government provides Title I money that can be used for in school pre-kindergarten programs.

Smart Start is an important state initiative that provides funds for early childhood health and welfare programs. Smart Start is operated by the North Carolina Partnership for Children, not DPI or the State Board. Governor Hunt, who has made the Smart Start program a major priority, acknowledged in 1999 that the existing programs have "barely scratched the surface of what needs to be done for... children." Smart Start is not principally a pre-kindergarten education program. There is no requirement that Smart Start funds be used for educational programs, but there is no prohibition against such use by a particular Smart Start program. The bottom line is that Smart Start is an existing public-private partnership through which programs for early educational intervention for at-risk children could be established and funded.

Studies consistently have found that the quality of a pre-kindergarten program is important in determining whether the program will have any effect on improving the skills of low-income children upon entry into kindergarten.

In a publication entitled "Early Intervention with Children: What We Know," the North Carolina Department of Human Resources summarized national studies showing that, when compared with children who receive no early intervention, preschool aged children who received early intervention showed substantial gains in IQ and other cognitive measures; were less likely to be placed in special education or retained in grade and more likely to achieve at grade level; had better self-esteem and attitudes; and showed higher projected life-time earnings. PX 419, pp HOO8716-17. The early education referred to was not day care centers or kindergartens which provided basic day care while parents worked.

The Frank Porter Graham Center, in a study of public preschool programs, examined the quality of North Carolina public preschools and the relationship between quality of the program and children's outcomes over time. The study found that the quality of public preschools in North Carolina was good on average and quite a bit higher than the quality of community child care centers.

Several large scale research studies have been conducted specifically examining the effects of early intervention programs for pre-school age children from disadvantaged (at-risk) backgrounds, including the Carolina Abecedarian Project, conducted by the Frank Porter Graham Child Development Center, the High/Scope Perry Preschool Project, and the Consortium for Longitudinal Studies PX 200, p. 2. These studies compared groups of disadvantaged children who participated in a pre-school program with those from similar backgrounds who did not participate in any pre-school intervention. The studies generally concluded that pre-school programs provide both

long term and short-term positive effects on children's development and academic achievement.

Based on the evidence presented, the Court finds that effective and appropriate pre-school programs can materially assist at-risk children to be able to come to kindergarten and be able to have an equal opportunity to receive a sound basic education from the start. The absence of such pre-school intervention for at-risk children materially affects their being able to have the equal opportunity to obtain a sound basic education from the start of their academic ladder.

The Court finds that there are programs in existence that provide at-risk children with the opportunity to reach kindergarten with sufficient pre-school intervention so that they can have the equal opportunity to obtain a sound basic education.

Hoke County has a 3 classroom pre-school program but it can only serve 54 children, far less than are in need of the program.

Another of these is a program for pre-school intervention for 4 year olds that is being implemented in the Charlotte-Mecklenburg Schools that provides excellent pre-school educational intervention to at-risk children in that system.

It is undisputed that the purpose of pre-school (pre-kindergarten) education is to prepare children to enter kindergarten. The purpose of kindergarten is to prepare children to be able to take advantage of the educational opportunities offered in the first grade.

The State has acknowledged a need for pre-kindergarten programs for at-risk children and

state law authorizes such programs to be housed in public schools. Such programs have not been implemented in a full and uniform manner.

It is also undisputed that the State of North Carolina has acknowledged a need to establish pre-kindergarten programs as part of the public school system since 1993. Former State Superintendent Bob Etheridge's 20 Point Plan for Reshaping K-12 Education in North Carolina was to "Provide pre-kindergarten programs for all economically disadvantaged 4 years olds who are at risk of school failure." PX275

Further, there is no dispute that pre-school programs are authorized in the public schools. Despite this authorization, the fact remains that such programs are not uniformly available to disadvantaged children throughout the State. Let's examine Charlotte-Mecklenburg's pre-kindergarten program.

Bright Beginnings

The Charlotte-Mecklenburg Schools ("CMS") started Bright Beginnings in 1998 in an effort to improve the skills of at-risk (especially low-income) children at the time they start kindergarten. Bright Beginnings shows that a carefully developed pre-kindergarten program, with well-trained teachers, is effective in improving the skill level of at-risk students upon entry to kindergarten.

The outreach efforts for Bright Beginnings focus on low-income children because those students frequently start kindergarten less prepared to begin school than their peers, particularly with respect to language development skills.

There are five (5) critical components to the Bright Beginning Program: (1) an aligned, written, taught and assessed curriculum that is child centered and has a strong language development and literacy component; (2) parent-family involvement and partnership agreements; (3) community participation and collaboration; (4) professional development; and (5) on-going research and evaluation.

CMS primarily funds Bright Beginnings through federal Title I monies. CMS contends that it lacks the funds to serve all of the children that are in need of Bright Beginnings. In funding Bright Beginnings, CMS is spending 85% of CMS's Title I funding from the federal government. This is approximately 10.1 million dollars to provide 1,800 low-income, ($5,800 per child) at-risk children, with a literacy and language development curriculum. The State of North Carolina questions this expenditure as having no proven long term effect or advantage for the children.

Based on all the evidence, the Court disagrees and rejects this contention. The goal of pre-kindergarten is to prepare the student to come to kindergarten with the skills and knowledge to be able to equally obtain the benefits of a kindergarten and early elementary education on as similar terms as possible with those children whose parents drop them at school in a Land Rover, Lexus, Tahoe, Expedition or Mercedes-Benz.

Bright Beginnings classes have 16 to 19 students with a teacher and teacher assistant. The teachers have obtained, or are in the process of obtaining, birth to kindergarten certification from the State.

The data from the first year of Bright Beginnings demonstrates that, upon entering kindergarten, participants in the program had retained skills and knowledge acquired the previous year, and were better prepared for kindergarten than were similar children who were eligible for Bright Beginnings but had not participated in the program. On some measures, Bright Beginnings participants were better prepared for kindergarten than were children from less deprived backgrounds. Those children scored higher on measures of book and print awareness, word recognition, language comprehension, spelling and writing, number identification, and behavioral adjustment than did those children who had participated in some other full day care experience the year before starting kindergarten.

Despite this successful outlook not all children who would benefit are being served. CMS would like to be able to offer Bright Beginnings to approximately 2000 additional four-year old students who would likely be eligible based on qualifying for free or reduced priced lunch or other socioeconomic data.

Having covered the Bright Beginnings' pre-kindergarten program in CMS, let's cover what Hoke County provides for its at-risk children in terms of pre-kindergarten educational opportunity.

Pre-Kindergarten Opportunities in Hoke County are limited and not all at-risk children are being provided with a pre-kindergarten opportunity. The low performance on the third grade EOG tests reflects the absence of such opportunities for Hoke County at-risk children.

Hoke County offers a full-day kindergarten experience to any child who reaches the age of 5

before October 16. At the time of trial there were only three (3) pre-kindergarten classes for the entire pre-school 4 year-old population. Each class served 18 students. Those classes were located at South Hoke Elementary, Scurlock Elementary and West Hoke Elementary.

These classes were physically located in public school classrooms but were not funded by the public school system (except for providing the classroom space and utilities). The children accepted to the pre-kindergarten program are those who are the lowest on the screening test scores for admittance to the program. The children are selected by using the LAP-D screening instrument that measures cognitive, language and fine motor abilities.

The Hoke County Schools funded these three classes through a combination of federal Title I funds and local Smart Start funds..

The Hoke pre-kindergarten program was evaluated by Dr. Ellen Peisner-Feinburg, a recognized expert in the areas of early childhood education and developmental psychology. Dr. Feinburg concluded that the Hoke pre-kindergarten classes are in the good quality range and thus, are likely to have beneficial effects on the children's outcomes in later grades. Dr. Feinburg concluded that the present pre-kindergarten program in Hoke County is not sufficient to accommodate the number of at risk (low income) children who would benefit from being admitted to the program. (Pl. 361,2)

Data from the South Hoke and Scurlock pre-kindergarten programs shows that the children who have participated have shown development and growth. One Hoke kindergarten teacher observed that the children who had participated in the pre-kindergarten program have better gross and fine

motor skills, better comprehension skills, listening skills, social skills and hygiene skills than students who do not participate in the program.

South Hoke Elementary School has the longest running pre-kindergarten program (1992). The principal testified that the students enrolled in the pre-kindergarten program make gains in the course of the year as reflected by developmental tests. Those students who complete the pre-kindergarten program are better prepared for kindergarten than those who do not. Despite this evidence, which the Court finds credible, there are great many at-risk children in Hoke County who are denied this opportunity because only 3 pre-kindergarten classes are available.

For 1998-99, 101 Hoke County children were screened for 54 slots in pre-kindergarten. Based on the number of kindergartners enrolled in the Hoke County Schools for the 1998-99 school year (497) and the percentage of elementary school children who qualified for free and reduced lunch (70.1%), Feinburg concluded that there were approximately 348 Hoke children who would have benefited from participation in the pre-kindergarten programs, yet only 54 children were actually served.

Peisner Feinburg expects that the children who participated in the pre-kindergarten programs are far more likely to perform better over a longer period of time than similar low income children who did not receive any type of formal, center based experience before entering kindergarten.

To expand the existing Hoke pre-kindergarten program to serve eligible low income, at-risk children, Hoke County School Administrators

calculate it would take some 17 additional teachers at a yearly cost of $1,103,784, plus the capital costs for classrooms, equipment and supplies.

Despite this evidence, the State of North Carolina's counsel in this case continue to be adamant that pre-kindergarten programs for at-risk children are not required in order for them to have an equal opportunity to receive a sound basic education. This position stands on the same quicksand as the State's position that Level II performance is evidence that a child is receiving the components of a sound basic education, a position rejected by this Court.

In the case of Hoke County, the performance of 3rd graders, as well as children in grades 4 through 8, is below the State performance average. Hoke County has shown that its at-risk 5 year old kindergarten students (who have not had the benefit of a 4 year old pre-kindergarten program) come to five year old kindergarten not ready to learn and their 3rd - 8th grade performance shows this clearly. Far too many of these Hoke children are at-risk of academic failure in the 3rd grade and remain so for the next six years.

Hoke County third grade performance is even poorer when compared to the overall state data for black and white 3rd grade students on the EOG tests in reading and math. The overall performance in Hoke County elementary and middle schools reveals an unacceptable level of at-risk academic performance below Level III.

The Court has previously set forth the data to see at what levels black and white students were performing statewide at the end of the 3rd grade in reading and math. That data will not be repeated

here. The statewide numbers of at-risk children (B&W) is unacceptable. Hoke's is even more so.

The Court has also examined the data for Hoke County to see how Hoke County students were, and are, performing on the Third Grade EOG tests for reading and math.

While the results from 1993 through 1999 are improving, the number of 3rd grade students in Hoke County performing at Level I or Level II in Reading and Mathematics is worse than the state average.

Reading. In 1993-94 in Hoke County, 395 students took the third grade EOG Reading Comprehension tests. 213 scored at Level II or below. 54% of all Hoke third graders were performing below grade level in reading comprehension.

In 1997-98 in Hoke County, 520 students took the third grade EOG Reading Comprehension tests. 206 scored at Level II or below. 39% of all Hoke third graders were performing below grade level in reading comprehension.

In 1998-99, in Hoke County, there were 543 3rd grade students who took the EOG reading comprehension tests. Of that number, 180 scored at Level II or below. 33% of all Hoke third graders were performing below grade level in reading comprehension.

Math. In 1993-94, in Hoke County, 391 students took the 3rd grade EOG Mathematics test. 205 scored at Level II or below. 52% of all Hoke third graders were performing below grade level in math.

In 1997-98, in Hoke County, there were 522 3rd grade students who took the EOG Mathematics test.

214 scored at Level II or below. 41% of all Hoke third graders were performing below grade level in math.

In 1998-99, in Hoke County, there were 543 3rd grade students who took the EOG Mathematics test. 196 scored at Level II or below. 36% of all Hoke third graders were performing below grade level in math.

Looking at the 5th grade in Hoke County in reading and math for 1998-99 shows a dismal picture as well.

In 1998-99, in Hoke County, there were 435 5th grade students who took the EOG Reading and Mathematics. 49.1% of those Hoke students scored at Level II or below.

In contrast, the statewide average for students taking the 5th grade EOG Reading and Mathematics tests showed 28.5% of all students scoring at Level II or below.

In 1998-99, in Hoke County, the reading performance for grades 3 through 8 on EOG tests showed that more than 30% of the students in each grade were performing below grade level in reading (Level I or II).

In 1998-99, in Hoke County, the mathematics performance for grades 3 through 8 on EOG tests showed that below grade level performance varied, grade by grade between 22.5% (grade 4) and 35.7%(grade 3).

In 1998-99 Hoke County had 61.8% (3743) of its 6,057 children eligible for FRPL (March, 1998). The system racial makeup was 32.7% (1980) white;

50.0% (3028) black; 13.4% (812) American Indian; and 3.0% (182) Hispanic children.

Disaggregating the composite performance data for the elementary and middle schools in Hoke County by race (an at-risk factor)(black and white) shows that 40.8% of the black students are performing below grade level in reading, math and writing (Levels I & II). This ranges from 43% below grade level in reading for the 3rd grade to 54.7% below grade level in writing for the 4th grade. The Mathematics performance ranges from 23.5% below grade level in the 6th grade to 49% below grade level in the third grade and 36% below grade level in the 8th grade.

Whites, on the other hand, have a composite percentage of only 18.7% performing below grade level in grades 3 through 8 in all subjects. In each subject area and in each grade (with the exception of reading grade 4 and math grade 3 and writing grades 4 and 7) white students performed below grade level less than 20% in all courses tested in each grade.

The American Indian composite performance for grades 3 through 8 showed that 38.7% were performing below grade level (Levels I&II) in the subjects tested. The 3rd grade reading performance was 41% below grade level and the math performance was 35.7% below grade level. In the 8th grade reading tests, 46.3% of the American Indian children scored below grade level while in math, 31.7% scored below grade level (Level I&II).

The Hispanic composite performance was that 29.1% of Hispanic children were performing below grade level on all the EOG tests in grades 3 through 8.

Reduced to essentials, it is clear from the evidence that many more pre-kindergarten age at-risk children in Hoke County are in need of additional educational opportunities before they attend 5-year old kindergarten than are now being served. Hoke County is only serving 54 children, about one-third (1/3) of those who need the program as well in order to be able to obtain an equal opportunity for a sound basic education.

The same (although the numbers are higher in CMS) is true in the Charlotte-Mecklenburg School system as in Hoke. The Bright Beginnings Program does not serve all the at-risk students who would benefit from the program and thus, be placed on an equal footing with those more fortunate at the time they enter 5-year old kindergarten.

Unfortunately, this pre-kindergarten program deficit permeates throughout the State of North Carolina for at-risk children who are not presently entering kindergarten ready to learn or take advantage of an equal opportunity to begin to obtain a sound basic education.

The at-risk, pre-kindergarten age children of North Carolina are not being provided with an equal opportunity to obtain a sound basic education from the start unless, and until, they are provided with an appropriate pre-kindergarten educational opportunity substantially similar to the Hoke County pre-kindergarten program or the Bright Beginnings Program.

DISCUSSION AND CONCLUSION

The bottom line is simple. The Court, based on the clear and convincing evidence, finds that at-risk children should be provided the opportunity to

attend a quality pre-kindergarten educational based program that has, as its goal, the preparation of at-risk children for kindergarten.

This educational opportunity should be geared to put at-risk children in a position to take advantage of the equal opportunity to receive a sound basic education when they reach five-year old kindergarten. As a result, the at-risk children should arrive at five- year old kindergarten prepared, as best they can with the extra help, to take advantage of the opportunity to receive a sound basic education on a level with those children that are not at-risk.

The investment in early childhood pre-kindergarten education for at-risk children should yield dividends in their future educational experiences.

The Court finds that the academic performance of these at-risk children should materially improve as shown by the evidence and data coming out of the Bright Beginnings and the Hoke County pre-kindergarten programs.

This vital early childhood intervention should improve academic achievement by at-risk children so that by the end of kindergarten, first grade, second grade, third grade and onward, these at-risk children will be performing at or above grade level and receiving a sound basic education as is their constitutional right and no longer be academically at-risk.

The Court is not so naïve as to think that every single at-risk child will be an academic superstar as a result of this early childhood intervention, but the Court is convinced that without this intervention more children will be

doomed to the academic basement when in fact, with this help, they can perform at grade level or above and receive a sound basic education.

In conclusion, the Court, based on the clear and convincing evidence, finds and concludes as a matter of law that under the North Carolina Constitution as interpreted by Leandro, the right of each child to an equal opportunity to receive a sound basic education in the public schools is not to be conditioned upon age, but rather upon the need of the particular child, including, if necessary, the equal opportunity of an at-risk child to receive early childhood pre-kindergarten education prior to reaching the age of five and prior to entering five-year old kindergarten.

The Court further finds and concludes as a matter of law that at the present time, the State of North Carolina lacks sufficient quality pre-kindergarten educational programs to meet the needs of its at-risk children. As a result, those at-risk children, who are not presently in quality pre-kindergarten educational programs, are being denied their fundamental constitutional right to receive the equal opportunity to a sound basic education.

The denial of this fundamental constitutional right is the failure of the State to provide early childhood education in the form of quality pre-kindergarten educational programs that will help at-risk children come to school ready to take advantage of the educational opportunities offered in five-year old kindergarten and beyond.

CAVEAT. The Court's decision does not require the State of North Carolina to provide every four (4) year old child with a pre-kindergarten program at state expense. A universal four year old pre-

kindergarten program is not required to meet the sound basic education standard of Leandro because, fortunately, the majority of four year olds are not at-risk and are able to enter the kindergarten at age five ready to learn.

Pre-kindergarten educational programs for at-risk children, however, must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs. The nuts and bolts and implementation of the expansion of pre-kindergarten educational programs for at-risk children is a matter to be taken up by the Executive and Legislative Branches of Government.

This is so because Leandro instructs the Court to grant deference to those branches of Government in terms of the implementation of such programs if a constitutional deficit is determined to exist.

Notwithstanding this, the pre-kindergarten deficit for at-risk children must be made up in Hoke County, as well as in other counties in North Carolina, at a reasoned and deliberate pace.

This the 26 day of October, 2000.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
FILED
SUPERIOR COURT DIVISION
WAKE COUNTY: MAR 26 AM 10:29 95 CVS 1158
WAKE COUNTY, C.S.C.

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,
And
ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,
Vs.
STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

MEMORANDUM OF DECISION

SECTION THREE
HOKE COUNTY AND BEYOND

An Analysis of the Evidence relating to Hoke County's At-Risk Students' failure to meet the Leandro performance standard compared with At-Risk Students' failure to meet the Leandro performance standard, regardless of where they go to school, has led the Court to conclude that the academic problems of At-Risk Students are not being adequately and strategically addressed. Furthermore, the Court is not convinced that the At-Risk performance problems are caused by a lack of overall funding. Instead, the problems appear to be caused by the lack of a coordinated, effective educational strategy for At-Risk Students in which education funds are first spent to meet the sound basic education opportunity required by the Constitution before funds are spent for educational purposes not required for a sound basic education.

SYNOPSIS OF THE DECISION

On October 12, 2000, the Court entered Section One of its decision. At the outset, the Court charted a course in which there would be at least three (3) separate Memoranda of Decision, each addressing different aspects of the case.

In the first Memorandum of Decision, the Court analyzed separate components of the North Carolina Educational Delivery System and determined that, as a system, it was sound, valid and constitutional when measured against the sound basic education standard of ***Leandro***. The Court also found that a student who was performing at Level III or above on the ABCs EOC and EOG tests was obtaining a sound basic education under ***Leandro***.

The second Memorandum of Decision was entered on October 26,2000. In that decision, the Court analyzed the educational needs of at-risk children, and determined for at-risk children to have an equal opportunity for a sound basic education, the State should provide quality pre-kindergarten programs for at-risk children.

The third Memorandum of Decision was originally intended to focus on two issues relating to the Hoke County Schools. First, whether children in Hoke County are receiving a sound basic education? Second, if children are not receiving a sound basic education, is it because of lack of sufficient funding as the plaintiffs contend, or for some other reason(s)?

In analyzing whether or not Hoke County students were obtaining a sound basic education, the Court examined the Hoke County students' performance and compared Hoke with other school systems student performance.

This comparison showed that there were at-risk students failing to achieve a sound basic education statewide, as well as in Hoke County, and that the low performance of at-risk students was similar regardless of the wealth and resources of the school system attended.

Taking all of the evidence into account, the Court determined that the at-risk children in North Carolina are not obtaining a sound basic education and that the reason appears to be the lack of a coordinated, effective educational strategy for at-risk children statewide.

The Court is not convinced that the lack of a coordinated, effective educational strategy is based on the lack of sufficient funding by the State. Instead, the Court believes that the funds presently appropriated and otherwise available are not being effectively and strategically applied so as to meet the following principles from *Leandro*:

1. ***All children have an equal opportunity to receive a sound basic education and an equal opportunity is all the State is required to provide.***
2. ***The sound basic education is qualitatively defined and an appropriate educational strategy to provide children with the opportunity to receive a sound basic education is required.***
3. ***In the event that children are not being provided the equal opportunity to obtain a sound basic education because of inadequate educational programs and strategy, the educational programs and strategy must be changed to accomplish the constitutional mandate.***

4. *In the event there is not sufficient funding to provide the educational programs, more funding must be appropriated to meet the constitutional mandate.*
5. *Funds appropriated and applied to education, from whatever source, are first to be used for the purpose of providing children with the equal opportunity to receive a sound basic education.*
6. *In the event of a deficit in the sound basic education component, funds that are being used for the purpose of providing educational programs not part of the sound basic education must be re-allocated and applied to the sound basic education until any deficit in that program is abolished.*

In summary, school systems and the State must first put in place programs that provide all children with the equal opportunity to obtain a sound basic education and that if the funding that is appropriated from whatever source is being used for any other educational purpose than to meet the constitutional mandate, then those funds must be reallocated to satisfy the constitution.

The State and its school systems are directed to assess the present educational programs as they are applied to the at-risk student group, and adopt a coordinated, uniform strategy for improving the educational opportunities for at-risk students and as a part of the process, re-assess and re-allocate the available funding, if needed, to meet this goal with respect to at-risk children within the parameters of the Constitution. Upon completion of this task, they are to report to the Court the results of their undertaking. Pending this undertaking, no Final Judgment will be entered.

HOKE COUNTY, N.C.

Hoke County, North Carolina, is located in the Sandhills region of our State. Farming is a major economic activity there. Poultry processing, textiles, cosmetics and light manufacturing are among its primary industries. As of 1996 the county had an estimated population of 28,144 and Raeford, its only municipality and the county seat, had an estimated population of 4,029.

In Hoke County, there are no universities, no museums, and no major shopping centers. Aside from football games on Friday nights in the fall, there are few things for young people to do. Hoke County does not have a hospital. The latest data from the North Carolina Child Advocacy Institute shows that there are no pediatricians in Hoke County.

The business and employment opportunities in Hoke County are limited. The two largest private employers are the House of Raeford poultry plant and Burlington Industries plant. The largest non-manufacturing employer is the North Carolina Department of Corrections, followed by the public school system and county government.

The main civic event of the year in Hoke County is the North Carolina Turkey Festival. Over three days, it features such activities as a turkey cooking contest, some performances by local people, and a craft fair. In the last two years there have been major layoffs and plant closings in Hoke County including ones by Burlington Industries and Spanco. Hoke County has found it difficult to recruit new industries.

HOKE COUNTY PUBLIC SCHOOLS - AN OVERVIEW

HCSS is governed by a locally elected board of education. The Hoke County Board of Education has the duties and responsibilities prescribed by law, including the duty and responsibility for "general control and supervision of all matters pertaining to the public schools" in Hoke County, N.C.G.S. § 115C-40, to implement the Standard Course of Study, N.C.G.S. § 115C-89(c) and to select and evaluate all employees. N.C.G.S. § 115C-47. No present or former member of the board was called to testify by plaintiffs at the trial of this matter. Defendants did, however, introduce portions of the deposition of the present chairman of the board, Mr. McAllister.

The superintendent of HCSS at the time of trial was Donald L. Steed. Mr. Steed retired at the end of June, 2000. The Superintendent is chief administrative officer of the HCSS and has the duties, *inter alia*, to recommend the employment of all principals and teachers, to implement all State policies and standards and to prepare and recommend a budget. N.C.G.S. §§ 115C-276, -427.

Pursuant to N.C.G.S. § 115C-27(a), the Hoke County Board of Education has "the duty . . . to elect a superintendent who is qualified." Mr. Steed was not called to testify by plaintiffs at the trial of this matter. Defendants did, however, introduce portions of the deposition of Mr. Steed.

There are 11 schools in Hoke County at the present time. These include seven elementary schools (McLauchlin Elementary, Scurlock Elementary, South Hoke Elementary, West Hoke Elementary, Rockfish Hoke Elementary, Upchurch Elementary, and Shady Grove Elementary, two middle schools (West Hoke Middle School and East Hoke Middle School), one high school (Hoke County High School) and one alternative school

(Turlington School). Sandy Grove Elementary opened in time for the 1999-2000 school year and is a "state of the art" elementary school. Ironically, this brand new sparkling jewel of an elementary school failed to meet the ABC standards for expected growth/gain, received no recognition whatsoever and posted a performance composite score of 62.5, meaning that 37.5% of the EOC tests taken by students in Grades 3-5 were below grade level. This poor performance fell right in line with the academic performance of several other Hoke elementary schools housed in older and allegedly out-dated buildings. This is strong evidence that even a brand new building does not ensure high academic achievement, or as one saying goes, "you can dress them up but you can't take them out."

Hoke County Schools Physical Plants. It's not the building - It's what takes place inside that really matters.

The Court personally visited each elementary school (including state of the art Sandy Grove), the high school and one of the middle schools in January, 2000. The middle schools are "twins" and both came on line at the same time. The middle schools are state of the art, modern facilities. The Court also visited Turlington. Turlington, although an old building, shares its auditorium with the Town of Raeford. The auditorium is used for concerts and civic events by the public.

Although Turlington is old and its upper floors not used and in disrepair, the classrooms have high ceilings, good lighting and are very clean. The classrooms in use in Turlington are similar to the classrooms at Fred A. Olds Elementary School on Dixie Trail in Raleigh where the Court attended grades 1 through 3. Fred A. Olds Elementary School is still in use although it is now closed for renovations.

With respect to HCSS' facilities, the Court finds that the HCSS' facilities are sufficiently adequate, upon the completion of the science wing addition to Hoke County High School, to provide physical facilities so that the children of Hoke County can be provided with a sound basic education. Any expert witness testimony to the contrary is rejected and found not to be credible. In Utopia (which does not exist anywhere) every child would go to school in a modern school, but this is simply not a reality, nor does a sound basic education depend on such trappings.

Simply put, HCSS has a satisfactory blend of older schools and modern schools, similar to school systems all across the State of North Carolina, including Wake County and CMS. The critical component of whether or not the children are being provided with an equal opportunity to receive a sound basic education does not lie in a shiny new school or an older school, but rather, the critical component is the quality of instruction and leadership provided by the principal and the teachers who purport to educate the children who attend. Of critical importance to this process is the factor of parental involvement and support of those children in the educational process.

The chief administrative officer of each of these schools is its principal. Principals have the duty, *inter alia*, to grade and classify students, to recommend the employment of teachers, to evaluate the performance of teachers and to provide for discipline. N.C.G.S. § 115C-288.

Only one of these principals, Tona Jacobs, was called to testify by plaintiffs at the trial of this matter. Defendants, however, did introduce the depositions of two other principals, Darlene Clark and Sam Queen. As of the 1997-98 school year, 679 persons were employed by the HCSS, 544 of whom were paid with State funds, 53 of whom were paid with federal funds

and 82 of whom were paid with local funds. For that year the staff to student ratio was 1 to 9.

As of the 1997-98 school year 406 persons were employed by the HCSS in professional positions, 374 of whom were paid with State funds, 32 of whom were paid with federal funds and none of whom were paid with local funds. For that year the professional staff to student ratio was 1 to 14.8.

As of the 1997-98 school year, 334 persons were employed by the HCSS as classroom teachers, 304 of whom were paid with State funds, 30 of whom were paid with federal funds and none of whom were paid with local funds. For that year the classroom teacher to student ratio was 1 to 18. Only six classroom teachers were called to testify by plaintiffs at the trial of this matter.

As of the 1997-98 school year, 132 persons were employed by the HCSS as teacher assistants, 113 of whom were paid with State funds, 19 of whom were paid with federal funds and none of whom were paid with local funds. For that year the teacher assistant to classroom teacher ratio was 1 to 2.53. No teacher assistant was called by plaintiffs to testify at the trial of this matter.

As of the 1997-98 school year, 6,002 students were enrolled in the HCSS. Only 2 of these 6,002 students are plaintiffs in this matter, Randell Hasty and Andrew Sunkel. Mr. Hasty and Mr. Sunkel were called as witnesses by plaintiffs, but plaintiffs did not call any other student in the HCSS or any graduate of Hoke County High School to testify regarding their opportunities in the HCSS.

The student enrollment in the Hoke County schools at the time of trial was 6,157. Hoke enrollment has increased significantly from 1991-92 through 1998-99.

Hoke administrators predict, based on births, that enrollment in the Hoke schools is likely to continue to increase substantially through 2003-04, to more than 7,300 students. T. 9/15, pp. 26-27 (Moss); PX 481.

Since 1991, the Hoke student population has grown at a faster rate than the state average. North Carolina average daily membership ("ADM") increased from 1,080,223 in 1991-92 to 1,229,929 in 1998-99, an increase of over 13%. Hoke County ADM increased from 4,997 in 1991-92 to 6,057 in 1998-99, an increase of over 17%.

In 1997-98, the Hoke student body was 32.6 percent white, 50.1 percent black, 13.9 percent Native American, 2.5 percent Hispanic and 0.8 percent Asian. Hoke's enrollment of black students in 1996-97 was proportionately nearly two-thirds greater than the State's 30.7 percent black average and its Native American students represented a proportion of the system's enrollment more than 8 times greater that the State's average of 1.5%. Of that population, 73.8% were eligible for free and/or reduced price lunch. The statewide average was 39.9 %. Only students from low income families are eligible for this program.

In 1998-99, 61.8% of HCSS students were eligible for free and reduced lunch. The racial composition for that year was 32.7% white, 50.0% black, 13.4% American Indian, 3.0% Hispanic and .09 % Asian.

HOKE COUNTY STUDENTS ARE ABOVE AVERAGE IN BEING FROM ECONOMICALLY DEPRIVED HOUSEHOLDS

The students who attend the Hoke County Schools are from more economically deprived backgrounds than the average LEA in North Carolina. In order to put the HCSS in proper perspective, data about the low economic status from whence many of Hoke's school children come is necessary. This is because it is common for children

from economically disadvantaged backgrounds to have particular difficulties in gaining proficiency in school. "There's certainly a high correlation between poverty and lower [academic] performance." T. 11/23, p. 128 (Triplett). Much of this can be explained because of the low levels of adult education and the economic status of many of Hoke County's population.

The level of adult education in Hoke County is low. About half the population lacks a high school diploma. T. 9/15, pp. 19-20 (Moss); PX 198, pp. 6, 11 (Table 1, Panel D) (citing U.S. Department of Commerce, 1990 US Census, Database); PX 371 (U.S. Census Data); PX 449, p. HO08865; PX 293. For 1996, less than 9 percent of Hoke county adults over 25 were college graduates. PX 371 (U.S. Census Data). The percentage of adults in Hoke County with a college education is less than half the percentage for the State as a whole. T. 9/15, p. 21 (Moss).

According to census data, 11.1 percent of children in Hoke County were living in households in which no parent was participating in the labor force. PX 198, pp. 6, 13 (Table 1, Panel I) (citing U.S. Department of Commerce, 1990 US Census, Database). In 1990, the percentage of Hoke County children living in single parent households was 48.2 percent, compared to 30.4 percent statewide. PX 320, pp. 58, 122. See also PX 198, pp. 6, 10 (Table 1, Panel C) (citing U.S. Department of Commerce, 1990 US Census, Database); T. 9/28 [Agnew], pp. 53-54 (Natriello) (referencing PX 320, pp. 58, 122). In 1993-97, over 41 percent of Hoke County births were out of wedlock. PX 372, p. 4-47 (N.C. Vital Statistics, NCPH). As stated before in Section II of the Court's decision, illegitimacy results from irresponsible behavior on the part of the child's parents. Illegitimacy is a root cause of the societal problems that create the environments in which at-risk children live and arrive at the schoolhouse ill prepared to learn or to succeed.

Fifty-nine (59%) percent of all children in Hoke are children of mothers served by "WIC," or the federal nutritional assistance program for women, infants, and children. PX 198, pp. 6, 8-9 (citing North Carolina Center for Health Statistics, North Carolina Health Statistics Pocket Guide); T. 9/28 [Agnew], p. 51 (Natriello). Again, this reflects the low level of education, the high rate of irresponsible sexual behavior resulting in illegitimacy and explains in great measure why many of HCSS children fail to perform well academically.

"Racial and/or ethnic minority group membership is perhaps the best known factor associated with being educationally disadvantaged." [Agnew], pp. 5-6 (Natriello).

As discussed in Part II of the Court's Decision dealing with at-risk children, statistics show that children from poverty backgrounds tend to achieve less well in school than children who come from middle class backgrounds. Low family income often places students at risk of academic failure. Many low-performing schools have high percentages of low-income students who are at-risk of educational failure. Those factors have been discussed in detail in Section II of this Court's decision. An unusually high number of Hoke County students have factors that put them at-risk of educational failure according to the State's analysis used to calculated allotments for at-risk student services.

The analysis was devised by the State and is used to calculate allotments for at-risk student services. This analysis allocates funds based not only on a certain number of dollars per student, but also a certain number of dollars (50 percent) under a weighting formula. This weighting formula factors in the school districts' end-of-grade test failures, the

absence rate, the non-promotion rate, the dropout count, the poverty index, and the graduation rate. HCSS ranked near the bottom of all school districts on a number of these factors.

A study conducted by DPI in the 1990s entitled "Improving Schools Study" concluded that the most important factor related to student performance was socioeconomic status. Economic status and educational achievement are significantly linked; thus, poor children typically do less well in school than children from families that have better or additional resources. Specifically, "[c]hildren living in families with incomes below the poverty line are nearly twice as likely to be retained in a grade" as are children from more affluent families, and they are more likely to drop out of high school. The income level of one's community is also related to educational performance.

State statistics for Hoke County show that over one-sixth of families in the county are below poverty level; over one-fourth of the children in the county live in poverty; and nearly two-thirds of the students in the Hoke County Public Schools receive free and reduced price meals. There are proportionately many more children in Hoke statewide below the poverty level (29.6 %), than is true statewide (16.2 %).

DPI statistics for the 1997-98 school year show a strong correlation between high performance on ABCs tests in a school and the number of needy children in that school. As the percentage of needy students in the school increases, the composite ABCs test score falls. The composite average ABCs score was only 45 for children attending schools in which 90 percent or more of the students were eligible for free or reduced lunch; the average score was 88, almost double, in schools where free or reduced lunch eligibility was 10 percent or less.

North Carolina students receiving free lunch, on average, attain a scale score of 156.3 on the eighth-grade reading end-of-grade test. This score falls between the average fifth and sixth-grade scale scores for non-FRPL students.

North Carolina students receiving free or reduced price lunch (FRPL), on average, attain a scale score of 167.5 on the eighth-grade math end-of-grade test. This score is approximately equal to the average sixth-grade scale score for non-FRPL students.

In Hoke County elementary schools the percentage of children on free/reduced price lunch is inversely related to the percent of children performing at or above grade level. That is, the higher the percentage of children in a school on free/reduced price lunch, the lower the percentage who are performing at grade level.

Associate Superintendent Moss analyzed the performance of Hoke students based on their economic circumstances. As previously noted, the numbers of Hoke elementary and middle students performing below Level III (that is, below the State's proficiency standard) is substantial. In the 1998-99 school year

at the third, fifth, and eighth grade levels, between 40% and 45% of students were below Level III.

The great majority of these students below the proficient level were eligible for free or reduced price lunch. PX 465 (Gateway Implications by Lunch Status). These students would have been retained (rather than promoted) under the State's soon-to-be-implemented Gateway policy. T. 9/17, pp. 253-57 (Moss). This would impose substantial additional financial burdens on the Hoke schools, including additional personnel for remediation and additional facilities to house students retained. T. 9/17, p. 257 (Moss).

For 1998-99, the scores on the end-of-grade tests for students in Hoke County were lowest for students from low-income families who received free or reduced price lunch. For the end-of-grade reading test for 1998-99, the percent of students scoring proficient on the test, disaggregated by income, was as follows:

	Grade Level					
	3	4	5	6	7	8
Full Pay Students	82%	78%	78%	83%	79%	82%
Reduced Price Students	65%	64%	70%	57%	65%	77%
Free Lunch Students	57%	48%	60%	64%	56%	62%

For the end-of-grade mathematics test for 1998-99, the percent of students scoring proficient on the test, disaggregated by income, was as follows:

	Grade Level					
	3	4	5	6	7	8
Full Pay Students	76%	89%	85%	88%	79%	85%
Reduced Price Students	66%	85%	87%	76%	60%	77%
Free Lunch Students	56%	68%	67%	78%	60%	62%

The ABCs test data for Hoke elementary and middle students shows that students who receive free or reduced price lunch generally have lower scores than other students. In almost every grade and in both

reading and math, scores varied predictably, with the economically advantaged students doing better and the most economically disadvantaged children doing worse. This is consistent with many studies showing that test results are related to students' socioeconomic status. The same applies to students statewide.

In all of these Hoke schools, the majority (and in some schools almost all) of students were eligible for free or reduced price lunch. Based on the record in this case, it can hardly be disputed that HCSS has a high "concentration" of students who are at-risk of academic failure. What is unique about Hoke is that the general socioeconomic condition of the County falls across all racial lines that provides an unusual "concentration" effect throughout the system as compared with large, urban districts or wealthier districts such as Charlotte-Mecklenburg, Durham, Forsyth, Guilford and Wake. In those counties, the "concentration" effect is found more along racial lines rather than across the board.

LARGE PERCENTAGES OF HOKE STUDENTS HAVE BEEN UNABLE TO MEET THE STATE'S PROFICIENCY STANDARD ON STANDARDIZED TESTS FOR YEARS PRIOR TO 1999-00.

There is a mass of evidence from the State's own testing program, including its compilations of results, that shows that large percentages of students in the Hoke County schools have failed to achieve the level of performance defined by the State Board, as adequate mastery of subject matter knowledge and skills, Level III and above, the level necessary to indicate the student is achieving a sound basic education in the subject matter. Level III and above has also been determined to be the performance standard under the ***Leandro*** test by this Court.

In 1998-99, the performance composite of students scoring at Level III or above in the ABC tests in Hoke

High School was 38.4 %. In other words, in 1998-99, 61.6% of the Hoke High School students did not score at proficient levels in the tested subjects.

As previously noted, the ABCs testing program for high schools includes tests in some grades of areas that were specified as part of a sound basic education by the Supreme Court, including English, mathematics, physical science, geography, history, and basic economic and political systems.

Examination of each tested subject for 1998-99 shows that in most tested subjects, most Hoke high school students were below Level III. Hoke's scores at Level III or above, without disaggregating by ethnic group were dismal: Algebra I-45.8%; Algebra II-37%, Biology -37.4%, Chemistry-12.1%, English I-54.7%, English II-25.1%,Economic, Legal & Political Systems-60.9%("ELP"), Geometry-33.8%, Physical Science-26.7%,Physics-37.5%, U.S. History-32.2% percent.

In addition to the failure of the high school students in Hoke to meet the State's proficiency standard in subject areas that are central to a sound basic education, the testing results show that the HCSS students on average are not as high as the State Average. The Court notes, however, that the use of the State average without disaggregating the scores between ethnic groups, some more at risk than others, gives little more than an overview that a problem exists. Using the State averages there is a disparity between the average systemwide performance of HCSS students and the State average. This disparity will not continue to exist in such large measure once the scores are disaggregated between ethnic groups-a subject that will be discussed later in this decision.

The Green Book of State testing results contains a comprehensive presentation of the State's standardized test scores, including comparisons between the

percentages of Hoke high school students who scored at the proficient level (Level III or higher) and the statewide percentages.

The 1997-98 Green Book shows the following:

For 1997-98, in Algebra I 46.9% of HCSS students scored at Level III or above, while the State average was 61.6%. For Biology, 44% of HCSS students scored at Level III or above, while the State average was 59%. For ELP, the Hoke percentage proficient was 65.8, while the State percentage was 66.9. For English I, 47.7% of HCSS students scored at Level III or above, while the State average was 60.7%. For U.S. History, 43.8% of HCSS students scored at Level III or above, while the State average was 49.6%. In prior years, the same pattern of low scores for HCSS exists. The 1998-99& 1999-00 Green Books show some improvement but an average disparity continues to exist.

These disparities existed not only in high school but systemwide. Averages of ABCs test performances for Hoke students were substantially lower than those for comparable students (without adjusting for race and socio-economic status) in the State as a whole at every grade level. On every EOC and EOG test administered by the State, substantially higher percentages of Hoke students failed to meet the State's standard of adequate performance than did students statewide.

As with Hoke high school students, the standardized test scores of Hoke students in grades 3-8 persistently trail their peers in the State as a whole. The Green Book for 1997-98 also shows that the percentage proficient for Hoke (which ranged from 48.5 to 57.1) was behind the State average for every grade, with gaps ranging from 11.7% (for the 5th grade) to 15.1%(for the 8th grade). PX 59, pp. 112, 118, 124, 130, 136, 142. The Green Book reports for prior years show similar low proficiency rates and performance gaps for Hoke elementary and middle school students.

In 1996-97, the State reported that Hoke students passed the computer skills test at a much lower rate than did the State as a whole. In Hoke, 51.2% passed, while for the State 74.8% passed.

On the State's so called "high school" competency test (which, as discussed previously, is in substance the same as the eighth grade end-of grade tests of reading and mathematics), the results are similarly disturbing. In 1997-98, students in Hoke performed substantially below the State average on the State's high school competency standard. That year only 52.7% of HCSS 8th grade students passed the test, compared to 68.4% for the State as a whole. Neither percentage is satisfactory as statewide 31.6% (27,777)failed to score at a proficient level at the end of the 8th grade out of more than 87,900 students.

The HCSS results for the EOG tests generally show that Hoke students are more deficient in higher order thinking skills than in skills such as memorization. Educators distinguish higher order thinking skills from more basic skills such as memorization. Higher order thinking skills involve generating, evaluating, synthesizing, and applying information from a variety of sources to solve problems.

In 1998-99, the State sent a voluntary assistance team to South Hoke Elementary School. The team was led by Sharon Ward, and had two other members who were experienced teachers. This team was trained by the State in instructional strategies. The team did an analysis and made numerous reports on South Hoke Elementary.

The State assistance team that worked at South Hoke elementary school said, "Test data indicates that students are not effectively mastering higher order thinking strategies." (PX 9, p. S38819) The test scores analyzed by the team demonstrate this problem; South Hoke students were relatively strong in the reading area for identifying or collecting information and ideas, but weak in such areas as analyzing and synthesizing ideas and discovering related ideas.

Similarly, in the math area, South Hoke students were relatively strong in numeration and measurement, but weak in problem solving. (PX 9, S38828)

Associate Superintendent Moss conducted an analysis of Hoke students' test results and compared achievement on higher order and lower order thinking skills. In general, questions testing lower order skills (such as knowledge and basic comprehension) made up about 30 percent of the end-of-grade tests, and Hoke students did relatively well on such portions of the test. On upper level thinking skills (such as analyzing, synthesizing and evaluating), which make up the remaining 70 percent of the test, Hoke students did poorly.

The low performance of HCSS students contributes to the general economic malaise of Hoke County and helps explain the low socioeconomic status of the community as a whole. In a large, wealthy urban area, poor performing at-risk students are "masked" by students who are in the majority and from middle and upper

middle income families with higher incomes and higher levels of parental education.

Regardless of where the student lives, low academic performance results from the same types of problems that face a higher percentage of the children in HCSS than in a wealthier county with a higher economic base and higher level of middle and upper middle income families.

A large percentage of HCSS students leave the system without graduating. They simply drop out. The drop out factor is one indicator of whether or not a school system is providing its students with the opportunity to obtain a sound basic education. HCSS, however, is not alone in terms of having a drop-out problem. High School drop-outs have not obtained a Sound Basic Education and this problem exists statewide.

In addition to test results as an indicator of whether or not students are obtaining a sound basic education in Hoke, or any LEA, another output measure of any school system is the students who leave school without graduating. Children who drop out of school are much less likely than those who remain to have or to acquire the skills they need in languages, mathematics and sciences to function in a changing society. Students who drop out of school are much less likely to engage successfully in post-secondary education and vocational training. They also are less likely to have sufficient academic and vocational skills to compete on an equal basis with others in the workplace. This is true for dropouts regardless of where they live or the color of their skin.

In 1992, school dropouts across the nation earned an annual income slightly under $13,000 on average, "about one-third less than high school graduates. With respect to lifetime wages, the gap between dropouts and more educated adults is widening steadily as

opportunities expand for higher-skilled workers and disappear for the less skilled. [Researchers have] estimated that, overall, the 1993 dropout pool will earn $212,000 less than high school graduates, and $812,000 less than college graduates. Dropouts comprise nearly half of the heads of households on welfare." PX 177,p.64.

85% of the juveniles in the North Carolina court system are dropouts. 82% of prison inmates are high school dropouts. According to the Department of Public Instruction, "The dropout rate is a key indicator of school success; unfortunately, the numbers indicate that we are continuing to lose too many students." The State Board has adopted as policy the goal of reducing the dropout rate in North Carolina.

The dropout rate is one factor that should be looked at in evaluating the performance of schools. Similarly, according to the State, one of the measures of whether the State is succeeding in its goal of "mastery of essential knowledge and skills by every student"is the "percentage of ninth grade cohort graduating from high school within 4 years."

HCSS' dropout rate has fluctuated substantially from year-to-year in the years beginning 1988-89, with a high of 5.99 and a low of 2.50. In 1997, the dropout rate per 100 students among Native American students in Hoke County was 5.51%, compared to 3.61% countywide and 3.88% statewide. Tona Jacobs, principal of South Hoke Elementary School, testified that these figures are consistent with her observations in Hoke County.

The retention rate in Hoke County is extremely low. The retention rate compares the number of high school graduates with the ninth grade enrollment four years earlier. In Hoke County in the mid-1990s, approximately 41% of those entering the 9th grade graduated from high school four years later. Statewide, in the same

period, over 60% of 9th grade students graduated from high school four years later. HCCS' 41% retention rate was the worst in the State. As one high school teacher observed, students who make it to the senior level are survivors; he estimated that only about half of a freshman class make it to their senior year. T. 11/15, pp. 195-96 (Keim).

HCSS' dismal retention rate is explained in part by the fact that a great number of HCSS students are not well prepared for high school and come from families with low parental education and poor socioeconomic status. Students who do not do well in the early grades are more likely than other students to later drop out of school. T. 9/17, p. 325 (Moss). The State has found retention rates (keeping children in school) a critical component of a sound basic education. If a student drops out of high school, that child has not obtained the quantitative goals of a sound basic education defined in ***Leandro***.

A low high school retention rate also results in an undereducated work force. T. 9/15, p. 99 (Moss). As Bernice McPhatter, the county manager of Hoke, testified, the high drop out rate in Hoke County has hampered county industrial recruitment efforts. Employers do not flock to counties where a great number of potential job holders are functionally illiterate and poorly educated. This same principle applies in every county in North Carolina, especially those that are poor, rural and starving for decent paying industrial jobs.

The dropout problem in Hoke and other counties could be improved with early intervention and other programs. In 1994 the State Board of Education found that "[a] wide range of programs for dropout prevention and students at risk [was] needed within every school system".

The failure of large percentages of HCSS students to complete high school not only results in those children who leave having failed to obtain a sound basic education, but is also evidence of a systematic weakness in the HCSS in meeting the needs of many of its students. In addition, many of those who stay in school and graduate have not obtained a sound basic education. This is evidenced by the number of HCSS graduates who do poorly in the work force and in higher education.

A disproportionate number of HCSS are poorly prepared for employment and for post-secondary education which is evidence that they have not obtained a sound basic education.

"For purposes of our Constitution, a 'sound basic education' is one that provides the student with at least:

- ***sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training***
- ***sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society"***

Leandro.

Post High School employment.

In addition to the dropouts, many of HCSS students who stay in school and graduate, as many of their counterparts throughout North Carolina, have not obtained a sound basic education as defined by ***Leandro in that they are poorly prepared to compete on an equal basis in gainful employment and further formal education in today's contemporary society.***

Evidence of this can be gleaned, not only from ABC results, but from "output" evidence relating to the performance of HCSS graduates in the area of employment and post high school education. Plaintiffs introduced evidence regarding HCSS students who sought employment after leaving high school and HCSS students that pursued further education at a community college or in the University of North Carolina ("UNC") system.

In 1994, the North Carolina Education Standards and Accountability Commission stated, "The United States is in transition from an industrialized society to a technological, information-based society, a transition that is having a profound impact on the American economy. American business is finding it progressively more difficult to compete in the global marketplace against its European and Asian counterparts. One reason, business leaders contend, is that our high school graduates lack adequate mathematics, science, language arts, information processing and problem-solving skills for workplace success. Unskilled labor is no longer a valued commodity in this country . . [T]he number of jobs for unskilled workers has dropped from a high of 60% in 1950 to a projected 15% in 2000." *It is precisely this transition that the Supreme Court addressed in describing the qualitative components of the sound basic education. Listening to the clickety clack of the looms in a textile mill is a thing of the past in North Carolina. A high school diploma has to mean something substantial in terms of what the student has learned and the skills he or she has obtained in the education process. Hoke County's employers testified that HCSS graduates lack these skills.*

Evidence from Hoke County's employers demonstrated that many HCSS graduates lack the skills that local employers need. Several local business people responsible for hiring and training employees in Hoke County testified that many students coming from the Hoke County public schools are not qualified to perform even basic tasks that are needed for the jobs available.

The president and owner of a farm services company in Hoke County (who was also chairman of the Hoke Economic Development Commission) testified that most of his job applicants come from HCSS, and they generally lack the necessary reading comprehension skills. These employees must be able to read labels on products to avoid harming crops. The employees also need to be able to use basic math concepts, such as dividing by a percentage, in order to supply the proper fertilizer mix. New employees from the HCSS often lack these necessary math skills and must be specially instructed.

For purposes of the North Carolina Constitution, a "sound basic education" is one that provides the student with at least "sufficient ability to read, write and speak the English language and a sufficient knowledge of history, fundamental mathematics and physical science to enable to student to function in a complex and rapidly changing society." ***Leandro***

The human resources manager at Burlington Industries in Hoke County explained that even for entry level jobs, Burlington sought employees who could work their way up into more technical jobs. Potential employees need communication skills, as well as problem solving and analytical skills.

The training manager at Burlington testified that employees at the plant needed to be skilled in reading with understanding, because Burlington needed persons

with such skills to stay competitive. As the training manager for Burlington explained, the machinery used today is much more complex than it used to be. Also, employees at Burlington today use computers. Thus the skill level required of employees is higher than in former times.

Many new employees hired at Burlington in Hoke need to be taught basic skills. The majority of workers beginning at Burlington in Hoke are below the 10.9 grade level, which is the level that Burlington aims for. Burlington has tried to address this problem in Hoke by teaching reading, math, and computer literacy skills itself in a computer based learning program called REACH. T. 9/27, pp. 35-37 (Chesnutt).

Most of the Burlington employees who enter the REACH program to learn basic skills are HCSS graduates. Graduates of the REACH program include 178 Hoke High School graduates. 26% of those Hoke High students tested at below the seventh grade level when they began the REACH course, and 67% tested at the ninth grade level or below. This is not surprising to the Court based on HCSS students performance on the ABC tests.

The average age of REACH participants is 30 to 35 years old. In order to graduate from the REACH program, Burlington employees must reach the reading and math skill levels of grade 10.9 or better.

The director of the REACH program at Burlington testified that a sample of Burlington employees in Hoke was given a test of adult basic education. In vocabulary, 60% of the employees tested were below the 8.9 (eighth grade, ninth month) level, and for math, 79% percent were below the 8.9 grade level. As this same instructor testified, there was an equivalent level of test performance found among employees at Unilever, another major employer in Hoke County.

While this evidence is interesting as historical background, it is not surprising given the lack of any meaningful accountability system in place in North Carolina before the adoption of the ABC's program. It is also evidence that corroborates the fact that students who come from households where the parent(s) have a low level of education perform less well in school. Based on this, one would expect the children of these functionally illiterate adults to be at-risk in school and on track to likewise fail to obtain a sound basic education. This is not limited to Hoke County's population because it is a statewide problem for education today. With the loss of old style manufacturing jobs to NAFTA, employers who remain in North Carolina expect their employee pool to be up to date and ready to go to work in today's technical workforce.

In this regard, the qualitative component of a sound basic education that provides the student with at least sufficient academic and vocational skills to enable the student to compete on an equal basis with others in ***gainful employment in contemporary society really means something to Hoke County's employers.***

Unilever, one of the largest employers in Hoke County, operates a plant that produces deodorant, shampoo, and other personal care products. Unilever employees need technical skills, because production lines are high-speed computer-run lines. As a member of the human resources staff testified, Unilever hired approximately 25 new employees in Hoke from January to September, 1999. Although Unilever had received applications from students who have been to Hoke High School, it had not hired any Hoke graduates in 1999 at the time of trial. This is because many of the Hoke applications revealed the applicants' poor writing skills and inability to follow instructions. As a result the HCSS graduate applicants were not able to

compete on an equal basis for gainful employment in contemporary society.

This is true even where hatching turkeys is concerned. The human resources manager of Tar Heel Turkey Hatchery, a company that produces poults (baby turkeys) in Hoke County, testified that the company needs workers with reading, writing and math skills. Some of their jobs require the employees to perform calculations of percentages with regard to medications and vaccines. Some jobs require computer knowledge. In the previous year before the trial, of the 27 applications received from former students of the HCSS, many were incomplete and poorly spelled, and only one Hoke student was hired. Many of the company's 82 employees from HCSS are extremely weak in reading.

This problem is not limited to Hoke County. Any student who has failed to obtain the academic and vocational skills necessary to enable the student to apply for and obtain a decent job is at-risk in today's society.

This outside evidence corroborates the ABC testing data and other evidence relating to HCSS student performance. The Court notes, however, that the employee educational skill level requirements of companies such as Burlington, Unilever, Tar Heel Turkey Hatchery and the agricultural supply business are not limited to Hoke County businesses, but are the same or more rigorous with employers throughout North Carolina. High school graduates from Wake and Mecklenburg Counties that have not performed at grade level or above and thus, have not obtained a sound basic education, face the same employment barriers as functional illiterates in Hoke or other small poor counties with a high school degree that lacks a sound basic education as its foundation. However, the deficiencies in students that have failed to obtain a sound basic education by the time they graduate from

high school are not limited to those who elect to go into the work force upon graduation. The failure to obtain a sound basic education negatively impacts and impedes the student who elects to compete in further formal education such as community college or the university system.

HCSS graduates are generally not well prepared to go on to community college or into the university system.

According to the State, one of the measures of whether the State is succeeding in its goal of "mastery of essential knowledge and skills by every student" is the "percentage of students needing remediation at the post-secondary level." In this respect, evidence of how HCSS students do when they go into the community college and the university system is relevant to whether or not they have obtained a sound basic education at HCSS.

The performance of HCSS students in the community college system evidences a lack of preparation in high school and the lower grades. Of the 1996 HCSS graduates enrolled in North Carolina community colleges in 1996-97, 55% were enrolled in one or more developmental (i.e. remedial) courses. 40% of the HCSS were in "developmental English" and 40% were in regular English. 40% of HCSS graduates were in "developmental mathematics," while only 27.5% were in regular mathematics. Developmental Math is required if a student scores below college level on the Math portion of the ASSET placement test.

In addition, 45% HCSS graduates in community college were taking "developmental reading." Dr. Jaeger found these results consistent with the ASSET test results and other indications of the need for remedial course work after high school graduation. The average grade in remedial reading for those 1996 HCSS graduates who took that course in the NC Community College system was

1.8 on a 4 point scale. This is equivalent to a D+. The average grade in remedial math for 1996 HCSS graduates taking remedial math in the State Community College system in 1997 was 2.1. For HCSS graduates in the system that year the average grade in regular math was 1.8 and in science, 1.8. In short, the grades of HCSS graduates attending community college in remedial and other courses indicate that those students were not adequately prepared to perform at the community college level.

Because of this, it should come as no surprise that among those students from HCSS attending colleges in the UNC system, the percentage taking remedial courses is much higher than the state average. 30.7% of HCSS graduates entering UNC campuses in the fall of 1997 had to take remedial courses. HCSS' rate was double the (15.3%) rate of students from all North Carolina high schools who were required to take remedial courses in college.

22.5% of HCSS graduates entering the UNC system as first time freshmen in the fall of 1997 were placed in remedial math. This is compared to a rate of 14.5% of all N.C. public high school graduates entering the UNC system in the fall of 1997.

29.8% of HCSS graduates entering UNC campuses in the fall of 1996 had to take remedial courses as compared to 16.3% of students from all N.C. public high schools. Of the HCSS graduates entering the UNC system as first time freshmen in the fall of 1996, 10.7% were placed in remedial English as compared to 5.5% of all N.C. public high school graduates entering the UNC system as first time freshmen.

The high rate of students taking remedial courses is costly to the system, as well as to the individuals. The General Administration of UNC has estimated that "approximately $1.4 million was spent on mathematics

remediation in the University of North Carolina in 1995-1996."

The State has agreed that in determining whether an individual school system is providing a sound basic education, it is relevant to consider college admission and performance data and whether students graduating from that system need remediation in order to do postsecondary education work.

Forty-seven of HCSS 235 graduates in 1996 enrolled the next fall at a UNC campus, a 20% rate. Statewide, approximately 29% of all NC high school graduates that year enrolled at a UNC campus that fall. Three UNC institutions enrolled the largest numbers of Hoke students from the graduating class of 1997: Fayetteville State University (7), North Carolina A&T (9) and UNC-Pembroke (9).

In general, UNC institutions make admission decisions based on an assessment of a student's high school record. Factors to consider include grade point average, class rank, advanced courses taken, SAT or ACT scores, extracurricular activities, counselor recommendations and, in some cases, essays.

Of the HCSS graduates who enrolled as first year freshmen at a campus of the University of North Carolina system in the fall semester of 1997, 2.1 percent entered with advanced placement in English. Of all North Carolina public high school graduates entering the UNC system that fall, 11.1% had advanced placement in English. For students enrolling in 1996, the percentage of all North Carolina public high school students with advanced placement in English was 12.2% as compared to HCSS students 6.4%.

Among those enrolling as first time freshmen at a UNC system campus in the fall of 1997, the percentage of HCSS graduates placing in calculus (or a higher math

course) was 6.2%; for all N.C. public high school graduates enrolling as first time freshmen at a UNC system campus that fall, 24.7% placed in calculus or a higher level math course. The prior year, the percentage of students in calculus or above for N.C. public high school students was 23.6% as compared to 8.6% for HCSS.

For all N.C. public high school graduates entering the UNC system as first time freshmen in the fall of 1996, 6.7% enrolled in college honors programs. None of the 47 HCSS graduates who entered the UNC system as first time freshmen enrolled in honors courses.

Students from all N.C. public high schools enrolled in the UNC system in 1996 achieved an average college course grade in biology of 2.2. In comparison, HCSS graduates achieved an average course grade in biology of 1.6, equivalent to a D+. This statistic remained unchanged for 1997.

In 1997, students graduating from N.C. public high schools achieved an average UNC course grade in math of 2.3. In comparison, HCSS graduates achieved an average course grade in math of 1.6, equivalent to a D+. What does all this mean? It means that HCSS students who gain admittance to a UNC institution are far less likely to succeed than students from other high schools in North Carolina.

The Court notes that students from any N.C. LEA who have failed to obtain a sound basic education foundation in math, reading and other core subjects necessary to a successful college experience will have the same problems when and if they are accepted into a UNC institution. A lot of students in the same position as those from HCSS will do poorly and not complete the college experience either.

Of the HCSS graduates who entered a UNC institution as first time freshmen in the fall of 1995, 44.4% returned for their third college year with a GPA of 2.0 or better. Of all N.C. public high school graduates who entered the UNC system as first time freshman in 1995, 62.7% returned for their third year of college with a GPA of 2.0 or better.

Of the N.C. public high school graduates enrolled as first time freshmen in a UNC institution in the fall of 1997, 34.1% returned for a second year with a GPA of 2.0 or better and 30 credit hours or more. In comparison, only 16.4% of HCSS graduates in the UNC system returned for a second year with a GPA of 2.0 or better and 30 credit hours or more.

Of the HCSS graduates who entered the UNC system as first time freshmen in the fall of 1993, 31.3% graduated within 5 years. Of all the North Carolina public high school graduates who entered then, 51.6% graduated from the UNC system within 5 years.

The bottom line is that the performance of HCSS students in UNC system colleges and in community colleges shows that a great number of those students have not obtained the knowledge and skills needed to compete on an equal basis in post-secondary education and for gainful employment in today's job market.

The ABC's test data for HCSS, as well as the entire State of North Carolina, shows that HCSS is not alone or isolated in terms of the poor academic performance of great numbers of its at-risk students. Poor academic performance of at-risk populations of North Carolina public school students permeates throughout the State regardless of the "wealth" or local funding provided.

Based on the data available and the enormity of the at-risk problems throughout the State, the Court cannot close its eyes to this fact and look only at HCSS. The

poor academic performance of at-risk populations is too widespread to by-pass and put off for another day. Additionally, in trying to determine the issues in HCSS as applicable to the Leandro standard, comparisons with other student performance throughout the state on the same test instruments is necessary.

The evidence regarding Hoke County's economy and the socioeconomic status of its population, explains much about the low level of academic performance in the HCSS, and standing alone, constitutes strong and convincing evidence that a great many of the students in the HCSS have for many years failed to obtain the sound basic education guaranteed by the North Carolina Constitution and are continuing to fail to obtain a sound basic education. However, this evidence does answer the Court's inquiry in this case and that is whether or not it is the funding level of HCSS that is a major cause of the problem. To answer this question, the Court must look at the state as a whole in relation to HCSS. The best place to start is with the ABC test data, disaggregated to show how well or poorly other student populations are faring throughout the state.

Under *Leandro*, the Court is required to look at the "output" of student achievement, or the lack thereof, within the context of the ABC testing system of accountability.

Fortunately, the ABC system has been in place long enough for statewide and system-wide data to be available for the Court to look, not only at HCSS, but also to be able to analyze and compare HCSS' performance with those of other LEAs. After examining the test data, especially the test data contained in The Green Books for the years 1995-96 through 1999-2000, the Court is convinced that the problems with HCSS in terms of student achievement are not confined to Hoke and other poor rural counties, but are serious and widespread throughout North Carolina's public

school systems. Hoke County is not alone in poor student performance among the groups of at-risk populations.

Using state average test scores without looking at the at-risk and not at-risk populations performance in a disaggregated fashion answers little, if anything, at all.

What the Court has discovered in its analysis of at-risk student performance statewide should be of great concern to the citizens of North Carolina. It is of great concern to the Court and impacts on this case. As stated earlier, there is no question that there exists substantial student achievement average disparities between Hoke and other poor counties and the larger and wealthier counties. System average comparisons do not tell the story. Using averages masks the true picture with respect to at-risk students' academic performance within any school system, large or small, throughout the State of North Carolina.

Put another way, HCSS is composed of a majority of students that because of socioeconomic background are considered at-risk and this at-risk population in Hoke County is spread across all ethnic groups such that the overall systemwide "average" student performance without regard to race is below many of the larger, wealthier, urban counties where at-risk populations of students do not comprise the large majority of students from middle and upper socioeconomic strata.

In the larger or wealthier systems, the middle and upper middle income students are in the majority and thus, the system average is going to be higher. However, when the Court looks at the at-risk populations in the so-called wealthy and urban districts, regardless of size, the academic performance of the at-risk populations is strikingly similar, if

not worse, than the performance of certain segments of HCSS' at-risk student population.

The Funding Gap that exists between Counties in North Carolina, standing alone, does not explain the poor academic performance of at-risk students.

In this case, the plaintiffs and plaintiff-intervenors seek to have the Court require the State of North Carolina to pour more money into the Public Schools, poor and large urban, as the remedy for children who are not obtaining a sound basic education. The plaintiffs spend a considerable amount of effort and evidence on highlighting the funding disparities in Local Funding and alleged inadequacies in State funding as proof that the State is failing to provide a sound basic education to many of its children, especially those in poor counties and at-risk children in all counties.

While the evidence presented shows that there are considerable disparities in Local support between counties and school districts in North Carolina, the Court's careful examination of the results of student achievement in the ABC's program and other state testing programs reveals that with respect to at-risk student populations, the disparity in Local funding seems to make no discernible difference in the academic achievement of the at-risk populations in the individual districts as compared to a system by system "average" comparison.

Yes, it is certainly true that there are substantial student achievement gaps between the poorer North Carolina counties and the State's economically more advantaged counties. The Public School Forum of North Carolina provides an excellent in-depth analysis of the gaps that exist in the ability of small poor counties to spend money on their schools than that of larger, wealthier counties.

In 1998, the Public School Forum reported that: "The achievement gap between the wealthiest and poorest counties in end-of-grade testing is significant for grades 3-8 (reading and math), high school core courses, and SAT scores." PX 183, 1998 Local School Finance Study, p. 3. "The average percentage of students performing at or above grade level in grades 3-8 (composite score of reading and math, grades 3-8, and writing, grades 4 and 7) was 72.6% in the state's top ten wealthiest counties, but only 55.1% in the ten poorest counties. Over 62% of students in the top ten wealthiest counties achieved proficiency on high school core course tests as compared with only 39.7% of their peers in the ten poorest counties." 1998 Local School Finance Study, p. 3. The same financial trends continue to exist and widen each year according to the 1999 and 2000 Local School Finance Studies, (Pl. Ex. 489 (1999), and Court Exh C (2000).

With all due respect to the Local School Finance Studies approach, using averages, without more, to point out system-to-system disparities in student performance and local funding does not solve the inquiry that the Court is required to make in this case. The information as to ranking, ADM, local spending and supplemental funding provided by the Local School Finance Studies is an invaluable tool for the Court in its work in this case but the Court has to scratch and dig beneath the "averages" in order to determine if the amount of Local funding support is a causative factor in determining whether students are or are not obtaining a sound basic education. To accomplish this job, the Court must look at student population performance within districts and on a statewide basis. Simply put, the Court must "disaggregate" test results in conducting its analysis. This approach is nothing new. One of the criticisms of the the ABCs program has been its failure to disaggregate test result data at the individual school

level "to be sure that all students in that school are being well-taught." T. 11/16, p. 16 (Robinson, former State Board Chair).

While the Court is not going to disaggregate test result data at the individual school level, the Court has exhaustively examined the disaggregated test data available in The Green Books to try and determine whether or not there are student populations throughout school systems and North Carolina that are not obtaining a sound basic education and if so, what apparent effect does the funding disparity between those school systems play in their lack of Level III achievement.

In this regard, it is important to compare at-risk student populations (such as Native Americans, black and Hispanics) with the majority group of students (white) to be sure they are "not being shortchanged." Jay Robinson.

Taking Jay Robinson to heart and looking at the statistics between ethnic groups, the record shows that there are in fact significant disparities across the State in the performance of different ethnic groups. "In 1998-99, 79.2% of White students in grades 3-8 were at or above Achievement Level III in reading and mathematics compared to 48.5% of Black students, 55.5% of American Indian students, and 55.6% of Hispanic students." PX 490, p. 8. See also the disparities which are set forth in the Court's decision in Section II.

The 1996-1997 Report of Student Performance in Writing issued by the Department of Public Instruction notes that a "wide discrepancy among students within a classroom, and across ethnic groups" is indicated in the test results. PX 60, p. 1. For that test, the State designated a score of 2.5 as the grade level standard. PX 60, pp. 2-3. At Grade 7, only 43.3% of

Hispanic students, 40.2% of American Indian students and 39.2% of black students scored at or above a 2.5. PX 60, p. 6. The results for Grade 4 indicated that only 41.9% of American Indian Students, 39.7% of Hispanic students and 36.7% of black students scored at or above a 2.5. PX 60, p. 5.

In analyzing ABCs results, the State has found that "[s]chools with historically higher percentages of students applying for free or reduced lunch tended to have lower performance composites (percent of students at or above grade level) on the ABCs." PX 159(H. Johnson) Schools in the low-performing category almost universally have very high FRPL populations. This finding by the State is corroborated by the performance of students in HCSS. However, there are larger, wealthier school districts that have larger numbers of students with free or reduced price lunch status than attend HCSS in all grades.

By way of example, in 1997-98 Wake County had an ADM of 89,074 children. Of the children attending the Wake County Schools, 31.7% were eligible for free or reduced price lunch, some 27,612 children and over 20,000 more children than enrolled in HCSS in 1997-98. New Hanover County had 21,211 children enrolled in 1997-98. Its free and reduced lunch eligible population was 34.4%, or 7,297 children. Again, more than the total number of students enrolled in HCSS. And, the number of students failing to perform at grade level in Wake County far outnumber the entire student population of HCSS. The same is also true for Charlotte Mecklenburg.

Accordingly, the Court will look not only at HCSS' ABC results but will compare HCSS results with some other school systems starting with its larger, wealthier neighbor, Charlotte Mecklenburg ("CMSS).

Comparison of Hoke County's student performance with Charlotte Mecklenburg (CMS) student performance in 1999-00, a snap shot - small and poor versus large and wealthy.

In looking at Hoke's student performance, a snap shot comparision of Hoke's student peformance with students in a large, urban school district within its geographical region of North Carolina would be interesting, especially for comparison of students of similar race. Using logic and common sense, one would expect to see the academic performance of a large, school district to be substantially better than a poor rural school district such as Hoke, especially where the system's local funding per ADM is substantially higher. In 1998-99, Hoke had 63.7%(3,844) of its students participating in free and reduced price lunch. CMS had 39% (38,653) in free and reduced price lunch, ten times more students than were participating in Hoke.

Hoke County lies within the Southwest Region (RAC 3)of the State. The largest school district in that region is Charlotte-Mecklenburg ("CMS"), a huge urban district. In 1998-99 CMS had over 98,000 students, with a total local funding (excluding capital) per ADM of $1,910 as compared to HCSS's 6,057 ADM and total local spending (excluding capital) per ADM of $664 (which included Low-wealth funding). In 1999-00, CMS had an ADM in excess of 101,000. CMS had 36.4% (37,112) of its students participating in free and reduced price lunch. CMS' average teacher supplement was $4,458.

In 1999-00, HCSS had an ADM of 6,132. HCSS had 60% (3,679) of its students participating in free and reduced price lunch. CMS' average teacher supplement was $397.

In 1998-99,CMS' local funding support was ranked 5th in the State and HCSS' local funding support was ranked

99th in the State according to the 2000 Local School Finance Study, p.8. CMS' teacher average teacher supplement in 1998-99 was $3,951 compared to HCSS' $293. Looking at the difference in local funding per pupil (ADM) in terms of an average classroom of 26 students sharply points out the disparity in local funding support provided to students as between HCSS and CMS. The Court does not have the 1999-00 local funding support data.

The disparity in available local funds between HCSS and CMS using an average class size of 26 students is in excess of $32,000 per classroom. If the amount of money spent per average classroom was the factor that made a difference in student performance, one would expect CMS's students to be light years ahead of HCSS'students. First, let's compare local spending per ADM and an average classroom for example.

Using as an example, an average class of 26 students, let's calculate the disparity in dollar amounts (local funding per ADM) between HCSS and CMS as applied to an average classroom of 26. One ADM equals one student. For each classroom of 26 students with $1,910 per ADM, CMS provides local funding of ***$49,660*** to the 26 students in the average classroom.

Compare this amount to an average classroom of 26 students in HCSS where the spending per ADM is $664. HCSS provides local funding of ***$17,264*** to the 26 students in the average classroom, ***a spending differnce of more than $32,000 per average classroom.*** For this huge amount of extra money per (classroom/ ADM), common sense would dictate that one would find much better student performance on EOG and EOC scores in CMS than in HCSS.

That is, if sheer dollars spent per ADM were being properly spent so as to make a difference in performance of students at-risk of academic failure. A

snap shot of the scores on certain EOC, EOG and Comprehensive tests in reading and math for CMS and HCSS in 1999-00 follows and what common sense would expect is not the case at all with the at-risk students in each LEA:

Since HCSS has a significant number of Native American Students, the Court will include their scores in comparison to CMS's Native American Students as well as the scores of black and white students by way of example for years 1999-00:

3rd Grade Reading and Math EOG scores.

In 1999-00, 39.2% of Hoke County's Native American students performed at or above grade level in reading and math in the third grade. 53.1% of CMS's Native American students performed at or above grade level in reading and math. ***Statewide 52.4% (787 out of 1,502) Native Americans scored at or above Level III-715 failed to achieve grade level proficiency.***

In 1999-00, 44.3% of Hoke County's black students performed at or above grade level in reading and math in the 3rd grade, which was higher than the State percentage of 43.7% and higher CMS' black 3rd grade students' performance at 42% at or above grade level. ***Statewide 30.6% (9470 out of 30,948)blacks scored at or above Level III- 21,478 failed to achieve grade level proficiency.***

In 1999-00, 72.4% of Hoke County's 3rd grade white students performed at or above grade level in reading and math which was lower than the state average of 76.2% and much lower than CMS's 3rd grade white students' average of 81.9% above grade level in reading and math. ***Statewide 61.1% (37745 out of 61,775)whites scored at or above Level III- 24,030 failed to achieve grade level proficiency.***

4th Grade reading and math

In 1999-00, 57.7% of Hoke County's Native American 4th grade students were at or above grade level in reading and math. 58.3% of CMS's Native American 4th grade students were at or above grade level in reading and math. The statewide average for this group was 57.6%. ***Statewide 57.6% (801 out of 1,390) scored at or above Level III - 589 failed to achieve grade level proficiency.***

In 1999-00, 46.9% of Hoke County's 4th grade black students were at or above grade level in reading and math while 53.1% black 4th graders performed below grade level (Level III) in reading and math. Hoke County's black 4th graders outperformed CMS' black 4th graders in reading and math. Only 45.5 % of CMS's black 4th graders scored at or above grade level in reading and math while 54.5% scored below grade level. ***Statewide 48.9% (14,505 out of 29,662) scored at or above Level III - 15,157 failed to achieve grade level proficiency.***

In 1999-00, 73.8% of Hoke County's white 4th graders scored at or above grade level in reading and math as compared to the statewide average of 79.6% of white 4th graders scoring at or above grade level in reading and math. CMS's white 4th graders scored at a 5.1% level of proficiency - 84.7% at or above level III. ***Statewide 62.6% (38,960 out of 62,237) scored at or above Level III - 23,277 failed to achieve grade level proficiency.***

7th Grade reading and math

In 1999-00, 49.1% of Hoke County's Native American 7th grade students performed at or above grade level in reading and mathematics. 62.2% of CMS's Native American 7th grade students performed at or above grade level in reading. ***Statewide 55.4% (794 out of 1,433) scored at***

or above Level III - 639 failed to achieve grade level proficiency.

In 1999-00, 50.7% of Hoke County's black 7th grade students performed at or above grade level in reading and mathematics compared to a statewide average for blacks of 50.5% in the 7th grade reading and math. 51.1% of CMS's black 7th graders scored at or above grade level in reading and math. ***Statewide 50.5% (13,901 out of 27,526) scored at or above Level III - 13,625 failed to achieve grade level proficiency.***

In 1999-00, 73.4% of Hoke County's white 7th grade students performed at or above grade level in reading and math as compared to 81.0 % of white 7th graders statewide and 87.8% of white 7th graders in CMS. ***Statewide 63.8% (38,277 out of 59,995) scored at or above Level III - 21,718 failed to achieve grade level proficiency.***

Algebra I EOC test in high school

In 1999-00, 50.8% of Hoke County Native American students performed at or above grade level on the Algebra I EOC test. In adjacent Scotland County, Native American students scored at a level of 89.7% at or above grade level. 51.9% of CMS's Native American students performed at or above grade level on Algebra I. ***Statewide 52.1% (638 out of 1,224) scored at or above Level III - 586 failed to achieve grade level proficiency.***

In 1999-00, 48.5% of Hoke County's black high school students scored at or above grade level on the Algebra I EOC test compared to the state average of 48.0%. Sadly, only 29.8% of CMS's black high school students scored at or above grade level in Algebra I while 70.2% scored below grade level. (Only 938 black students out of 3,146 taking Algebra I in CMS scored at or above grade level). ***Statewide 48% (11,835 out of***

24,656)scored at or above Level III - 12,821 failed to achieve grade level proficiency.

In 1999-00, 58.1% of Hoke County's white high school students scored at or above grade level on the Algebra I EOC test. CMS's white high school students scored at or above grade level at a rate of 70.6%. *Statewide 66.2% (39,500 out of 59,667) scored at or abobe Level III - 20,167 failed to achieve grade level proficiency.*

N.C. High School Comprehensive Tests in Reading and Mathematics (the test results are not part of the ABCs)

Another snapshot comparison for 1999-00 between HCSS and CMS is to look at the North Carolina High School Comprehensive Tests in Reading and Mathematics. The N.C. High School Comprehensive Tests are given at the end of the tenth grade. These tests assess the English Language Arts and Mathematical Competencies the typical student should master by the end of the 10th grade. These tests were first administered to North Carolina High School students in April, 1998. (The Green Book-1997-98, p. I, Def. 244) The scores are not part of the ABC accountability system. A review of the 1999-00 scores explains why the tests are not counted as part of the ABC's and explains why the DPI is trying to postpone giving a comprehensive high school test as a condition of graduation from high school in North Carolina for several more years. To corroborate this statement, the Court will include the Statewide Performance in addition to CMS and HCSS. The statewide percentage results for 1997-98 and 1998-99 are reported later in this decision.

Comprehensive Test Results in Reading at end of 10th grade-Statewide as well as CMS and HCSS

Statewide in reading only 61.7% of all students scored at or above Level III. 38.3% - 29,629 of all

students failed to score at grade level proficiency and thus, had not obtained a sound basic education in English Language Arts by the end of the 10th grade.

The American Indian score was 42.2% (57.8% below Level III); the black score was 39.4% (60.6% - 12,601 black students below Level III) and the white score was 71.6% (28.4% - 14,627 white students below Level III). 27,228 B&W 10th grade high school students scored below Level III and thus, had not received a sound basic education in English Language Arts by the end of the tenth grade.

HCSS' Native American students scored at 36.8% proficient (Level III or above) in reading while CMS's Native American students scored at 35.3% proficient.

HCSS' black students scored at 30.5% proficient in reading while CMS's black students scored at 37.1% proficient in reading.

HCSS' white students scored at 68.3% proficient in reading while CMS's white students scored at 78.1% proficient in reading.

Comprehensive Test Results in Mathematics at end of 10th grade- Statewide as well as HCSS and CMS.

Statewide in mathematics only 64.7% of all students scored at proficient (Level III or above). 35.3% - 27,308 students failed to score at grade level proficiency and thus, had not obtained a sound basic education in mathematics by the end of the 10th grade.

The American Indian percent proficient was 45%; the black percent proficient was 40.8% (59.2% -12,234 black students below grade level); the white percent proficient was 74.7% (25.3% -13,003 white students below grade level). As a result of these scores,

25,237 of the B&W 10th grade high school students had not received a sound basic education in mathematics by the end of the tenth grade.

HCSS' Native American students scored at 42.1% proficient. CMS' Native American students scored at 35.2% proficient in mathematics.

HCSS' black students scored at 40.1% proficient while CMS's black students scored at 38.1% proficient in mathematics.

HCSS' white students scored at 78.1% proficient while CMS' white students scored at 80.6% proficient in mathematics.

While the foregoing comparison only covers one year, similar results can be found for the previous years, including 1997-98, the first year in which the high school comprehensive tests in reading and math were given. While the percentages may vary somewhat, the trend remains the same-unacceptable.

Test scores (which are discussed throughout the Court's decision) are not, however, the only available output evidence. Plaintiffs offered testimony of a number of Hoke County public school administrators and teachers. These witnesses testified that many of their students were not performing at grade level and lacked essential skills. These witnesses, however, could be talking about any child in any classroom in the State of North Carolina who is not performing at grade level and lacked essential skills.

Many children in Hoke County begin their public schooling poorly prepared. Many children arrive at kindergarten not knowing what a book is or knowing their colors. One kindergarten teacher testified that every year, over half of her kindergarten students

cannot recognize or write their name and cannot hold a pencil, scissors or crayons because they do not have these things at home. Thus they lack skills and basic knowledge needed by kindergarteners. As explained in Section II of the Court's decision, this is not unique to Hoke.

As one Hoke third grade teacher testified, some Hoke students are not able to read when they arrive in the third grade. Those who do read have difficulty with comprehension, analyzing and problem solving. A student who cannot read when he enters third grade will not be reading at grade level at the end of the year, given the limited resources available. The same is true for any student in any county within North Carolina who is unable to read at grade level when he or she enters the third grade. See the Court's discussion in Section II of the decision dealing with At-Risk Children.

The performance problems do not stop in the 8th grade but continue to affect high school performance as well. This is true, not only in HCSS, but permeates the at-risk children in every system in North Carolina as the Statewide results show.

As one Hoke County high school biology teacher testified, many Hoke County high school students do not have the basic reading skills necessary to succeed in biology classes. Many students have difficulty reading the text and sounding out the biology vocabulary. High school students in Hoke often lack the critical thinking skills necessary to relate scientific concepts, as well as the basic math skills necessary to complete basic calculations. Those students also have difficulty reading and comprehending the questions on the state end-of-course tests. The same is true throughout North Carolina counties as shown by the performance of students on Algebra I, Physical Science, Biology, U.S. History and English I EOC tests, all

covering subjects that are needed for a student to achieve a sound basic education.

As one high school English teacher testified, some Hoke regular senior English students cannot read on a second-grade level. Many students cannot use vocabulary words correctly in a sentence, identify literary terms that they were taught in ninth grade, or come up with examples of concepts they previously learned. The same is also true throughout other counties in North Carolina judging by the large numbers of high school students who cannot achieve proficiency in reading and by the end of the tenth grade, or on the EOC tests.

A review of the major high school EOC tests for 1999-00 proves that this is not simply a Hoke County problem - it is a statewide problem, especially when looking at the sheer number of children who are failing to achieve proficient scores in high school EOC tests necessary for a sound basic education.

Biology EOC - 1999-00.

Statewide there were 80,549 students who took the EOC test in biology, a course required for high school graduation and a subject necessary for a sound basic education. Only 57.6% scored at Level III or above. Native Americans scored at 36.6% proficiency; blacks scored at 32.0% proficiency (68%-12,904 scored at Level II or below); whites scored at a 68.6% proficiency (31.4% - 16,934 scored at Level II or below); Hispanics scored at 44% proficiency. **The bottom line is that 42.4% - 34,153 students in high school in North Carolina failed to achieve a sound basic education in biology in the year 1999-00. Of those children failing to achieve a sound basic education in biology, 49.6% were white.**

English I EOC - 1999-00.

Statewide there were 93,434 students who took the EOC test in English I, a course required for high school graduation and a subject necessary for a sound basic education. Only 68.4% scored at Level III or above. Native Americans scored at 48.3% proficiency; blacks scored at 49.3% proficiency (51.7%-13,920 scored at Level II or below); whites scored at a 77.8% proficiency (22.2% - 13,414 scored at Level II or below); Hispanics scored at 51.7% proficiency. **The bottom line is that 31.6% - 29,525 students in high school in North Carolina failed to achieve a sound basic education in English I in the year 1999-00. Of those children failing to achieve a sound basic education in English I, 45.4% were white and 47.1% were black.**

Physical Science EOC - 1999-00

Statewide, there were 67,066 students tested in physical science, a subject necessary to achieve a sound basic education under ***Leandro***. Only 57.1% scored at Level III or above. Native Americans scored at 32.4% proficiency; blacks scored at 33% proficiency (67%-13,350 scored at Level II or below); whites scored at 69.5% proficiency (31.5%- 13,436 scored at Level II or below); Hispanics scored at 42.6% proficiency. **The bottom line is that 45.1% - 30,247 students failed to obtain a sound basic education in physical science in 1999-00 in North Carolina. Of that number, 44% were white and 44% were black.**

HCSS and CMS EOC scores in physical science were well below the state average. Black students in CMS scored 25% proficient (75% did not obtain a sound basic education in physical science) and black students in HCSS scored 19.4% proficient (80.6% did not obtain a sound basic education in physical science). White students in CMS scored at 71.3%, less than a percentage point over the state average for whites and white

students in HCSS scored at 64.3%, five points below the state average for whites.

As one Hoke County teacher testified, many Hoke High School math students lack the critical thinking skills necessary to succeed in lower level math courses. For example, students do not understand examples of square footage of carpets, calculating sales tax, or the rise and fall of stock prices because they have never been exposed to any of these concepts. This is also true throughout other counties in North Carolina judging by the large numbers of students who cannot achieve proficiency in mathematics by the end of the tenth grade, or in Algebra I, or Algebra II.

Algebra I EOC - 1999-00

Statewide, there were 90,109 students tested in Algebra I, a course required for high school graduation. 68.9% scored at Level III or above. 31.1% scored below grade level. Native Americans scored at 52.1% proficient (Hoke 50.8%;CMS 51.9%); blacks scored at 48% proficient (52%- 12,821 failed to score at Level III); whites scored at 77.7% proficient (22.3% - 13,305 failed to score at Level III); Hispanics scored at 62.4% proficient; **The bottom line is that 28,024 high school students failed to obtain a sound basic education in Algebra I. Of that number 12,281 were black and 13,305 were white, a combined total of 25,586 B&W.**

Algebra II EOC - 1999-000.

In 1999-000 in Algebra II, there were 52,451 students participating in EOC tests for the course. 61.1% scored at Level III or above. 38.9%-20,403 students failed to score at grade level. For Native Americans the level of proficiency was 37.3%. HCSS' Native Americans scored at a level of 42.9%. For black students statewide the level of proficiency was 39.6%

(60.4% - 7185 were not proficient). HCSS' black students were 32.8% proficient. CMS' black students were 38.1% proficient. For white students statewide the level of proficiency was 70% (30% -11,239 were not proficient). HCSS' white students were 58.7% proficient. CMS' white students were 70.2% proficient, the state average for white students. **The bottom line is that 20,403 high school students (38.9%) failed to achieve a sound basic education in Algebra II.**

As a Hoke High School social studies teacher testified, many social studies students are not reading at grade level, and have difficulty grasping the subject matter because of their lack of vocabulary. This is also true throughout North Carolina as evidenced by the 1999-000 student performance on core high school courses such as Economics, Legal and Political Systems (ELP) and American History, all of which are part of the substantive sound basic education mandated by ***Leandro***.

ELP Systems EOC - 1999-000.

Statewide, there were 78,992 students who were tested in ELP, a course required for high school graduation and the subject matter of which is necessary for a sound basic education under ***Leandro***. 67.3% of all students scored at Level III or above. Native Americans scored at 41.9% proficiency (HCSS Native Americans scored at 50.0%); blacks scored at 45.9% (54.1% - 11,940 scored at Level II or below); whites scored at 77.6% proficiency (22.4%- 11,505 scored at Level II or below); Hispanics scored at 53.3% proficiency. **The bottom line is that 32.7% -25,830 students failed to obtain a sound basic education in ELP Systems in 1999-00 statewide. Of that number, 44.5% were white and 46.2% were black.**

HCSS black students scored at 55.2% proficiency. CMS black students scored at 39.2% proficiency (60.8% below

grade level); HCSS white students scored at 75% proficiency and CMS white students scored at 78.8% proficiency.

United States History EOC- 1999-00 *Leandro requires a "sufficient fundamental knowledge of ..history"*

Statewide, there were 70,930 students who were tested in U.S. History, a fundamental knowledge of which is required under the ***Leandro*** standard for obtaining a sound basic education. In an almost unbelievable display of ignorance, only 46.9% of N.C. High School students scored at a proficient level. **53.1% - 37,664 students failed to show that they had achieved a sound basic education in U.S. History.** 27.7% of American Indians scored at Level III (Hoke 14.3%); 24.6% of blacks scored at Level III (75.4%- 14,696 scored below Level III); 56.5% of whites scored at Level III (43.5% -20,598 scored below Level III); 38.6% of Hispanics scored at Level III; (Hoke 42.9%);(CMS 31.1%)

The testimony of Hoke teachers regarding poor student performance in high school is corroborated by the EOG and EOC scores for Hoke County. However, as the record clearly and unequivocally shows, poor student performance (by at-risk children) exists not only in Hoke County and CMS but in all counties statewide as the test scores for 1999-00 and prior years show.

In this regard, the Court has compiled data from the Green Books for the years 1995-66 through 1999-00 that shows the numbers of white, black, Asian, Hispanic & American Indian students who are performing below grade level (below Level III) in the 8th grade reading and math and in 6 core high school courses, all of which are an essential component of the ***Leandro*** sound basic education. This data puts a number by each percentage of student performance per ethnic group for those who have failed to achieve grade level. The data clearly

shows that for each year and for each course, although there is incremental improvement over time, that the numbers of black and white students individually at-risk in these courses (by failing to achieve grade level) are almost the same in each subject. The bottom line is that the numbers of at-risk students are about equal, as between blacks and whites, while the percentages vary due to the total numbers of students in each ethnic group. The numbers of children not achieving proficiency is disturbing.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Reading & Math in Grade 8

Year	White	Black	Asian	Hispanic	American Indian
95-96	15,751 (27.9%)	15,262 (63%)	331 (29.2%)	618 (49.7%)	857 (60.4%)
96-97	14,606 (25.5%)	15,197 (60%)	359 (29.6%)	760 (49.6%)	702 (54.3%)
97-98	11,410 (19.6%)	12,600 (50.9%)	366 (26.2%)	763 (43.5%)	597 (45.1%)
98-99	11,481 (19.4%)	12,747 (48.6%)	348 (23.2%)	889 (43.5%)	531 (41.4%)
99-00	9,336 (15.8%)	11,534 (44.6%)	300 (18.6%)	904 (38.6%)	454 (34.6%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Algebra I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	24,020 (46.2%)	16,643 (76.6%)	396 (33.2%)	677 (61%)	966 (78.5%)
96-97	19,804 (35.4%)	15,409 (66.1%)	413 (28.9%)	648 (51.4%)	720 (67.4%)
97-98	16,588 (29.7%)	13,732 (60%)	357 (24.7%)	604 (42.5%)	494 (50.2%)
98-99	15,149 (26.3%)	13,430 (55.6%)	376 (21.1%)	630 (36.8%)	491 (43.6%)
99-00	13,306 (22.3%)	12,821 (52%)	369 (21%)	787 (37.6%)	586 (47.9%)

NOTE: Algebra I is generally taken in the 9th and 10th grades by the majority of students. The students who take Algebra I in the 7th and 8th grades score at higher levels of proficiency (99-00 7th gr. 96.9%; 8th gr. 90.9%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In English I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	20,379 (39.4%)	17,428 (73.1%)	446 (41.2%)	759 (62.5%)	957 (70.6%)
96-97	17,836 (39,8%)	16,773 (63.3%)	503 (35.9%)	847 (55.5%)	875 (66.7%)
97-98	16,568 (28.9%)	15,660 (60.2%)	503.(35.2%)	852 (52.4%)	839 (62.6%)
98-99	14,860 (25.6%)	14,508 (55.5%)	532 (34%)	931 (49.5%)	744 (53.4%)

99-00	13,415 (22.2%)	13,625 (51.7%)	473 (28.3%)	1134 (48.3%)	709 (51.7%)

NOTE: English I is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In ELP EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,786 (47.4%)	17,889 (80.1%)	568 (54.8%)	909 (70.7%)	872 (76.6%)
96-97	14,617 (27.1%)	13,866 (59.1%)	538 (34.6%)	769 (50.8%)	854 (55.6%)
97-98	11,718 (23.1%)	11,914 (54.2%)	516 (33.8%)	675 (44.8%)	540 (51.1%)
98-99	11,822 (23.0%)	11,423 (53.6%)	604 (36.0%)	780 (47.3%)	564 (53.2%)
99-00	11,505 (22.4%)	11,940 (54.1%)	556 (31.7%)	912 (46.7%)	686 (58.1%)

NOTE: ELP is taken in the 9th grade by the majority of students

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Biology EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,934 (51.2%)	17,578 (84.9%)	528 (51.3%)	757 (70.3%)	966 (80.0%)
96-97	16,155 (31.2%)	15,720 (69.1%)	421 (33.5%)	605 (50.6%)	580 (61.8%)
97-98	15,077 (29.1%)	15,267 (67.2%)	493 (34.1%)	685 (51.7%)	577 (57.6%)
98-99	15,145 (30.1%)	15,278 (68.7%)	579 (39.8%)	789 (54.4%)	512 (55.7%)
99-00	17,474 (31.4%)	14,630 (68.0%)	684 (41.0%)	984 (56.0%)	692 (63.4%)

NOTE: Biology is taken in the 10th grade by the majority of students. It may also be taken as early as the 9th grade. In 1999-00 the 9th graders who took biology scored at a proficiency level of 70.4%.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Physical Science EOG Tests * Physical Science EOG testing did not begin until 1998-99 *

Year	White	Black	Asian	Hispanic	American Indian
98-99	13,750 (32.0%)	13,885 (68.4%)	533 (47.3%)	880 (58.3%)	629 (65.4%)
99-00	13,010 (30.5%)	13,350 (67.0%)	450 (40.4%)	995 (57.4%)	764 (67.6%)

NOTE: Physical Science is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In U.S. History EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	22,610 (56.3%)	14,388 (84.4%)	488 (52.3%)	628 (81.9%)	819 (80.8%)

96-97	18,978 (41.3%)	13,804 (72.1%)	446 (40.1%)	523 (57.9%)	600 (69.9%)
97-98	18,866 (41.3%)	13,667 (71.5%)	524 (42.6%)	616 (58.3%)	603 (72.1%)
98-99	18,502 (39.6%)	13,788 (70.6%)	591 (41.3%)	684 (57.8%)	622 (70.5%)
99-00	20,598 (43.5%)	14,696 (75.4%)	714 (49.7%)	807 (61.4%)	634 (72.6%)

NOTE: U.S. History is taken in the 11th grade by the majority of students. Of those taking the course whose post high school plans did not include a 4 year college, no group scored greater than 32% proficient. Of those who planned to go to a 4 year college, 59.6% scored at proficiency (Level III) in 1999-00.

The foregoing analysis is a highlight. A thorough review of the data contained in The Green Book for each year from the 1995-96 edition to the 1999-2000 edition, shows that black, Hispanic, and Native American students in North Carolina consistently score lower than Asian and White students on EOC and EOG tests. The same is true for the Comprehensive Reading and Mathematics tests that have been given at the end of the tenth grade since 1998.

The same disparities that appear in the state tests appear on the SAT results.

The same also applies to SAT tests. PX 478, p. 4. For example, black SAT test-takers in North Carolina trailed the State average in 1999 by 149 points and trailed white test-takers by more than 200 points. PX 478, pp. 3-4. Black, Native American, Asian, and white students in North Carolina also all consistently score lower than their counterparts nationally on SAT tests. Of these groups, North Carolina's black SAT test-takers actually are closest to their national counterparts -- but still trailed by a full 19 points in 1999. PX 478,

After examining the data in The Green Book and data relating to Local funding efforts, teacher supplements and other evidence, it appears to the Court that the amount of Local funding effort does not have much, if any impact, on the poor student performance of those children who are consistently failing to achieve proficiency (Level III or above) regardless of race.

One would, of course, expect the opposite but the comparison of CMS and HCSS shows that both have high percentages of at-risk students not achieving academic success. One comparison is not enough.

Therefore, the Court has compiled the data from 3 counties - Orange, Harnett and Wake - for the past 3 years. Orange and Wake are in the top 20 counties in terms of Local funding support while Harnett (although similar in numbers of students to Orange) ranks next to HCSS, at the very bottom. The data there shows the same disturbing trend in the performance of at-risk students as in HCSS and CMS. The Court does not have the ADM Local funding data for 99-00.

COMPARISON OF STUDENT PERFORMANCE ON ABC'S IN ORANGE/CHAPEL HILL/CARRBORO; HARNETT & WAKE FOR 1997-98;1998-99 & 1999-00 WITH THE STATEWIDE AVERAGE PERFORMANCE.

ORANGE COUNTY - NUMBER 1 IN LOCAL FUNDING 97-98 & 98-99

Orange County has been number 1 in North Carolina in actual effort in local funding support to its school systems for 1997-98 and 1998-99.

In 1997-98, Orange County had an ADM of **14,517**. Its spending per ADM (excluding capital) was $2,391 ($62,166 per average classroom of 26 students). Orange County's two LEAs paid their teachers an average supplement of $3,052 (Orange County) and $3,025 (Chapel Hill/Carrboro). Orange County had 24.6%(1,484) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 16.9% (1,382) participation in free and reduced lunch.

In 1998-99, Orange County had an ADM of **14,892**. Its spending per ADM (excluding capital) was $2,608 ($67,808 per average classroom of 26 students). The average teacher supplement was $3,250 and $3,075,

respectively. Orange County had 26.3% (1,620) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 16.3% (1,377) participation in free and reduced price lunch.

In 1999-00, Orange County had an ADM of 14,619. The average teacher supplement was $3,872 (Orange Co.) and $4,418 (Chapel Hill). Orange County had 25.8%(1,672) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 18% (1,609) participation in free and reduced price lunch.

HARNETT COUNTY - NUMBER 97TH & 98TH IN LOCAL FUNDING 97-98 & 98-99 But comparable in numbers of students to Orange County.

Harnett County has been in the bottom in North Carolina in actual effort in local funding support to its school system for 1997-98 (**97th**) and 1998-99 (**98th**). HCSS has been the system just below Harnett in each of those years. Harnett County and Orange County have almost the same number of ADM. In 1997-98, Harnett County had an ADM of **14,417**. Its spending per ADM (excluding capital) was $608 ($15,808 per average classroom of 26 students) identical to HCSS in the same year. Harnett paid its teachers an average supplement of $756. Harnett had 47.6% (7,177) of its students participating in free and reduced price lunch.

In 1998-99 Harnett County had an ADM of **15,414**. Its spending per ADM (excluding capital) was $696 ($18,096 per average classroom of 26 students). Harnett paid its teachers an average supplement of $956. Harnett had 46.8% (7,201) of its students participating in free and reduced price lunch.

In 1999-00 Harnett County had an ADM of **15,932**, with 47.5% (7,568) of its students participating in free and reduced price lunch. Harnett paid its teachers an average supplement of $1,270 in 1999-00.

WAKE COUNTY -NUMBER 15TH AND 17TH IN LOCAL FUNDING AND SECOND LARGEST SYSTEM IN THE STATE BEHIND CMS - CONSIDERED TO BE ONE OF THE BEST ACADEMIC LARGE SYSTEMS IN NORTH CAROLINA.

Wake County has been in the top 20 counties in North Carolina in actual effort in local funding support to its school system for 1997-98 (15th) and 1998-99 (17th). In 1997-98, Wake had an ADM of **89,704**. Its spending per ADM (excluding capital) was $1,302 ($33,852 per average classroom of 26 students). Wake paid its teachers an average supplement of $3,572. Wake had 22.3% (19,954) of its students participating in free and reduced price lunch.

In 1998-99 Wake County had an ADM of **92,566**. Its spending per ADM (excluding capital) was $1,409($36,634 per average classroom of 26 students). Wake paid its teachers an average supplement of $4,226. Wake had 21.7% (19,658) of its students participating in free and reduced price lunch.

In 1999-00 Wake County had an ADM of **102,646**. Wake paid its teachers an average supplement of $4,485. Wake had 22% (22,630) of its students participating in free and reduced price lunch.

Wake's local funding effort per ADM for each year was more than twice that of Harnett's per ADM about one half of Orange County's local funding effort per ADM. The Chapel Hill/Carrboro school is located squarely in the middle of the University of North Carolina community. Its student scores should be higher due to the level of parental education in the community.

The Court, using The Green Book, has compared the 4 school systems' for three years (97-98;98-99 & 99-00). The comparison sets out the percentage of black (B) and (W) white students who scored ***at or above grade level***

indicating that they were obtaining a sound basic education in those subjects (Level III or Level IV) for each year in the following areas: (a) EOG in Reading and Math for grades 3 and 8-the percentage is the number of students who have performed at grade level in **both** reading and math; (b) The N.C. Comprehensive Tests in Reading and Mathematics given at the end of the 10th grade; (c) High School EOC tests in 4 core subjects that are all components of a sound basic education and high school education to wit: English I, Algebra I, ELP and Biology(98) /Physical Science (99/00). ***DUE TO SPACE CONSIDERATIONS THE COURT IS ROUNDING OFF THE PERCENTAGE TO THE NEXT HIGHEST NUMBER.***

What do the numbers show: By way of example. Take the U.S. History EOC test for 99-00 (History is another component of a sound basic education) in the Orange County Schools. The % of black students scoring at Level III or above was 48.1% (this means that ***51.9% failed to score at grade level*** and thus, had not obtained a sound basic education in U.S. History). The % of white students scoring at Level III or above was 62.1% (this means that ***37.9% failed to score at grade level*** and thus, had not obtained a sound basic education in U.S. History). To interpret the data set out below, all one has to do is understand the foregoing. ***ON THE CHART THE NUMBER 51.9% IS ROUNDED UP TO 52% AND 37.9% IS ROUNDED UP TO 38%.***

Remember, the ***percentages shown are the percentages of children, black and white, who scored proficient-grade level or above-on the EOG/EOC tests in the subjects shown.*** Following each comparison, the Statewide Performance Average of Black and White Students in that subject area for that year is set out.

1997-98

	GRADE 3 (R&M)		GRADE 8 (R&M)		NC COMPREHENSIVE TEST													
					Read			Math			ALG I		ELP		BIOL		ENG I	
	B	W	B	W	B	W		B	W	B	W	B	W	B	W	B	W	
ORANGE	38	68	49	85	40	70		53	74	80	93	52	76	42	77	50	76	
CH/CA	39	90	62	97	41	91		49	91	42	91	43	94	34	93	40	94	

HARNETT	39	66	54	79	26	56	27	53	42	66	53	82	28	63	47	70
WAKE	38	83	52	90	42	80	49	91	53	84	49	85	43	85	45	83

1997-98. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST				- ALG I		- ELP		- BIOLOGY		- ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W	B	W
State	39	73	50	81	35	65	32	65	40	71	46	77	33	71	40	72

1998-99

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST				- ALG I		- ELP		- PHYS SC		- ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W	B	W
ORANGE	43	78	41	81	41	70	35	74	56	77	51	79	26	70	40	78
CH/CA	41	92	60	97	43	94	47	93	46	88	47	94	32	86	55	95
HARNETT	50	73	55	79	37	69	37	68	48	67	60	82	29	68	47	70
WAKE	43	84	52	91	50	84	49	85	57	85	47	84	32	74	48	85

1998-99. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST				- ALG I		- ELP		- PHYS SC		- ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W	B	W
State	42	75	51	82	39	72	37	72	46	74	47	77	32	68	45	75

1999-00

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST				- ALG I		- ELP		- PHYS SC		- ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W	B	W
ORANGE	37	80	57	81	46	73	47	78	67	81	41	81	19	59	43	83
CH/CA	44	93	64	98	36	96	51	95	48	94	60	95	43	89	63	98
HARNETT	50	76	62	80	35	66	43	80	52	67	56	77	37	67	54	76
WAKE	45	89	60	92	50	86	50	87	60	88	51	89	36	79	53	90

1999-00. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST				- ALG I		- ELP		- PHYS SC		- ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W	B	W
State	44	77	56	85	40	72	41	75	48	78	46	78	33	70	50	78

In anticipation of the carping that would occur (although the Court has examined The Green Book data

for each district and county in N.C.) if the Court only makes a 5 county, 6 district comparison (the Court has already compared CMS and HCSS earlier in this decision which adds 2 more systems totaling 5 counties), the Court has decided to look at 8 more LEAs throughout the State over the last two years, 1998-99 & 1999-00. The Court does not have the per ADM funding data 1999-00.

The Counties in which the LEAs are located are from the top, middle and bottom in terms of 97-98 & 98-99 Local funding per ADM and average teacher supplements (98-99&99-00) In addition, the free and reduced price lunch participation will be listed for each LEA for 98-99 & 99-00. To make the comparison complete, the Court has added Charlotte-Mecklenburg and Hoke to the comparison for 98-99 and 99-00.

DURHAM COUNTY. Durham County ranked Number 3 in 97-98 with Local funding per ADM in the amount of $1,941 (28,937 students). In 98-99 Durham ranked Number 4 in Local Funding per ADM in the amount of $2,025 (29,270 students). In 98-99 Durham's average teacher supplement was $3,078 and Durham's free and reduced price lunch participation was 41.2% (11,749 students). In 99-00, Durham had an ADM of 28,740. Durham's average teacher supplement was $4,009 and Durham's free and reduced price lunch participation was 40.0% (11,487 students).

FORSYTH COUNTY. Forsyth County (Winston-Salem Forsyth LEA) ranked Number 7 in 97-98 with Local funding per ADM in the amount of $1,696 (42,120 students). In 98-99 Forsyth ranked Number 8 in Local funding per ADM in the amount of $1,645 (43,103 students). In 98-99 Forsyth's average teacher supplement was $3,015 and Forsyth's free and reduced price lunch participation was 35.2% (15,186 students). In 99-00, Forsyth had an ADM of 43,363. Forsyth's average teacher supplement was $2,809 and Forsyth's free and reduced price lunch participation was 36.8% (15,938 students).

GUILFORD COUNTY. Guilford County (Greensboro) ranked Number 10 in 97-98 with Local funding per ADM in the amount of $1,551 (59,120 students). In 98-99 Guilford ranked Number 11 in Local funding per ADM in the amount of $1,555 (60,409 students). In 98-99, Guilford's average teacher supplement was $3,033 and Guilford's free and reduced price lunch participation was 38.8% (23,811 students). In 99-00, Guilford had an ADM of 62,856. Guilford's average teacher supplement was $3,001 and Guilford's free and reduced price lunch participation was 39.3% (24,712 students).

RANDOLPH COUNTY. Randolph County ranked Number 92 in 97-98 with Local funding per ADM in the amount of $697 (20,014 students, including Asheboro City). Randolph County received Low Wealth Funding in 98-99. In 98-99 Randolph ranked Number 94 in Local funding per ADM in the amount of $734 (15,763 students excluding Asheboro). In 98-99, Randolph County received Low Wealth Funding. Randolph County's average teacher supplement was $504 and Randolph County's free and reduced price lunch participation was 27.9% (4,394 students). In 99-00, Randolph County (excluding Asheboro City Schools) had an ADM of 17,008. Randolph County's average teacher supplement was $499 and Randolph County's free and reduced price lunch participation was 26.4% (4,491 students).

NEW HANOVER COUNTY. New Hanover County (Wilmington) ranked Number 11 in 97-98 with Local funding per ADM in the amount of $1,475 (21,211 students). In 98-99, New Hanover ranked Number 9 in Local funding per ADM in the amount of $1,643 (21,101 students). New Hanover's average teacher supplement was $2,534 and New Hanover's free and reduced price lunch participation was 36% (7,577 students). In 99-00, New Hanover had an ADM of 25,235. New Hanover's average teacher supplement was $2,535 and New Hanover's free and reduced price lunch participation was 29.8% (7,530 students).

ROBESON COUNTY. Robeson County ranked Number 96 in 97-98 with Local funding per ADM in the amount of $664 (23,274 students). Robeson County receives Low Wealth Funding each year. In 98-99, Robeson ranked Number 96 in Local funding per ADM in the amount of $709 (23,484 students). Robeson's average teacher supplement was $1,375 and Robeson's free and reduced price lunch participation was ***73.3%*** (17,746 students). In 99-00, Robeson had an ADM of 24,388. Robeson's average teacher supplement was $1,250 and Robeson's free and reduced price lunch participation was ***73.6%*** (17,954 students).

HALIFAX COUNTY (does not include Roanoke Rapids City or Weldon City data on performance, or ADM, or supplement) Halifax County ranked Number 65 in 97-98 with Local funding per ADM of $854(6,517 students). Halifax County receives Low Wealth Funding. In 98-99, Halifax ranked Number 64 in Local Funding per ADM in the amount of $925 (6,328 students). Halifax's average teacher supplement was $165 and Halifax's free and reduced price lunch participation was ***82.6%*** (5,225 students). In 99-00, Halifax had an ADM of 6,306. Halifax's average teacher supplement was $450 and Halifax's free and reduced price lunch participation was ***82.0%*** (5,170 students). The Court notes that the overwhelming majority of the students in the Halifax County system are black, a trend that is not unusual in the poorest Northeast N.C. Counties (those with free and reduced lunch participation over 70%). Those counties are Bertie, Hyde, and Washington.

PITT COUNTY. Pitt County ranked Number 53 in 97-98 with Local funding per ADM of $895 (19,333 students). Pitt County receives Low Wealth Funding. In 98-99, Pitt ranked Number 60 in Local Funding per ADM in the amount of $944 (19,666 students). Pitt's average teacher supplement was $924 and Pitt's free and reduced price lunch participation was 46.2% (8,938 students). In 99-00, Pitt had an ADM of 19,343. Pitt's average teacher

supplement was $1,361 and Pitt's free and reduced price lunch participation was 49.1% (9,488 students).

In 1997-98, there were 483,872 students participating in free and reduced price lunch in N.C.-this was 39.6% of the children in the public schools. In 1998-99, there were 494,099 students participating in free and reduced price lunch in N.C.-this was 40.2% of the children in the public schools. In 1999-00, there were 500,533 students participating in free and reduced price lunch in N.C.- this was 39.5% of the children in public schools.

In the following comparison, the Court notes that the two consistently lowest performing counties in the tenth grade comprehensive tests and high school EOC test were Robeson and Halifax for 98-99 and 99-00. The factor that distinguishes Robeson and Halifax is the percentage of free and reduced price lunch participation. Robeson's percentage for 97-98 was 73.7%; for 98-99 it was 73.3%; and for 99-00 it was 73.6%. Halifax's percentage for 97-98 was 83.5%; for 98-99 it was 82.6%; and for 99-00 it was 82%.

1998-99

	GRADE 3 (R&M)		- GRADE 8 (R&M)		- NC COMPREHENSIVE TEST -				ALG I -		ELP - -		ENG I	
	B	W	B	W	(R) B	W	(M)	B	W	B	W	B	W	B	W
ORANGE	43	78	41	81	41	70		35	74	56	77	51	79	40	78
CH/CA	41	92	60	97	43	94		47	93	46	88	47	94	55	95
HARNETT	50	73	56	79	37	69		37	68	48	67	60	82	47	70
WAKE	43	84	52	91	50	84		49	85	57	85	47	84	48	85
DURHAM	42	81	50	88	44	82		43	81	42	72	45	80	48	84
FORSYTH	35	77	50	82	40	79		40	79	68	82	44	79	49	80
GUILFORD	39	78	49	84	45	78		41	79	34	70	51	84	45	80
RANDOLPH	38	68	33	71	46	61		42	64	60	79	79	(9) 90	39	66
N.HANOVER	42	81	50	88	45	79		38	77	42	73	42	80	49	82
ROBESON	45	69	43	73	27	58		26	54	54	69	41	74	40	64
HALIFAX	61	80	48	41	33	34 (9stu.)		29	50	43	35	47	62	29	24 (17st.)
PITT	40	77	53	89	45	79		42	82	66	86	58	86	46	82
CMS	40	83	42	83	34	75		32	77	28	63	38	81	39	82

HOKE	41	75	51	82	21	53	22	57	39	63	52	81	47	70		

1998-99. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -				ALG I -		ELP - -		ENG I	
	B	W	B	W	Read B	W	Math	B	W	B	W	B	W	B	W
State %	42	75	51	82	39	72		37	72	46	74	47	77	45	75

1999-00

	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -				ALG I -		ELP -		ENG I	
	B	W	B	W	Read B	W	Math	B	W	B	W	B	W	B	W
ORANGE	37	80	57	81	46	73		47	78	67	81	41	81	43	83
CH/CA	44	93	64	98	36	96		51	95	48	94	60	95	63	98
HARNETT	50	76	62	80	35	66		43	80	52	67	56	77	54	76
WAKE	45	89	60	92	50	86		50	87	60	88	51	89	53	90
DURHAM	47	85	54	89	44	80		46	84	38	76	40	79	52	86
FORSYTH	38	80	54	86	33	80		38	80	61	84	47	81	51	83
GUILFORD	43	80	56	87	44	78		43	80	43	77	54	85	50	84
RANDOLPH	40	65	59	78	33	62		35	66	55	78	64	86	31	67
N.HANOVER	40	84	56	88	47	82		45	82	43	72	37	79	46	83
ROBESON	43	71	47	73	34	67		33	67	41	64	33	52	40	60
HALIFAX	51	69	54	50	28	23 (9stu)		42	84	30	36	44	45	32	43
PITT	41	78	57	88	41	80		33	45	58	86	58	90	52	86
CMS	43	82	45	87	37	79		39	81	30	71	40	79	47	86
HOKE	45	73	57	76	31	69		41	79	49	59	56	75	47	66

1999-00. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -				ALG I -		ELP -		ENG I	
	B	W	B	W	Read B	W	Math	B	W	B	W	B	W	B	W
State	44	77	56	85	40	72		41	75	48	78	46	78	50	78

THERE ARE TWO DISTINCT GROUPS OF STUDENTS IN NORTH CAROLINA'S PUBLIC SCHOOLS - THOSE AT-RISK AND THOSE NOT AT-RISK.

The Court has made enough comparisons. The evidence of record as set forth in The Green Books shows the same pattern, more or less, in every county in North Carolina. The only logical conclusion that the Court can draw is that North Carolina's Public Schools have Two Distinct Student Populations in every grade from start to finish - (1) Those children at-risk

of educational failure and (2)those children not at-risk of educational failure. Educational achievement, or the lack thereof, is the dividing line between the two groups.

The main causative factors for this great divide are lack of, or low level of parental education, rampant and unchecked illegitimacy, and poverty which result in children being born and thereafter existing in an environment without two (married) parents, an environment in which daily survival is a prized commodity, rather than discipline and education. How did the Court reach this conclusion? From looking at the evidence and applying common sense.

To this end, the Court has reviewed the statewide data, including, but not limited to: (1) ABC test scores from 95-96 to 99-00; (2) Free and Reduced Price Lunch participation by County from 97-98 through 99-00; (3) Average Teacher Supplements from 97-98 through 99-00; (4) Local Funding per ADM and other data compiled by the Public School Forum, (5) Level of parental education as it affects student achievement on the ABCs and the high school comprehensive tests; and (6)the other evidence submitted.

From this review, it became crystal clear to the Court that there are two distinct groups attending the public schools in North Carolina-- those children at-risk of academic failure that are not obtaining a sound basic education and those children who are not at-risk of academic failure and who are obtaining a sound basic education. The major factors which can be used to identify (with of course, the usual exceptions)those children at-risk and those not at-risk, are (1) socio-economic status (2) level of parental education and (3) free and reduced price lunch participation, all of which are inextricably intertwined with the other.

Put another way, the low performing children who are consistently scoring below grade level -Level III- throughout the State of North Carolina are poor, and/or have parent(s) with little education who are employed on the lower end of the economic scale, if they are employed at all.

Parental Education Level is an undisputed factor in identifying the cause of disparities in achievement between at-risk and not at-risk children. Common sense would tell one that, even if the data were not extant to prove it.

Children of better-educated parents generally do better in school, and stay in school longer, than children whose parents have not completed high school. Students whose parents have a high school degree or less tend to perform less well on tests than those with college or graduate degrees. There is a direct correlation between students' performance on the EOG and EOC tests and parent education level. "The Green Books" [1995-96-99-2000] Def. Exhs. 239,243,244, Ct. Exhs. B,B-1) This data is found in each Green Book in those tables accompanying EOC/EOG tests entitled "EOC-Test Results/ Characteristics and Performance of Students."

Using the 1997-98 & 1999-2000 High School Comprehensive Test Results, [Table 6,page 178-97/98]; [Table 7, page 203-99/00], The Green Books, the Parental Education Level information reveals:

(R)=reading (M)= math

Parental Education 97/98

Did Not Finish H.S. - 4,969
71.8% below Level III (R); 70.1% below Level III (M)
H.S.Graduate - 22,598
54.2% below Level III (R); 55.4% below Level III (M)

Community College- 14,899
43.5% below Level III (R); 45.4% below Level III (M)
Four Year College-17,223
32.1% below Level III (R); 32.3% below Level III (M)
Graduate school-8,332
17.7% below Level III (R); 17.5% below Level III (M)

Parental Education 99/00
Did Not Finish H.S. - 4,832
65.6% below Level III (R) 59.7% below Level III (M)
H.S. Graduate - 19,813
52.8% below Level III (R); 48% below Level III (M)
Community College - 13,775
35.9% below Level III (R); 33.2% below Level III (M)
Four Year College - 18,838
26.3% below Level III (R); 24.1% below Level III (M)
Graduate School - 8,746
15.6% below Level III (R); 14.6% below Level III (M)

This same pattern exists with respect to all of the ABC test scores, EOC and EOG. The information is contained in The Green Books - Tables for EOG/EOC Tests entitled "Multiple-Choice Test Results- Characteristics and Performance" of Students. These tables set forth Levels of Parental Education and achievement percentages/numbers of students.

While there are certainly children from the at-risk group who succeed in school despite their socio-economic disadvantages, the lowest achievers generally come from this background. Those children from this group who do achieve have overcome the odds. Every school system in the state has children from this group. The economic conditions of the County and City or Town in which they live generally reflect the numbers of children who are not achieving grade level or above.

In contrast to the at-risk group of students, the overwhelming majority of the children who are performing at or above grade level -Level III or above-

throughout the State of North Carolina are not poor, have parent(s) with educations beyond high school and who are employed in the middle to upper end of the economic scale. While there are children from these backgrounds that do not achieve at Level III or above, the higher achievers generally come from the middle and upper middle-income background.

However, no matter how "wealthy" the County (LEA) is in terms of Local funding support, the school systems' scores show that these two groups of children exist in each LEA and the disparities between their academic performance are just as stark in "wealthy" systems such as Wake, CMS, Orange and Forsyth as in the school systems in the middle and at the low end of the Local funding spectrum.

When one looks at the percentage comparisons of students who are failing to achieve grade level proficiency on the basis of ethnicity, the higher percentage of at-risk students falls squarely on blacks, Hispanics and American Indians although the numbers of Hispanic and American Indian students is small when compared to the number of black and whites in the school system statewide.

The number of white students failing to achieve at grade level and thus at-risk is sometimes greater and many times comparable to the number of black students failing to achieve at grade level. Comparing the percentage of blacks failing to achieve to the percentage of whites failing to achieve is misleading, because there are so many more white students in the public schools. Accordingly, North Carolina has an across the board problem with at-risk students of all races, not just a problem with minority students.

White students are not immune from being at-risk of academic falure. There are large numbers of white students at-risk as well. As seen from the data

compiled above and from the record, the number of white students failing to achieve Level III or above in the elementary grades and in high school core subjects such as ELP, English I, U.S. History, Biology, Physical Science and Algebra I, and the High School Comprehensive Tests in Reading and Math, is higher or comparable to the number of black students who are failing to achieve Level III or above.

This should come as no surprise because there are many white students whose parent(s) come from low socio-economic status, have little, if any, education and work in low wage jobs, if at all. Those white children come from the same environment that other at-risk children do and the causes of their lack of achievement are the same.

Nowhere is this point made as clear as in a county which has a poor economic base with low paying jobs, such as Hoke, Halifax and Robeson ,all with Free and Reduced Price Lunch participation above 60%. There, the performance of all students across racial lines is lower than in a counties such as Wake, Mecklenburg and Durham where there are the two distinct groups of people divided by socio-economic status - the poor and the middle and upper middle income.

In those "wealthier" counties, the scores of black children remain low by percentage while the scores of white children (reflecting their parents income level and educational status) remain high by percentage. Nevertheless, if you have 80% of the white students in a district performing at or above grade level, there are 20% of the whites who are not and the number of those low achieving students are generally comparable to those of blacks who are low achieving.

In counties in the Northeast such as Halifax, Bertie, Northhampton, Washington and Hyde, the majority of the students in the public school systems are poor

and black. The scores of those children directly reflect the poverty level of the community in which they reside. Again, it is not race which causes the child to be at-risk, but the poverty, low parental education and job skills, if any and the illegitimacy which results in there being no stable family environment for the children to grow up in.

It is undisputed that poverty and low educational levels go hand in hand. Within this socio-economic background, there are also other factors at work which put the children further at-risk, including the absence of a stable two-parent (married) home environment due to irresponsible children, who are illegitimate, and who continue the cycle by having illegitimate children themselves, never get married and put those children at-risk of academic failure before they ever get to school.

Illegitimacy, like low parental education, is a factor in the disparities in achievement, as it is an outward and visible sign of irresponsible parents and a less than positive home environment for a child to grow up in. This is not the fault of the public schools and yet poverty and the illegitimacy it spawns, produces at-risk children that the public schools are expected to educate and train.

Unfortunately, way too many of North Carolina's children are brought into this world and, through no fault of their own, plunged into "home" environments void of intellectual stimulation, discipline, respect for others and from which they arrive at the schoolhouse destined for academic failure. This is not the fault of the public schools and yet, the public schools have no choice but to shoulder the burdens of these at-risk children and are expected to provide them with the equal opportunity to obtain a sound basic education.

This is so because, in the eyes of the law, these at-risk children are citizens of North Carolina, and, as citizens, they have the same constitutional rights as those children whose parents are married, have decent educations, earn a decent living and provide their children with a learning rich environment from the day they come home from the maternity ward.

Fortunately for these at-risk children, the State of North Carolina, with the vision of Jim Hunt and the support of the General Assembly, has enacted the ***Smart Start Program*** to begin to address the void in these children's everyday lives earlier than age 5. Pre-school experiences are vital to a child being ready and able to learn. It is these same at-risk children that the Court addressed in Section II of this decision regarding a quality pre-kindergarten program as part of the at-risk child's pre-school experience.

In this regard, the Court's decision about a pre-kindergarten experience for at-risk children, does not, repeat, does not mandate a 4 year old kindergarten program for all North Carolina children, nor does it require a "formal" pre-kindergarten program attached to and included in each elementary school. Why not?

Because the majority of North Carolina's children reside in stable home environments with parents who provide them with intellectual stimulation, a decent standard of living, values and discipline, do not need to leave home early and go into a publicly funded 4 year old pre-kindergarten program, nor should they ever be required to do so as they are not at-risk of academic failure. For these not at-risk children, there is simply no justification for taking them out of a stable home environment and sending them off to school before age 5.

The evidence clearly and convincingly shows that the majority of North Carolina children are not at-risk

of educational failure and are obtaining a sound basic education as required by Leandro. The problem comes with the other group - those at-risk of academic failure regardless of where they live

The evidence is clear and convincing that children from economically disadvantaged backgrounds can learn. However, in order for them to perform well in school it may take "more time or different kinds of intervention" and more resources than those needed for children from middle class backgrounds. Under the ABCs, there has been steady progress since 1995 for all children in the elementary grades. All one has to do is look at the ABC testing scores at the elementary school level, North Carolina's educators have made great progress in the last five years in the basics of reading and math, but with respect to a large number of the at-risk population, more needs to be done. The following shows the percentage of black, white, Hispanic and Asian students tested at the end of the 3rd grade in reading and math that scored at or above Grade Level for the 5 years from 95-96 through 99-00:

Number of Students Scoring at or above Grade Level (Level III) By Race Statewide In Reading & Math in Grade 3 R = reading M = Math

Year	White		Black		Asian		Hispanic	
	R	M	R	M	R	M	R	M
95-96	74.5	77.7	44.4	45.6	72.6	80.4	56.4	57.7
96-97	75.7	80.2	46.2	49.9	72.9	81.6	51.8	59.6
97-98	80.6	78.6	54.4	47.6	78.9	77.8	58.3	57.0
98-99	82.1	80.1	57.6	49.9	76.6	81.0	61.3	59.8
99-00	83.1	76.2	58.5	43.7	78.8	72.2	62.8	52.6

While this snapshot comparison shows progress, it also shows that North Carolina has a long way to go in addressing the at-risk group of students and what ***Leandro*** means to them. After all, those students have a constitutional right to an equal opportunity to receive a sound basic education just like those who are not at-risk of receiving a sound basic education.

Fortunately, the majority of N.C.'s children fall within the group who are not at-risk, go to school, learn and master the curriculum and obtain a sound basic education in the subjects taught them in North Carolina's public schools. For the not at-risk group of children, those achieving at Level III and above and being taught by competent certified teachers, the equal opportunity to obtain a sound basic education as defined by ***Leandro*** is being met regardless of where the children are in school.

With respect to the at-risk group, there is a serious question to be answered. Why do the at-risk children continue to perform so poorly in both the dirt poor counties and the "wealthy" counties when the amount of Local funding per average classroom of 26 is so great?

The evidence in this case raises a serious question with respect to the at-risk group of students. How is it that the LEAs with the highest levels of Local Funding per ADM and the highest teacher supplements have such large numbers of at-risk students failing to achieve grade level proficiency at the same or similar levels as those in Hoke, Robeson and other "poor" counties? How is it that Wake County with Local funding per average classroom of 26 students in the amount of $36,634 as compared to Harnett County's Local funding per average classroom of 26 students in the amount of $18,096, had 43% of its black 3rd graders proficient in reading and math in 1999-00 while Harnett had 50% proficient and Chapel Hill/Carrboro had only 41%? This pattern exists throughout the "wealthy" school districts as shown in the Court's previous comparisons and from the Green Books.

It is clear from the evidence that some of the at-risk group of students are not obtaining a sound basic education throughout the state. The Court's task in

this litigation is to determine whether or not the State of North Carolina is providing every child "an opportunity to receive a sound basic education in our public schools." If the State is providing each and every child with that opportunity, then the Constitutional mandate of ***Leandro*** has been met.

So far in this case, the Court has determined that the educational delivery system in North Carolina meets the ***Leandro*** standards, without answering the issue of funding, and that at-risk children should be provided a quality pre-kindergarten educational experience so that they can arrive at kindergarten ready to learn.

The evidence about Hoke County has shown that there are many children who are not obtaining a sound basic evidence in that school system. The evidence has also shown that Hoke County is not alone in its population of at-risk students. The State of North Carolina is permeated with at-risk students in each county and the evidence has further convincingly and clearly shown that the performance of at-risk students in poor and rich counties is strikingly similar regardless of the so called ADM dollars available from the Local funding source or Low Wealth funding, if applicable.

We know what socio-economic factors put a child at-risk of academic failure when they arrive at school. These factors remain constant throughout the State of North Carolina. We know that when these children get to school, regardless of what county they live in, they are more likely to fail to achieve academically and they require more attention, time and effort to teach, and this is more expensive than for the non at-risk child coming from the "ideal" home environment with two caring parents. This being the case, what the Court does not presently know is why the wealthy counties have so many at-risk children performing at a comparably poor academic level as those children in poor counties such as Hoke and Robeson.

And at the same time, why does a group of 6 small mountain LEAs that pay NO teacher supplements have decent, and in many cases better than average, percentages of ***all*** their students in grades 3, 5 & 8 scoring at or above Level III in EOG reading and math tests? By the 8th grade, in 99-00, 4 out of the 6 LEAs were above the state average 75%(all) and 84.2% (white). All were above 80%.

	Grade 3 98/99	-99/00	Grade 5 98/99-	99/00	Grade 8 98/99-	99/00	Free&Red Lunch 98/99-	99/00	Funding Rank 98/99
CHEROKEE	79.1	77.7	84.5	82.1	85.1	87.7	52.3	51.3	78TH
CLAY	66.3	81.0	81.6	81.3	81.5	89.7	38.0	42.7	27TH
GRAHAM	62.8	64.8	66.3	76.1	88.1	90.8	47.8	49.3	28TH
MACON	79.7	80.5	81.3	85.9	74.6	81.3	39.2	44.4	63RD
MADISON	64.5	74.8	81.2	83.6	78.8	81.3	47.2	45.3	47TH
SWAIN	79.0	66.4	75.9	80.6	82.4	84.4	57.9	57.9	66TH

The only logical answer that the Court can deduce from the across the board low scores of the at-risk group, regardless of the "wealth" and local funding support per ADM, is twofold:

First, the huge sums of money that the State of North Carolina channels into each LEA are not being strategically and logically directed and spent in the best manner possible to accomplish the mandate of ***Leandro*** which requires the State and the LEA to provide all of its children with the equal opportunity to obtain a sound basic education.

Second, that in the "wealthier" LEAs which have such greater amounts of Local Funding available per ADM, those LEAs are not strategically and logically directing and spending those funds in the best manner possible to accomplish the mandate of ***Leandro*** which requires each LEA to provide all of its children with the equal opportunity to obtain a sound basic education.

The biggest problem is with the "wealthier" LEAs, because they have so much more money available, and their at-risk results are, in comparison with a poor county like Hoke, worse because their at-risk population should be performing much better if sheer money available was a factor.

The Court raises these questions and makes its observation fully aware that it has "gored" the sacred educational establishment ox by doing so. These questions, however, are based on the concrete evidence relating to the at-risk group of below par student performance in all LEAs statewide.

It, however, is the Court's responsibility to review the funding practices to determine if the State and its LEAs are spending taxpayer dollars in a manner so as to meet the ***Leandro*** mandate that every child has an equal opportunity to receive a sound basic education.

A REVIEW OF LEANDRO AND ITS MANDATE FOR A SOUND BASIC EDUCATION IS NECESSARY BEFORE ADDRESSING THE MANNER IN WHICH FUNDING SHOULD BE SPENT TO MEET THE CONSTITUTIONAL REQUIREMENTS.

" ***...We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee <u>every child</u> of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the***

student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.." emphasis added; (slip op. 13-15)..... Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. ... For the foregoing reasons, we conclude that Article IX, Section 2(1) of the North Carolina Constitution requires that all children have the opportunity for a sound basic education, but it does not require that equal educational opportunities be afforded students in all of the school districts of the state. (slip op. pp. 17-22).

It is crystal clear what Chief Justice Mitchell and the Supreme Court said with respect to funding the equal opportunity to the sound basic education. The Constitution requires that the State and its LEAs provide all children with the equal opportunity to obtain the sound basic education, nothing more and nothing less. In this regard, the following parameters apply:

First, the State Constitution only requires that the State fund the equal opportunity to obtain a sound basic education to all of its children, nothing more.

Second, a sound basic education is qualitatively defined. In short, having a sound basic education means that when one graduates from high school, they should

be able to really compete in the world of today, either in the job market, or in community college, or at an institution of higher learning. In this regard, all children should have learned the basics, recognizing that some children will go on to higher education and others will not.

Third, the right to the equal opportunity to a sound basic education, is only to the sound basic education, not the frills and whistles. The State Constitution does not require that children be provided a prep school education, nor that children be provided the courses and experiences to enable them to go to Yale or Harvard. While there is no restriction on high-level electives, modern dance, advanced computer courses and multiple foreign language courses being taught or paid for by tax dollars in the public schools, the Constitutional guarantee of a sound basic education for each child must first be met.

Fourth, ***Leandro*** requires that the Constitutional right to the equal opportunity be met before any other dollars are spent on opportunities outside of the sound basic education.

Fifth, since the at-risk group of children are harder to teach and thus require more resources than not at-risk children in order to satisfy the Constitutional mandate, each LEA and the State must strategically plan and spend the resources funded in a manner that helps **all children** have an equal opportunity to a sound basic education.

Sixth, the hard cold truth of the ***Leandro*** decision should not be forgotten. The State of North Carolina originally argued, and the Court of Appeals agreed, that the Constitutional right to education is ***limited to an education which provides equal access to the existing educational system and does not embrace a qualitative standard.*** This "equal access" argument was

expressly rejected by the Supreme Court in favor of the qualitative standard set forth above. A sound basic education must mean something and have substance.

The bottom line is simply this. It is undisputed that the at-risk group of children is harder to educate and that the at-risk child requires more resources and attention to succeed. It is undisputed that the at-risk child has the same Constitutional guarantee of an equal opportunity to obtain a sound basic education as the non at-risk child. Therefore, within the parameters of providing each and every child with an equal opportunity to obtain a sound basic education, the money available must be allocated towards reaching the constitutional goal of providing each child with equal opportunity.

The result of the Leandro mandate with respect to funding as it is a part of providing equal opportunity, is that the State and each LEA must apply their resources towards the sound basic opportunity curriculum first, and within that application, provide adequate strategic allocation of resources and funding to assist the at-risk population of children in having an equal opportunity to obtain a sound basic education.

The requirement that the State and its LEAs provide adequate and strategic allocation of resources and funding means that there may very well be unequal funding of the sound basic education curriculum within each LEA itself, because the non at-risk children do not require as much funding to be provided with the equal opportunity as the at-risk children do.

Until this allocation and realignment of present available funds and resources to meet the Leandro requirement is accomplished by each LEA and the State and the results reported to this Court, there will be no requirement for a Final Judgment.

Reduced to essentials, the plaintiffs and plaintiff-intervenors have produced clear and convincing evidence that there are at-risk children in Hoke County and throughout North Carolina who are, by virtue of the ABCs accountability system and other measures, not obtaining a sound basic education.

What they have not yet proved, by clear and convincing credible evidence, is that the failure of at-risk children (the issue of pre-kindergarten aside) to obtain a sound basic education is the result of lack of sufficient funding by the State of North Carolina.

Instead, what the clear and convincing and credible evidence in this record shows with respect to at-risk children is that given the proper, strategic allocation of resources within each school, at-risk children can obtain a sound basic education like non at-risk children. While the clear and convincing, credible evidence shows that such proper, strategic allocation of resources when employed, work, the evidence is not clear and convincing that the State and each LEA is utilizing its funding and resources in a proper, strategic manner with regard to its at-risk children.

Put another way, the Court is not yet convinced by the evidence that the State of North Carolina is not presently putting sufficient funds in place to provide each child with the equal opportunity to obtain a sound basic education, at-risk or not. The Court is, however, convinced that neither the State nor all of its LEAs, including HCSS, the other plaintiffs or the plaintiff-intervenors, are strategically allocating the available resources to see that at-risk children have the equal opportunity to obtain a sound basic education. When the strategic and focused allocation of available resources is done, at-risk children do improve and obtain a sound basic education in the core subjects.

There are many prime examples of leadership and of strategically allocating available resources so as to focus on at-risk children. The Court cites five (5) schools as examples. Each example involved the person acknowledged by all to be critical to a school's success, the principal. The Court also acknowledges that none of the successes set forth as examples could have been accomplished without the focused, dedicated hard work of the classroom teachers in each of those schools and parental support for the programs.

If these wonderful educators can achieve success with at-risk children on a shoe-string, there is no absolutely no excuse for other schools, especially wealthy schools, not to achieve at-risk student success with leadership and proper strategic allocation of resources.

The first is occurring in HCSS. Enter Darlene Clark as the new principal of West Hoke Middle School in 1997-98. West Hoke Middle School was a low performing school at the time. Ms. Clark, without any input from an Assistance Team, turned the school around. Here's what she did. She had teachers tutor at-risk children before and after school. She rearranged the instructional schedule to produce two (2) more hours of instruction per day, one in reading and one in math. She instituted two (2) teacher teams, so that students would get all their instruction from two teachers. Using those, and other techniques, and without any additional resources or funding, Ms.Clark was able to effect substantial changes,improvements and turn West Hoke Middle School into an "Exemplary Growth/Gain" school in 1997-98.

The second is occurring in Wake County. Enter Sue Sisson as principal of Kingswood Elementary School in Cary in 1991. Kingswood was built in 1954 as a school for black children. It has the capacity for 159 students and with trailers, 308 in 99-00. Kingswood has

a large percentage of poor students. By 99-00, Ms. Sisson's school had 95% of its students passing the EOC tests. Here's what she did. The goal was to provide individualized learning for each child. The assistant principal's position was eliminated, along with all but one teaching assistant position, and the dance/drama teacher position. Ms. Sisson utilized the freed up resources to reduce class size to an average of 15 students. The school hired a learning resource teacher to work with at-risk and gifted students. Ms. Sisson used money from the Accelerated Learning Program to spend on teachers as tutors. Kingswood was named a "school of excellence" and Ms. Sisson was the Wake Principal of the Year. (The information about Kingswood is from an Article published in the News & Observer, October 21, 2000 by T.Keung Hui, Staff Writer). The Court has no reason to doubt its accuracy.

The third is occurring in Gaston Middle School in Northampton County. Enter Principal Lucy Edwards. Under Ms.Edwards leadership the faculty and staff have brought Gaston Middle School, a school with 84% of its children on Free and Reduced Price Lunch, from a school where less than 50% of its children were scoring at Level III in reading and math in 1995 to 77% above Level III in Math and 76% above Level III in reading in 99-00. Ms. Edwards has a "relentless focus on achievement." (N&O, 2/19/01-Schools Search For Success) The Court has no reason to doubt its accuracy.

The fourth is occurring in Baskerville Elementary School in Rocky Mount-Nash County. Enter Principal Ann Edge. Under Ms. Edge's leadership, the faculty and staff have brought Baskerville Elementary School, a school with 92% of its children on Free and Reduced Price Lunch, from a school where less than 40% of its students scored at or above level III in reading and math in 1994 to 81% above Level III in math and 67% above Level III in reading in 99-00. (N&O,2/19/01-

Schools Search for Success)The Court has no reason to doubt its accuracy.

The fifth is occurring in Winstead Elementary School in Halifax County. Enter Principal Robert Pope. Under Mr. Pope's leadership, the faculty and staff have brought Winstead Elementary School, a school with 87% of its children on Free and Reduced Price Lunch, from a school where less than 37% of its students scored at or above Level III in reading and math in 1994 to 79% of its students scoring at Level III in both reading and math in 99-00. (N&O,2/19/01-Schools Search for Success) The Court has no reason to doubt its accuracy.

These examples show that, with leadership and focus, available resources can be strategically applied to provide an equal opportunity to at-risk children to obtain a sound basic education. The Court is sure that there are many, many more principals and dedicated teachers who utilize the same leadership and ingenuity throughout North Carolina. However, the present record does not reflect that the State of North Carolina, nor the plaintiff or plaintiff-intervenor LEAs, have adopted or put into practice the type of strategic allocation of resources towards the at-risk population. Merely throwing more money into the pot does not satisfy the Constitutional requirement that the children be provided an equal opportunity.

It's how the resources are allocated that count. Palatial central offices and high salaries for non teaching administrators and staff are not constitutionally mandated. The tax money that is spent must first be spent to properly educate the at-risk children that are failing to achieve grade level proficiency.

Reduced to essentials, the plaintiffs and plaintiff-intervenors have yet to convince this Court, by clear and convincing evidence, that the State of

North Carolina is not presently providing sufficient funding to its LEAs to meet the Constitutional mandate that each child have an equal opportunity to receive a sound basic education. The Court, on its own, has concluded that a strategic allocation of available resources is required to be developed and then applied to meet the at-risk child's needs. Until this is done, there is no need to proceed further or to enter a Final Judgment.

In accord with the conclusions reached above and the vital need to address these problems within the parameters of Leandro, the Court Orders and Directs:

I. The State of North Carolina and the plaintiff, plaintiff-intervenors, to conduct self-examinations of the present allocation of resources and to produce a rationale, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children to obtain a sound basic education using common sense and methods that work and are directed towards each child's particular need. The system and allocation should be flexible.

The nuts and bolts of how this should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government and to the educators who are paid to have the knowledge and expertise with which to conduct such a self-examination of the present allocation of resources and to produce a rationale comprehensive plan to strategically focus available resources and funds consistent with the goal of providing the opportunity for all children, including those at-risk of obtaining a sound basic education.

In directing this be done, the Court is showing proper deference to the Executive and Legislative

Branches by allowing them, initially at least, to use their informed judgment as to how best re-allocate and strategically apply funds, modify or change existing programs and, if needed, create new programs and approaches to remove the barriers to an equal opportunity to a sound basic education. Throwing money, either local or state, at the problem without strategic and effective planning accompanied by accountability for results will not be acceptable.

II. This process should be accomplished without undue delay and certainly it can be done within twelve months. This is not an overwhelming task given the amount of educational experts and staff available to the DPI, the Legislature, and the fact that some schools have already found the key to success. Consider going to Clay and Cherokee Counties and find out what they are doing to achieve such success. Go observe the five examples set out in this Memorandum of Decision. The Court encourages the parties to entertain input from excellent resources as The Public School Forum and other non-profit organizations interested in the welfare of all of North Carolina's students.

III. The Court would like progress reports on a quarterly basis as this case is still active and a work in progress as the work directed is undertaken.

This the 26th *day of March, 2001.*

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
BY
WAKE CO. C.S.C.

ORDER AMENDING MEMORANDUM OF DECISION OF MARCH 26,2001

THIS MATTER is before the Court on its own motion, pursuant to Rule 54(b), North Carolina Rules of Civil Procedure, to amend Section III, the Memorandum of Decision dated March 26,2001, in the interests of justice and judicial economy, so as to permit this Court, which has the sole and ultimate responsibility for determining the critical question of whether or not the failure of at-risk children to receive a sound basic education is based on lack of funding as opposed to lack of properly applied educational strategies and available resources to achieve the goal of providing them with a sound basic education, to take additional evidence and conduct its own focused inquiry into this critical question. How can such an amendment be made? The answer is simple. There has been no final judgment entered.

The Three Memoranda of Decision filed so far in this case, including the March 26, 2001 Section III, are interlocutory. No Final Judgment has been entered. These Memoranda of Decisions of part of a series of steps being taken by the Court to determine, as best it can, the truth in this matter and the ultimate issue raised by the plaintiffs and plaintiff-intervenors relating to the sufficiency of the educational opportunities provided and funded by the State in relation to the ***Leandro*** sound basic education standard.

An interlocutory order or decree is provisional or preliminary only. It does not determine the issues joined in the suit, but merely directs some further proceedings preparatory to the final decree. An interlocutory order differs from a final judgment in that an interlocutory order is subject to change by the court during the pendency of the action to meet the exigencies of the case. ***Russ v. Woodard, 232 N.C. 36 (1950)***

"An interlocutory remains in the control of and in the breast of the court, and upon good cause shown it may be amended, modified, changed or rescinded as the court may think proper." ***Maxwell v. Blair, 95 N.C. 317 (1886)***

These principles are also found in the Rules of Civil Procedure.

Rule 54. Judgments.

(a) Definition. - A judgment is either interlocutory or the final determination of the rights of the parties.

(b) Judgment upon multiple claims or involving multiple parties. - When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the

court may enter a final judgment as to one or more but fewer than all of the claims or parties only if there is no just reason for delay and it is so determined in the judgment. Such judgment shall then be subject to review by appeal or as otherwise provided by these rules or other statutes. ***In the absence of entry of such a final judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and shall not then be subject to review either by appeal or otherwise except as expressly provided by these rules or other statutes. Similarly, in the absence of entry of such a final judgment, any order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*** ***(emphasis added)***

The Defendants ("State") filed Notice of Appeal to the North Carolina Court of Appeals from the Court's interlocutory Memorandum of Decision of March 26, on April 24, 2001. The Plaintiffs subsequently filed a Notice of Appeal as a precautionary measure stating that they did not believe the State could appeal because the Court's decisions were interlocutory, not final.

On April 24, 2001, the State also filed and served a Motion for Stay to request the Court to stay that part of the Court's March 26, Memorandum of Decision which directed the State and the Plaintiffs, and Plaintiff-Intervenors to:

I. ***The State of North Carolina and the plaintiff, plaintiff-intervenors, to conduct self-examinations of the present allocation of resources and to produce a rational,***

comprehensive plan which strategically focuses available resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children to obtain a sound basic education using common sense methods that work and are directed towards each child's particular need. The system and allocation should be flexible.

The nuts and bolts of how this should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government and to the educators who are paid to have knowledge and expertise with which to conduct a self-examination of the present allocation of resources and to produce a rational comprehensive plan to strategically focus available resources and funds consistent with the goal of providing the opportunity for all children, including those at-risk of obtaining a sound basic education.

In directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best re-allocate and strategically apply funds, modify or change existing programs and, if needed, create new programs and approaches to remove the barriers to an equal opportunity to a sound basic education. Throwing money, either local or state, at the problem without strategic and effective planning accompanied by accountability for results will not be acceptable.

This process should be accomplished without undue delay and certainly it can be done

> ***within twelve months. This is not an overwhelming task given the amount of educational experts and staff available to the DPI, the Legislature, and the fact that some schools have already found the keys to success. Consider going to Clay and Cherokee Counties and find out what they are doing to achieve such success. Go observe the five examples set out in this Memorandum of Decision. The Court encourages the parties to entertain input from excellent resources as The Public School Forum and other non-profit organizations interested in the welfare of all of North Carolina's students.***
>
> ***III. The Court would like progress reports on a quarterly basis as this case is still active and a work in progress as the work directed is undertaken. (Memorandum of Decision, March 26,2001 pp. 83-84)***

After a hearing on April 25, 2001, the Court denied the State's Motion for Stay. The Court prepared and entered an Order Denying Defendants' Motion For Stay on May 1, 2001. The State filed a Petition for Writ of Supersedeas in the North Carolina Court of Appeals on May 10, 2001. The Court of Appeals granted a temporary stay of the foregoing provisions of the Court's March 26 Memorandum of Decision on May 14, 2001. The Plaintiffs and Plaintiff-Intervenors filed written responses opposing the State's Petition for Writ of Supersedeas.

One of the State's chief complaints about the Order contained in the March 26 Memorandum of Decision was based on premise that the State had not been found by the Court to be responsible for the failure of so many at-risk students in North Carolina to obtain a sound basic education. Accordingly, the Court, by requiring the State to re-allocate and re-structure resources absent a finding of liability on the State's part,

constituted a "usurpation" of the power of the Legislative and Executive Branches of Government. Simply put, absent a finding that the large numbers of children at-risk of academic failure are the State's fault, the State should not have to participate in or come up with a plan to re-allocate resources.

Despite disagreement with what the Court had ordered and the State's appeal, Governor Easley, on May 23, 2001, announced that he had assembled a thirty (30) member task force to develop a long range plan to improve the state's public schools. One member of the task force was quoted in the ***News & Observer***:

> " Gilchrist said he envisions pulling a lot of successful classroom strategies together. 'Many wonderful things are going on in our schools... but we've been working in isolation,' he said." Governor Easley was reported as saying that, "Our schools are not what they should be and we cannot be satisfied with mediocrity," and that "the group will explore innovative programs that have helped poor children, as recommended in the court order." He also indicated that the group will share its work with the Court should the state lose its appeal in this lawsuit. ***News & Observer, p. 3A, 5/23/01.***

On May 24,2001, the North Carolina Court of Appeals entered the following Order denying the State's petition for a writ of supersedeas and dissolving the stay:

> ***The petition for writ of supersedeas filed in this cause by defendants on 10 May 2001 is denied. The temporary stay granted by this Court on 14 May 2001 is hereby dissolved.***
> ***By Order of the Court this the 24th day of May, 2001.***

The net effect of the denial of the Petition for Writ of Supersedeas is that the State, the Plaintiffs, and Plaintiff-Intervenors will have to do what this Court has directed pending the outcome of the appeal, unless the Supreme Court intervenes and stays this Court's Order pending appeal. The Plaintiffs and Plaintiff-Intervenors did not oppose the Court's directive.

The pendency of an appeal of interlocutory orders in the middle of this Court's fact finding process is distracting, slows down the effort to get to the truth and the delay is detrimental to the children.

The Court, for the reasons set forth in detail in its Order Denying the Defendants' Motion for Stay filed May 1, 2001, wants to get about its task of answering the critical question as to whether or not the failure of at-risk children to obtain a sound basic education is based on lack of funding or lack of implementation of similar successful, cost-effective programs as discussed in the March 26 Memorandum of Decision.

The Governor's voluntary establishment of the task force to develop a long range plan to improve the state's public schools, which plan includes, exploring innovative programs that have helped poor children, as recommended by this Court in its Order, is commendable and is action consistent with this Court's Order of March 26, although the task force has a broader mandate. The citizens of North Carolina and this Court can rely on the word of the Governor of this State with respect to the mandate and work of the task force. Governor Easley's task force appears ready to focus on the big picture to improve education, including issues relating to improvements in education for poor and at-risk children.

Taking into account the fact that the Governor's task force is now in place and the action taken by the

North Carolina Court of Appeals denying the State's Petition for Writ of Supersedeas, this Court has reassessed the exigencies of this case as it now stands. This case is complex, multi-faceted and a work in progress.

With the Governor's voluntarily established task force looking at the "big picture", and the freedom to move ahead despite the appeal, the Court believes that it can more quickly, and with less disruption, address the question of whether or not the at-risk students within the plaintiff and plaintiff-intervenor school districts are failing to obtain a sound basic education because of lack of funding, or because of a lack of sound, cost-effective educational programs being implemented in low performing schools. After all, this question is for the Court to ultimately decide and under the present circumstances, is a job this Court now believes it should undertake on its own without having to wait for a year, dependent on others to do the work.

By taking responsibility for focusing and deciding this critical question, the case will move faster towards a determination of the critical issues and at the same time, the Governor's task force can move along concurrently to benefit the children of North Carolina by recommending improvements in education.

In consideration of this voluntary action by the Governor consistent with the Court's Order, there is no real need for the Court, at this time, to continue to Order the State to undertake any massive form of self-examination, when the task force is to work on issues on behalf of all children, including those at-risk, while the Court, at the same time, can focus on the critical question of whether the at-risk problem is based on lack of funding or lack of focused and properly applied educational strategies and resources by the LEAs themselves.

For the foregoing reasons, and in the interests of judicial economy and justice, the Court, in its discretion and as authorized by Rule 54(b), North Carolina Rules of Civil Procedure, hereby amends the Memorandum of Decision of March 26, 2001, and vacates ***only*** that portion which Orders and Directs the State of North Carolina, the plaintiffs and plaintiff-intervenors to conduct self-examinations of the present allocation of resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children, to obtain a sound basic education using common sense and methods that work and are directed towards each child's particular need, specifically Paragraphs Number I, II, and III, on pages 83 and 84 of the March 26 Memorandum of Decision. Except as vacated, the March 26 Memorandum of Decision remains intact and unchanged.

This having been done, the Court will proceed to conduct additional evidentiary hearings that focus on those matters relating to successful educational programs and strategies and the answer as to why those programs and strategies have not been implemented by the plaintiffs and plaintiff-intervenors LEAs in schools with low performing at-risk populations. The purpose will be to seek an answer to the question of whether the failure is lack of funding or lack of proper allocation of resources within the LEA or a lack of cost effective implementation of successful strategies because of lack of leadership and effort within the LEA itself, or a combination of two or more of these factors.

The Court will meet with counsel within the next two weeks to discuss a timetable and plan for conducting additional hearing(s) to assist the Court in its answer to this critical question in the Court's search for the truth in this case.

The net result of the amendment to the March 26,2001 Memorandum of Decision and this Order is to enable the Court, working independently, to move this case along while at the same time continuing to grant due deference to the Executive and Legislative Branches as they proceed in their stated goal to improve education for all of North Carolina's children, including those at-risk.

Now, Therefore, It is ORDERED, in the Court's discretion, in the interests of justice and judicial economy, and pursuant to Rule 54(b), North Carolina Rules of Civil Procedure, that this Court's interlocutory Memorandum of Decision dated March 26,2001, be, and the same is hereby, amended by vacating only those paragraphs I, II, and III contained on pages 83-84 of the Memorandum of Decision. The Memorandum of Decision dated March 26,2001, as hereby amended remains in effect and in place.

This the 29th day of May, 2001.

Howard E.Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

SECTION FOUR - HOKE COUNTY & BEYOND - JUDGMENT

PROCEDURAL BACKGROUND

The Plaintiffs (low wealth school districts) filed this case almost eight (8) years ago, in May, 1994 alleging that the State of North Carolina was failing to provide adequate funds for the education of children in low-wealth school districts. The Plaintiff-Intervenors (large, urban school districts) were allowed to join in the action to present claims that they too were under funded by the State in terms of meeting the educational needs of their school children.

The Defendants, the State of North Carolina and State Board of Education ("the State"), moved to

dismiss the Plaintiffs' Complaint, which Motion was denied by the trial court. The State then appealed that decision to the North Carolina Court of Appeals and the North Carolina Supreme Court, which remanded the case to this Court for trial in Leandro v. State of North Carolina, 346 N.C. 336 (1997).

In a landmark decision, the North Carolina Supreme Court declared that the Constitution of North Carolina required the State of North Carolina to provide each and every child with the right to an equal opportunity to obtain a sound basic education and defined the content of a sound basic education as follows:

" *...We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.." emphasis added; (Leandro p. 347)*

The case was designated exceptional under Rule 2.1 and this Court was assigned the case by then Chief Justice Burley B. Mitchell, Jr.

It should never be forgotten that the State of North Carolina, represented by its Attorney General, while acknowledging the State's constitutional responsibility has consistently fought "tooth and nail" to prevent any finding that (1) the State of North Carolina is not providing the equal opportunity for each child to obtain a sound basic education through its educational programs, systems and offerings and (2) that the State of North Carolina is not providing sufficient funding to its school districts to provide each and every child with the equal opportunity to obtain a sound basic education within its funding delivery system.

The State has consistently taken the position that the system of education it maintains and funds is adequate and meets the constitutional mandate. The State takes the position that it is the responsibility of the individual school district("LEA"),in partnership with the State, to spend the money the State provides to meet the constitutionally mandated needs of the school children. Put another way, if an individual LEA is failing to provide any of its school children with the opportunity for a sound basic education, it is the LEA's fault, not the State's fault.

Special Deputy Tom Ziko summed up the State's position on this question as follows:

> ***The State of North Carolina does not fund its school system on a one size fits all basis. In partnership with local boards of education, the State provides sufficient funding for every child and every school system to have the opportunity to acquire a sound basic education. If the local board is irresponsible, ignores its constitutional duties and fails to apply the money where constitutional need exists, that's not… that will not support a claim that the State system of***

general and uniform free public schools is unconstitutional.(Tr. 8/18/2000 pp 111-112)

After a six-week trial in the fall of 1999, having considered evidence submitted by the parties, this Court issued two Memoranda of Decision in October, 2000 and a third Memorandum of Decision on March 26, 2001.

All of the Memoranda of Decisions were interlocutory. A synopsis of each of the Court's Memoranda of Decision follows:

On October 12, 2000, the Court entered Section One of its decision. At the outset, the Court charted a course in which there would be at least three (3) separate Memoranda of Decision, each addressing different aspects of the case.

In the first Memorandum of Decision, the Court analyzed separate components of the North Carolina Educational Delivery System and determined that, as a system, it was sound, valid and constitutional when measured against the sound basic education standard of *Leandro*. The Court also found that a student who was performing at Level III (grade level) or above on the ABCs EOC and EOG tests was obtaining a sound basic education under *Leandro*.

The second Memorandum of Decision was entered on October 26,2000. In that decision, the Court analyzed the educational needs of at-risk children, and determined for at-risk children to have an equal opportunity for a sound basic education, the State should provide quality pre-kindergarten programs for at-risk children.

Part II of this Court's decision stated in pertinent part: ***The Court further finds and concludes as a matter of law that at the present time, the State of North Carolina lacks sufficient quality pre-***

kindergarten educational programs to meet the needs of its at-risk children. As a result, those at-risk children, who are not presently in quality pre-kindergarten educational programs, are being denied their fundamental constitutional right to receive the opportunity to a sound basic education.....

Pre-kindergarten educational programs for at-risk children, however, must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs. The nuts and bolts and implementation for the expansion of pre-kindergarten programs for at-risk children is a matter to be taken up by the Executive and Legislative Branches of Government.

This is so because Leandro instructs the Court to grant deference to those branches of Government in terms of the implementation of such programs if a constitutional deficit is found to exist. (October 26,2000 Memorandum of Decision, pp. 42-43.)

The third Memorandum of Decision entered on March 26, 2001 was originally intended to focus on two issues relating to the Hoke County Schools. First, whether children in Hoke County are receiving a sound basic education? Second, if children are not receiving a sound basic education, is it because of lack of sufficient funding as the plaintiffs contend, or for some other reason(s)?

In analyzing whether or not Hoke County students were obtaining a sound basic education, the Court examined the Hoke County students' performance and compared Hoke with other school systems student performance.

This comparison showed that there were at-risk students failing to achieve a sound basic education statewide, as well as in Hoke County, and that the low

performance of at-risk students was similar regardless of the wealth and resources of the school system attended.

Taking all of the evidence into account, the Court determined that the at-risk children in North Carolina were not obtaining a sound basic education and that the reason appeared to be the lack of a coordinated, effective educational strategy for at-risk children statewide. Excerpts from the March 26 Memorandum follow:

The bottom line is simply this. It is undisputed that the at-risk group of children is harder to educate and that the at-risk child requires more resources and attention to succeed. It is undisputed that the at-risk child has the same Constitutional guarantee of an equal opportunity to obtain a sound basic education as the non at-risk child. Therefore, within the parameters of providing each and every child with an equal opportunity to obtain a sound basic education, the money available must be allocated towards reaching the constitutional goal of providing each child with equal opportunity.

The result of the Leandro mandate with respect to funding as it is a part of providing equal opportunity, is that the State and each LEA must apply their resources towards the sound basic opportunity curriculum first, and within that application, provide adequate strategic allocation of resources and funding to assist the at-risk population of children in having an equal opportunity to obtain a sound basic education.

Put another way, the Court is not yet convinced by the evidence that the State of North Carolina is not presently putting sufficient funds in place to provide each child with the equal opportunity to obtain a sound basic education, at-risk or not. The Court is, however, convinced that neither the State nor all of its LEAs,

including HCSS, the other plaintiffs or the plaintiff-intervenors, are strategically allocating the available resources to see that at-risk children have the equal opportunity to obtain a sound basic education. When the strategic and focused allocation of available resources is done, at-risk children do improve and obtain a sound basic education in the core subjects.

However, the present record does not reflect that the State of North Carolina, nor the plaintiff or plaintiff-intervenor LEAs, have adopted or put into practice the type of strategic allocation of resources towards the at-risk population. Merely throwing more money into the pot does not satisfy the Constitutional requirement that the children be provided an equal opportunity.

It's how the resources are allocated that count. Palatial central offices and high salaries for non teaching administrators and staff are not constitutionally mandated. The tax money that is spent must first be spent to properly educate the at-risk children that are failing to achieve grade level proficiency. (March 26,2000 Memorandum of Decision, pp. 78,79,82)

The Court was not convinced that the lack of a coordinated, effective educational strategy was based on the lack of sufficient funding by the State. Instead, the Court believed that the funds appropriated and otherwise available were not being effectively and strategically applied so as to meet the following principles from *Leandro*:

1. *All children have an equal opportunity to receive a sound basic education and an equal opportunity is all the State is required to provide.*

2. *The sound basic education is qualitatively defined and an appropriate educational strategy to provide children with the opportunity to receive a sound basic education is required.*
3. *In the event that children are not being provided the equal opportunity to obtain a sound basic education because of inadequate educational programs and strategy, the educational programs and strategy must be changed to accomplish the constitutional mandate.*
4. *In the event there is not sufficient funding to provide the educational programs, more funding must be appropriated to meet the constitutional mandate.*
5. *Funds appropriated and applied to education, from whatever source, are first to be used for the purpose of providing children with the equal opportunity to receive a sound basic education.*
6. *In the event of a deficit in the sound basic education component, funds that are being used for the purpose of providing educational programs not part of the sound basic education must be re-allocated and applied to the sound basic education until any deficit in that program is abolished. (3/26/00 Synopsis p.2)*

In summary, the Court found that the individual school systems and the State must first put in place programs that provide all children with the equal opportunity to obtain a sound basic education and that if the funding that is appropriated from whatever source is being used for any other educational purpose than to meet the constitutional mandate, then those funds must be reallocated to satisfy the constitutional mandate first and foremost. Because the Court was not convinced of the precise cause(s) of the large numbers of at-risk children throughout the State, the Court ordered:

I. The State of North Carolina and the plaintiff, plaintiff-intervenors, to conduct self-examinations of the present allocation of resources and to produce a rational, comprehensive plan which strategically focuses available resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children to obtain a sound basic education using common sense methods that work and are directed towards each child's particular need. The system and allocation should be flexible.

The nuts and bolts of how this should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government and to the educators who are paid to have knowledge and expertise with which to conduct a self-examination of the present allocation of resources and to produce a rational comprehensive plan to strategically focus available resources and funds consistent with the goal of providing the opportunity for all children, including those at-risk of obtaining a sound basic education.

In directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best re-allocate and strategically apply funds, modify or change existing programs and, if needed, create new programs and approaches to remove the barriers to an equal opportunity to a sound basic education. Throwing money, either local or state, at the problem without

strategic and effective planning accompanied by accountability for results will not be acceptable.

This process should be accomplished without undue delay and certainly it can be done within twelve months. This is not an overwhelming task given the amount of educational experts and staff available to the DPI, the Legislature, and the fact that some schools have already found the keys to success. Consider going to Clay and Cherokee Counties and find out what they are doing to achieve such success. Go observe the five examples set out in this Memorandum of Decision. The Court encourages the parties to entertain input from excellent resources as The Public School Forum and other non-profit organizations interested in the welfare of all of North Carolina's students.

III. The Court would like progress reports on a quarterly basis as this case is still active and a work in progress as the work directed is undertaken. (March 26,2001 Memorandum of Decision pp. 83-84)

The Court's direction that the parties meet together to analyze educational strategies, focus and if necessary re-allocate funds did not sit well with the State. The Court's analysis of *Leandro* to include *the requirement that at-risk children should be the recipients of strategically allocated available resources before non constitutionally mandated programs were funded* ignited a virtual "firestorm" in political and educational circles. On April 24, 2001, the State announced it would appeal the Court's decision requiring the State and the plaintiffs to come up with a plan to re-allocate resources.

The portion of this Court's opinion that ignited the "firestorm" follows:

> *....the right to the equal opportunity to a sound basic education, is only to the sound basic education, not the frills and whistles. The State Constitution does not require that children be provided a prep school education, nor that children be provided the courses and experiences to enable them to go to Yale or Harvard. While there is no restriction on high-level electives, modern dance, advanced computer courses and multiple foreign language courses being taught or paid for by tax dollars in the public schools, the Constitutional guarantee of a sound basic education for each child must first be met. (March 26,2001 Memorandum of Decision p. 77)*

The political and educational "leadership" apparently were terrified that being required to consider successful at-risk educational practices, and if necessary, re-allocate existing resources from programs not mandated by the constitutional requirement as amplified by the Leandro doctrine would, according to Phil Kirk, chairman of the State Board of Education, *....drive more of the brighter students away from public schools into private education."* ....

This statement, and others like it, reflected a fundamental misconception about *Leandro's guarantee of an equal opportunity to obtain a sound basic education to each and every child in the State. The North Carolina Constitution's right to a sound basic education for each and every child extends to all children, including the "best and the brightest."*

It has become clear to the Court that it was the State's "minimalist" vision of what the North Carolina Supreme Court expected a student to obtain within the definition of a sound basic education that caused the educational and olitical leadership to fail to appreciate the fact that *Leandro's* guarantee of a sound

basic education applies to all students, including the "best and brightest." The Court believes that it is appropriate to set the record straight on this point, once and for all. *Leandro's guarantee of an equal opportunity for a sound basic education applies to all students, not just at-risk students and not just the smartest.*

The State's position that the equal opportunity to receive a sound basic education has been provided when a child performs at a level of minimal mediocrity (Level II-below grade level) and is barely scraping by obtain a high school diploma is just plain wrong. Here's why.

The description of what constitutes the minimum sound basic education set forth in *Leandro* has been in print since July 24, 1997. Despite the plain language of Leandro and the State's ABC system's measurement of acceptable academic achievement being set at Level III, or above, the State has consistently argued that the sound basic education constitutionally mandated is only a "fundamental" and "sufficient" minimal education which, when aligned with the student achievement levels under the ABCs, fits within the definition of achievement at Level II-below grade level.

The State's position has been, and still is, that when a child achieves Level II (below grade level) academic performance, then the child has been provided with a sufficient, fundamental basic education that meets constitutional muster. The State's position is that Level III and IV (grade level and above) academic performance are only goals that the State would like to have all children aspire to and reach.

A review of statements made by Special Deputy Attorney Tom Ziko during a Court hearing on August 18, 2000, explains the State's position on this issue best:

Ziko:.... and the proper standard to look at when determining whether a child has achieved a sound basic education, level two. Court: So the position is---your position is that the sound --- the constitutional requirement of the sound basic education is a minimum education? Ziko: Yes. Court: A basic education? Ziko: Fundamental..... .....Ziko: ..... Level two is described as students performing at this level demonstrate inconsistent mastery of knowledge and skills in the subject, and are minimally prepared to be successful at the next grade, minimally prepared. That's consistent with sufficient. That's consistent with fundamental. That's consistent with you know just enough to move ahead. Court: So the child under your.. with your position, the child is to have mastered enough fundamental skills, although the State's goals in the ABCs and elsewhere to get, to educate our children are far greater?

Ziko: The State has far higher goals and always has had higher goals than providing a system which does nothing but provide a sound basic education. Court: So the child who... it's the difference between a moped and a Cadillac. The goals are a Cadillac goal and the minimum standard, the minimum standard you're talking about provides that child with a moped, and if they can really achieve they get a Cadillac. Ziko: Yes.

Court: But the Constitution doesn't demand more than a moped. Ziko: Right. I think that was clear in the Supreme Court's opinion where it consistently talks about sufficient fundamental knowledge.....

Ziko..... our proposed finding that level two is a constitutional standard is not only aligned with the language of the standards themselves, but also the history of education in this State and to my knowledge every other state that C's and D's are

passing courses, are passing grades..... What is the floor below which the Legislature and the Board of Education cannot fall? That floor has to be something less than what we aspired. It has to be no more than level two..... The test the Supreme Court has indicated is good evidence, and the best evidence in this case is that the vast majority of students in Hoke County are scoring at or above level two, which is the best aligned standard with a sound basic education. (Tr. 8/18/2000 pp 23-29)

This Court, in Section I, rejected the State's position and found that Level III (grade level academic performance) was the minimum level of academic performance under *Leandro*. *(October 12, 2000 Memorandum of Decision)*

Clear evidence that the educational and political leadership were continuing, in March, 2001, to rely on the Attorney General's flawed "vision" of a *sound basic education as being fundamental, minimal, Level II performance and more importantly, the misconception that Leandro's guarantee of a sound basic education did not apply to each and every child, including the smartest child,* poured out in their response to the Court's March 26, 2001 direction that the State meet with the plaintiff parties, determine effective educational strategies for at-risk children and if necessary, re-allocate resources to address the needs of at-risk children who were failing to obtain a sound basic education.

Chairman Phil Kirk:

"We'll continue to emphasize helping at-risk students," Kirk said, *"but we emphatically reject any notion that it be done at the expense of brighter students..."* (N&O, 4/24/01 pp. 1A, 8A)

Attorney General Cooper:

" Every child in North Carolina deserves a sound basic education, but that is a floor rather than a ceiling." (N&O, 4/24/01 p. 1A)

Governor Mike Easely:

"Our children deserve educational opportunities that go far beyond the minimal constitutional standards that are the focus of the Leandro case." "Our goal must be twofold,... to make certain that all students have the opportunity to pass 'sound, basic' courses and to excel in superior, competitive academic programs that prepare them to meet the demands of today's knowledge-based, global economy." (N&O, 4/24/01 p. 1A)

At the same time, Governor Easley announced that he was appointing a study group task force to focus on making North Carolina's schools " superior and competitive."

House Speaker James Black:

" I also stand ready to help the governor's task force build on our efforts to give all of our children a quality education, especially those considered at risk of failure." (N&O, 4/24/01 p.8A)

Contrary to what the State and its Educational and Political Leadership believes, *Leandro's* sound basic education mandates a quality education for all children, sufficient for those who wish to go into the work force, to vocational school, to college, and to be able to meaningfully compete with others in those endeavors.

It is not necessary for this Court to try to reinvent the wheel. *Leandro provides the answer and has resolved the issue:*

The principal question presented by this argument is whether the people's constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate..... Leandro, p 345.

..... The General Assembly also seems to have recognized the constitutional right to a sound basic education and to have embraced that right in Chapter 115C of the General Statutes. For example, in a statute governing the use of funds under the control of the State Board of Education, the General Assembly has stated:

> *(a)It is the policy of the State of North Carolina to create a public school system that generates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner.....*
> *(b)To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study. N.C.G.S. 115C-408(1994)*

In addition, the legislature has required local boards of education to 'provide adequate school systems within their respective local school administrative units, as directed by law.' N.C.G.S. 115C-47(1)(Supp. 1996)

We conclude that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundatmental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or upon vocational training and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society. (Leandro p. 346)

Make no mistake. *Leandro* clearly holds that all children are entitled to the equal opportunity to obtain a sound basic education consistent with their individual abilities, to and including a sound basic education sufficient (a) to be prepared at the end of high school to be able to enter the workforce and obtain meaningful employment; (b) to be prepared to attend a vocational/technical school and succeed

academically; or (c) to be prepared to attend a college or university and at the end of each, to be compete with others on an equal basis in higher education or gainful employment.

The opportunity to a sound basic education, depending on the abilities and desires of each child, encompasses a meaningful and substantial education that at a minimum, prepares each student with the tools to achieve at work, at a vocational training course, or at an institution of higher learning. In short, a sound basic education has to prepare one to succeed in the real world, not just scrape by with C's and D's.

That being the case, there was not then, and is not now, anything to fear from being required to assess, analyze, review and if needed, re-allocate non-constitutionally mandated resources to meet the constitutionally mandated needs of all children, including those at-risk. Academically gifted courses in core high school subjects required for admission to the University system, including AP courses that prepare students who wish to go to college, are just as much a part of a sound basic education as are courses in shop, mechanical engineering, auto mechanics, that prepare students to enter the work-force. Once again, let there be no mistake. *Leandro* guarantees a sound basic educational opportunity to all children sufficiently substantial to permit those who can, including Chairman Kirk's "best and brightest" to go to college.

Reduced to essentials, the Court finds that the State of North Carolina's continued insistence that *Leandro's* guarantee of the opportunity for sound basic education has been met when a student performs below grade level and that performance at grade level or above is merely a non-constitutionally mandated goal to which all should aspire, is merely a shell game played to avoid accepting the responsibility imposed by

Leandro and mandated by the North Carolina Constitution.

HAVING PUT THE MISCONCEPTION THAT LEANDRO'S GUARANTEE OF A SOUND BASIC EDUCATION DOES NOT APPLY TO ALL CHILDREN, INCLUDING THE BEST AND THE BRIGHTEST, TO REST, THE COURT WILL CONTINUE WITH THE PROCEDURAL BACKGROUND AT THE TIME OF THE STATE'S APPEAL IN APRIL, 2001.

The State's Notice of Appeal was accompanied by a Motion For a Stay of the Court's Order pending the outcome of the appeal. The Plaintiff-parties filed "protective notice of appeals." After a hearing on April 25, 2001, the Court denied the State's Motion for Stay. The Court prepared and entered an Order Denying Defendants' Motion For Stay on May 1, 2001.

The State next filed a Petition for Writ of Supersedeas in the North Carolina Court of Appeals on May 10, 2001. The Court of Appeals granted a temporary stay on May 14, 2001. The Plaintiff-parties filed written responses opposing the State's Petition for Writ of Supersedeas.

One of the State's chief complaints about the Order contained in the March 26, 2001 Memorandum of Decision *was based on premise that the State had not been found by the Court to be responsible for the failure of so many at-risk students in North Carolina to obtain a sound basic education.* The State contended that the Court, by requiring the State to meet with the Plaintiff-parties, review educational practices, and if needed, re-allocate and re-structure resources, coupled with the absence of a finding of liability on the State's part, constituted a "usurpation" of the power of the Legislative and Executive Branches of Government.

Simply put, absent a finding by this Court that the large numbers of children at-risk of academic failure are the State's responsibility, the State did not want to have to participate in or come up with a plan to look at educationally effective methods to teach at-risk children that were cost-effective and if necessary, re-allocate resources to meet the constitutional mandate. The State was also rocking along under the false premise that to have to re-allocate resources to help at-risk children, it would have to take away constitutionally mandated resources to provide the equal opportunity to obtain a sound basic education as defined by *Leandro* for the group of students that Chairman Kirk termed the "best and brightest."

This "best and brightest" pronouncement was a cruel scare tactic designed to sit well with the majority of the public at large whose children were performing at grade level or above and being successful in obtaining a sound basic education by being prepared to attend colleges and universities and therein, to compete with others in furtherance of their formal educations.

The State's objection to looking at successful educational methods and programs to help at-risk children was in direct contravention of the legislatively mandated policy to create a public school system that graduates students with the skills demanded in the workforce using educational funds in a cost-effective manner, a policy cited by the Supreme Court in *Leandro*. Balking at being directed to focus on known, cost-effective educational programs that are successful with at-risk children was in direct contravention of the announced policy of the State of North Carolina set forth in N.C.G.S. 115C-408(a): ***It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society using***

State,local and other funds in the most COST EFFECTIVE MANNER. (emphasis added). This is not educational policy set by this Court. It is educational policy set by the State of North Carolina itself enacted into law.

All this Court had asked the State and the plaintiffs to do was precisely what the legislative branch of government had enacted as policy and directed the Educational establishment to do---- create a public school system that graduates good citizens with the skills necessary to function in today's society, using all funds, in the most cost effective manner.

Despite disagreement with what the Court had ordered, Governor Easley, on May 23, 2001, announced that he had assembled a thirty (30) member task force to develop a long range plan to improve the state's public schools. One member of the task force was quoted in the *News & Observer*:

> *" Gilchrist said he envisions pulling a lot of successful classroom strategies together. 'Many wonderful things are going on in our schools... but we've been working in isolation,' he said." Governor Easley was reported as saying that, "Our schools are not what they should be and we cannot be satisfied with mediocrity," and that "the group will explore innovative programs that have helped poor children, as recommended in the court order." He also indicated that the group will share its work with the Court should the state lose its appeal in this lawsuit.(News & Observer, p. 3A, 5/23/01.)(emphasis added.)*

On May 24,2001, the North Carolina Court of Appeals entered the an Order denying the State's petition for a writ of supersedeas and dissolving the stay:

> *The petition for writ of supersedeas filed in this cause by defendants on 10 May 2001 is denied. The*

temporary stay granted by this Court on 14 May 2001 is hereby dissolved.
By Order of the Court this the 24th day of May, 2001.

Notwithstanding the denial of the Stay, the pendency of an appeal of interlocutory orders in the middle of this Court's fact-finding process was distracting.

The Court wanted to get about its task of answering the critical question as to whether or not the failure of at-risk children to obtain a sound basic education is based on lack of funding or lack of implementation of similar successful, cost-effective programs as discussed in the March 26 Memorandum of Decision.

The Court also thought that the Governor's voluntary establishment of the task force to develop a long range plan to improve the state's public schools, as recommended by this Court in its Order, was commendable and was action consistent with the Court's Order of March 26, 2001, although the task force had a broader mandate.

Taking into account the fact that the Governor's task force was in place and the action taken by the North Carolina Court of Appeals *denying* the State's Petition for Writ of Supersedeas, the Court reassessed the exigencies of this case as it then stood.

With the Governor's voluntarily established task force in operation, and the freedom to move ahead despite the appeal, the Court believed that it could more quickly, and with less disruption, address the question of whether or not the at-risk students within the plaintiff-parties' school districts are failing to obtain a sound basic education because of lack of funding, or because of a lack of sound, cost-effective

educational programs being implemented in low performing schools, or a combination of those factors.

By taking responsibility for focusing and deciding the critical question(s), the Court believed the case would move faster and at the same time, the Governor's task force could move concurrently to benefit the children of North Carolina by recommending improvements in education.

In consideration of this voluntary action by the Governor consistent with the Court's Order and the Court's decision to move forward, the Court determined that there was no real need for the Court, at that time, to Order the State to undertake any massive form of self-examination and re-allocation.

By Order entered on May 29, 2001, the Court, in its discretion and as authorized by Rule 54(b), North Carolina Rules of Civil Procedure, amended the Memorandum of Decision of March 26, 2001, and vacated *only* that portion which Ordered and Directed the State of North Carolina, the plaintiff-parties to conduct self-examinations of the present allocation of resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children, to obtain a sound basic education using common sense and methods that work and are directed towards each child's particular need, specifically ***Paragraphs Number I,II, and III, on pages 83 and 84 of the March 26,2001 Memorandum of Decision.*** Except as vacated, the March 26 Memorandum of Decision remained intact and unchanged.

The net result of the Order amending the ***March 26,2001 Memorandum of Decision*** was to enable the Court, working independently, to move this case along while at the same time continuing to grant due deference to the Executive and Legislative Branches as they proceed in

their stated goal to improve education for all of North Carolina's children, including those at-risk.

On June 15, 2001, the State withdrew its appeal to the Court of Appeals. The Plaintiff-parties followed suit. Reduced to essentials, all appeals were withdrawn following the Court's Order of May 29, 2001. The Court, after consultation with the parties, scheduled another hearing to focus on evidence relating to successful educational strategies and programs for at-risk children and the answers to the questions posed in its Memorandum of Decision of March 26, as amended.

The evidentiary hearing took a total of ten days beginning on September 15, 2001, and concluding October 5, 2001. The Court heard evidence concerning the following schools and school districts:

- Winstead Elementary School in Wilson County (Robert Pope, principal; Larry Price, superintendent)
- Baskerville Elementary School in Nash-Rocky Mount (Ann Edge, principal; George Norris, superintendent)
- Gaston Middle School in Northampton County (Lucy Edwards, principal; Mary McDuffie, superintendent)
- West Hoke Middle School in Hoke County (Darlene Clark, principal; Mitch Tyler, superintendent)
- Kingswood Elementary School in Wake County (Sue Sisson, principal; Bill McNeal, superintendent)
- Mountain View Elementary School in Burke County (Teresa DeHart, principal)
- Hayesville Elementary, Middle, and High Schools in Clay County (Scott Penland, superintendent)

In addition, the Court heard evidence from Henry Johnson and Jennifer Bennett of the Department of Public Instruction, Josephine Baker of the Wake County

Schools, Steve Wrenn (plaintiffs' expert), and Carolyn Olivarez of the Hoke County Schools.

Before discussing what the evidence showed relating to effective educational practices, programs, strategies and resources required for at-risk students, it is appropriate to outline what the Court has previously found in its earlier Memoranda of Decision with respect to the issue of student achievement under the *Leandro* standard.

A. PRIOR FINDINGS ON STANDARDS AND OBJECTIVES

1. The Requirement of Grade Level Performance

[T]he Court finds that students who are performing at grade level or above as defined as Level III and Level IV on the EOC or EOG tests are demonstrating sufficient ability in the subject matters tested to be on track to receive a sound basic education, and those students that are performing below grade level at Level I or Level II are not on track to receive a sound basic education.(Oct. 12, 2000 Memorandum of Decision p.187)

A student who is performing below grade level (as defined by Level I or Level II) is not obtaining a sound basic education under the Leandro standard.
(Oct.12, 2000 Memorandum of Decision p.183)

High school drop-outs have not obtained a Sound Basic Education and this problem exists statewide. (Mar. 26,2001 Memorandum of Decision p. 17)

2. The Requirement of Proficiency for All Students

North Carolinians should expect no less for their children than an educational goal that seeks to have every child perform at Level III proficiency or above . . . . (Oct.12, 2000 Memorandum of Decision p. 183)

[E]very school in North Carolina is capable of having 90 percent of its students score at proficient levels (i.e., Level III or IV) on EOG and EOC tests (except for students with disabilities or LEP who are excused from the tests).(Oct.12, 2000 Memorandum of Decision pp. 187-88)

The fact that more than one-fourth of our children are academically at-risk in reading and math in the third grade is clear evidence that something more needs to be done to provide them with an equal opportunity to obtain a sound basic education. If they are not on track by the 3rd grade, a great many of these children are not going to be on track by the 8th grade. The evidence bears this out.(Oct.26, 2000 Memorandum of Decision p 25)

These results are unacceptable. They clearly and convincingly show that more than 25% of our third graders are at-risk of academic failure after four years of education in the public schools. The only logical conclusion that one can draw is that these children who are at-risk for academic failure in the third grade have "missed the boat" in their first (4) years in their respective schools. They are not on track to get a sound basic education. For reasons not their fault, they have not had the equal opportunity to receive a sound basic education. The evidence of educational "outputs" on the 3rd grade EOG tests and the Grade 3 Pretests clearly and convincingly proves this. (Oct. 26, 2000 Memorandum of Decision p. 24)

We know that when these [at-risk] children get to school, regardless of what county they live in, they are more likely to fail to achieve academically and they require more attention, time and effort to teach, and this is more expensive than for the non at -risk child coming from the 'ideal' home environment with two caring parents.(Mar.26, 2001 Memorandum of Decision p.73)

As the educators and education experts for all parties unanimously agreed at trial, given the proper resources, the educational needs of at-risk students (such as students living in poverty) can be met. All children can learn, even children with substantial disadvantages. Many disadvantaged children not only learn, but they break through the disadvantages and do well academically in spite of their at-risk factors. Unfortunately, there are way too many at-risk children who do not break out and continue to perform poorly and below grade level. It is these children's needs that must be addressed in order to attempt to break the cycle of poverty and disadvantage.(Oct.26, 2000 Memorandum of Decision pp. 15-16)

The evidence is clear and convincing that children from economically disadvantaged backgrounds can learn. However, in order for them to perform well in school it may take 'more time or different kinds of intervention' and more resources than those needed for children from middle class backgrounds.(Mar.26, 2001 Memorandum of Decision p. 71)

The Court is convinced that the answer to the question as to why these at-risk children are sorely lagging behind the majority is simple. When these children came to kindergarten at age 5, they were at-risk, already behind, not ready to learn and certainly not in a position to take advantage

of the opportunity to begin the process to obtain a sound basic education on an equal footing with their fellow five year old students who were not encumbered by outside at-risk factors. (Oct. 26, 2000 Memorandum of Decision p. 24)

The evidence is clear and convincing that at-risk students require additional help, programs and resources in order to perform at a level satisfactory for them to obtain a sound basic education and to perform at the same educational level as children who are not at risk for academic failure. (Oct.26, 2000 Memorandum of Decision p.15)

Economically disadvantaged children, more so than economically advantaged children, need opportunities and services over and above those provided to the general student population in order to put them in a position to obtain an equal opportunity to receive a sound basic education. These additional opportunities may include additional time on task, lower class sizes, early childhood education, individual tutoring, early intervention or supplementary instruction and materials. Enabling at-risk children to perform well in school requires more time and more resources.(Oct. 25, 2000 Memorandum of Decision p. 10)

The dropout problem in Hoke and other counties could be improved with early intervention and other programs. In 1994 the State Board of Education found that '[a] wide range of programs for dropout prevention and students at risk [was] needed within every school system.'(Mar.26, 2001 Memorandum of Decision p. 19)

The bottom line is simply this. It is undisputed that the at-risk group of children is harder to educate and that the at-risk child

requires more resources and attention to succeed. (Mar.26, 2001 Memorandum of Decision p. 78)

4. Effective Programs for Helping At-Risk Students

As a general premise, witnesses for all parties agreed as to a number of particular programs and interventions that are effective in improving the scholastic performance of at-risk students, either by increasing the time devoted to instruction or by increasing the intensity of instruction by lowering class size or providing expanded staff development programs. (Oct. 26, 2000 Memorandum of Decision p. 16)

Reducing class size. Witnesses for all parties agreed that reducing class size is an effective means of improving student achievement and performance for at-risk children. Smaller class sizes are particularly beneficial for at-risk children and in schools that serve a student population with a high percentage of at-risk students. (Oct.26, 2000 Memorandum of Decision p. 16)

Tutoring. Witnesses for all parties agreed that tutoring, especially when one-on-one with a trained tutor, is an effective means of increasing the academic performance of students, and especially at-risk students. (Oct.26, 2000 Memorandum of Decision p.16)

More time on task. Witnesses for all parties agreed that providing at-risk students with more instructional time, by increasing the length of the school day or the school year is an effective means of increasing academic performance. Student performance is, to a large extent, a function of time on task. Several State witnesses testified that at-risk students often require more

instructional time than other students to master the SCOS. (Oct.26, 2000 Memorandum of Decision pp. 16-17)

The evidence shows that with additional resources applied in a common-sense and practical manner, children with significant disadvantages can receive and take advantage of the equal opportunity for a sound basic education, including, but not limited to preschool programs, tutors and reduced class size. (Oct. 26, 2000 Memorandum of Decision p. 17)

DPI acknowledges that there are effective methods for improving student performance. According to DPI, preschool programs, use of trained tutors, improving teacher quality, lowering class size and supporting teachers' professional development are effective methods for improving student performance. A large and well-accepted body of research establishes that programs that substantially improve the academic performance of children from poverty and at risk backgrounds (of course these programs would improve any child's performance) include early childhood intervention, more instruction, tutoring and lower class size, and recruitment and retention of good teachers. (Oct.26, 2000 Memorandum of Decision p. 17)

Competent and well-trained teachers with updated professional development. It goes without saying that competent, well-trained teachers who are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above.(Oct.26, 2000 Memorandum of Decision p. 17)

Reduction in class size. Smaller classes make the greatest impact in early grades for disadvantaged and minority students. Also, class size is especially important where there is a school with a concentration of at-risk students. When a school has a high concentration of at-risk students, those students bring all the risk factors with them into the classroom, imposing additional demands on their teachers. Reducing class size for students who are below proficiency would permit one-on-one instruction. Small group teaching would assist those students in reaching proficiency.(Oct.26, 2000 Memorandum of Decision p. 18)

No one single program will meet all needs. The bottom line is that there is not necessarily one single program that is going to meet all the needs of at-risk students. Effective solutions are those that build upon one another as the child progresses through school. Having said that, however, the Court is convinced, by the greater weight of the evidence, that the earlier there is an opportunity to intervene in the at-risk child's educational ladder, the better chance that child will have to take advantage of its constitutional right to an equal opportunity to receive a sound basic education. (Oct.26, 2000 Memorandum of Decision p. 19)

NONE OF THE CREDIBLE EVIDENCE RECEIVED AT THE HEARINGS IN SEPTEMBER AND OCTOBER, NOR STUDENT PERFORMANCE RELATED DATA RECEIVED THEREAFTER, CONTROVERTED ANY OF THE FOREGOING FINDINGS BY THIS COURT, NOR PERSUADED THE COURT TO CHANGE OR AMEND ITS DETERMINATIONS AND FINDINGS CONTAINED IN THE FIRST THREE MEMORANDA OF DECISION.

DISCUSSION OF THE EVIDENCE PRESENTED AT THE SEPTEMBER AND OCTOBER, 2001 HEARINGS.

The focus of the hearings.

The hearings focused on determining the cause(s) for the large numbers of at-risk children failing to obtain a sound basic education in the plaintiffs' and plaintiff-intervenors' ("plaintiff-parties'")school districts and in other school districts throughout the State. The critical questions that the Court wanted to focus on were: WHETHER OR NOT THE AT-RISK CHILDREN WERE FAILING TO OBTAIN A SOUND BASIC EDUCATION BECAUSE OF (A) A LACK OF SUFFICIENT FUNDING FOR EDUCATIONAL PROGRAMS? (B) A LACK OF EFFECTIVE LEADERSHIP IMPLEMENTATING EFFECTIVE EDUCATIONAL PROGRAMS FOR AT-RISK CHILDREN? OR (C) A COMBINATION OF LACK OF SUFFICIENT FUNDING AND LACK OF LEADERSHIP IMPLEMENTING EFFECTIVE EDUCATIONAL PROGRAMS FOR AT-RISK CHILDREN?

The net result of the Court's inquiry is that there is no single, simple educational program that meets the needs of at-risk children. The answer is that there are many effective educational programs that are successful in educating at-risk children.

Not surprisingly, the evidence presented at the hearings fits squarely with what this Court has found, from the evidence previously presented, are necessary criteria of effective schools that teach children at-risk of educational failure.

While the evidence clearly and convincingly showed that schools with effective leadership and hard work can, and do, accomplish the goal of providing children with the opportunity for a sound basic education using different educational strategies, all successful schools strive to meet similar criteria to enable them to provide their students, especially those at-risk, with the equal opportunity to obtain a sound basic education. These criteria are:

An Effective, Competent and Motivated Principal is Key to a School's success.

It is undisputed that an effective, energetic, motivated Principal is the key to the success of any school, especially one with a high percentage of at-risk children. An effective Principal (a) has high expectations of the faculty and students; (b) has in place an instructional program that is effective and provides individualized and differentiated instruction so that each child learns the Standard Course of Study; (c) has a faculty of dedicated, competent and caring teachers who have "bought in" to the instructional program implemented by the Principal are trained to carry out that program, and who communicate each day to the children the high expectations expected of them.

The evidence clearly demonstrated, once again, that an effective principal can improve the performance of at-risk students by using a variety of policies, educational practices and programs in combination with high expectations, dedication, commitment, proper staff development with proper funding, strong leadership and competent teachers who effectively teach the Standard Course of Study to all of their students using individualized and differentiated instruction.

High Quality, Full Time Teachers Who Teach in Their Fields of Expertise is Essential and Mandatory.

During the first round of evidentiary hearings in this case, the North Carolina Department of Public Instruction (DPI) singled out policies to improve teacher quality and to support teachers' professional development as especially effective steps toward higher student performance. Based on the credible evidence presented at the first round of evidentiary hearings, the Court found and concluded in its October 26th Decision at 17:

It goes without saying that competent, well-trained teachers who are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above.

This finding remains undisputed and there was no credible evidence to the contrary presented by any party during the September hearings. Instead, the evidence received from principals and superintendents in the schools that were the focus of the September 17th hearings consistently affirmed the essential role that competent, well-trained teachers play in obtaining student success, whether at-risk or not.

Principals and Superintendents who testified all agreed that that teachers who bring to school high expectations—that all of their students can learn—are able to lead their students to academic success. The common theme among the principals in these successful schools was that quality teachers *do* make a difference.

Likewise, there can be no dispute that the negative results of even one ineffective teacher can do significant damage to a student's achievement not only in the year in which the student has to suffer through mediocrity but afterward.

The North Carolina Commission on Raising Achievement and Closing Gaps ("*The Bridges Commission*") released a report on student achievement in December of 2001. The Court requested a copy of the report be added to the record and this report is now in evidence.

The Bridges Commission was appointed in the summer of 2000 to advise the State Board of Education, the

State Superintendent, and local school systems on ways to raise achievement for all students and close the minority student achievement gap.

In its report, the Bridges Commission concluded:

> *Most policymakers, parents, educators, and researchers now generally agree that nothing is more closely tied to student achievement and underachievement than the preparation, support and quality of classroom teachers. It follows then, that nothing is more critical to our efforts to close the achievement gap than making certain that every student, especially those who have been traditionally underserved by public schools, has access to competent, caring, qualified teachers in schools organized for success. (Report p. 10)*

Reduced to essentials, teacher quality is of determinative importance in raising student achievement levels, especially those at-risk. All of the credible evidence shows this to be the case. A caring, qualified, competent teacher effectively teaching the SCOS in each classroom is necessary to provide each child with the opportunity to obtain a sound basic education through individualized and differentiated instruction.

<u>Safe and orderly environment in the School is essential in order for students to learn.</u>

The following facts are not in dispute. Good Principals ensure good discipline in their schools. Schools must have and maintain good discipline because without good discipline and a safe environment, learning is not going to take place. With good discipline comes an environment that is conducive to learning. Successful principals agree that in the event there is good teaching going on at the school, the discipline problem is diminished such that

discipline almost takes care of itself." *The best discipline you can ever have or deterrent to misbehave is just to have good teaching.*" (DeHart, 9/20/01, Tr.p. 146)

Clear and focused school mission- Teaching the Standard Course of Study in a focused and effective manner.

It is undisputed that successful Principals and teachers focus on teaching the Standard Course of Study(SCOS)to their students and constantly assess and monitor the progress of their students as they work through the SCOS.

All the principals who testified stressed the fact that they expected and demanded their teachers teach the SCOS. Not every principal's methods of seeing that the SCOS is being taught are the same. To the contrary, the evidence is clear and convincing that successfully teaching the SCOS to children, especially at-risk children, can be accomplished through a wide variety of educational practices, programs and teaching methods.

In short, no one educational method is mandated and competent Principals should have the flexibility within their own schools to provide differing instructional leadership and methods - so long as they are cost effective and get the job of educating children done.

Instructional leadership from the Principal which is effectively implemented by the classroom teachers and staff.

Focused, competent Principals are necessary for any school, but especially schools with high populations of at-risk students. Traits that one expects to find in good, competent Principal are (a) energy; (b) experience in working with people; (c) good communication skills; (d) leadership skills - inspire

the faculty and students to follow the educational programs and methods for academic success; (e) knowledge of the mission for the school and be able to effectively communicate what the school should be doing and have the teachers and parents buy into the programs at the school; (f) people skills and the ability to recognize talents in teachers and to hire good teachers Focused, competent Principals provide the instructional leadership for the school so that the focused mission - teaching the Standard Course of Study - is effectively carried out by the teaching staff and (g) maintain order and discipline for a safe environment.

Effective Principals ensure that their teachers provide their students with individualized, differentiated instruction. Principal Pope succinctly defined individualized and differentiated instruction.

> *When you individualize and differentiate instruction, number one, you find out where the student is and when you differentiate, you may teach him differently than you teach the students sitting in the desk beside him. The days of staying in front of the …class and giving everybody the same lesson is not proven to be successful with today's students. Through our assessments and working with students, we should know where every student is and then we should be able to give every student what he needs to be successful.(Tr. Pp 123-24; 9/17/01)*

With respect to at-risk students, it is undisputed that individualized, differentiated instruction is essential for success. All the successful principals who testified agreed that individualized, differentiated instruction was important, but all followed different instructional methods to get reach that goal consistent with their own educational philosophy and the resources available to them.

Regardless of their differences in instructional methods, the evidence is clear and convincing that effective Principals are those who can and do implement instructional programs and policies to ensure that their teachers are teaching the SCOS, are assessing the students' mastery of the objective of the SCOS and are progressing on a track to cover the objectives of the SCOS for each period of the school year.

High expectations of teachers and students.

Good Principals demand high expectations of their teachers and students while seeing to it that the SCOS is being effectively taught in each and every classroom. This is especially true with at-risk student populations.

> *So -- but I think the lessons of poverty are that we can overcome poverty through education. And the only way to do that is to understand where we are going and to set our expectations higher than they have been set before. T. 9/19/01, at 70 (McDuffie). .. "[w]e expect every child to learn, every child to give the best that they have to give. We expect you to reach your goals when you set them. Our children, at the beginning of every nine weeks, we have a reader program where they set their own goals so that they have set their own expectations." T. 9/18/01, at 43 (Edge).*

Consistent with a good Principal's goal of high expectations of students is the expectation that the teachers will work hard. The bottom line is that high expectations of students, but especially at-risk students, are essential and necessary. Having high expectations of a child costs nothing. Having high expectations of an at-risk child from a poverty background is, however, absolutely necessary.

The consensus of opinion was overwhelming that for at-risk populations, teachers must recognize that there is a different set of challenges with these children, and that these children do not come to school with all of the equipment that other children bring.

The Principals agreed that they wanted teachers who were interested in these children, had a lot of energy, focus on educational issues and willing to work with the students and parents. In addition, the teachers had to expect and believe that the students could do well.

Staff Development and on-going Training for teachers is essential and necessary - unfortunately, due to an admitted system of low expectations for some groups of children, many veteran teachers will have to be retrained in order to effectively reach at-risk children.

There was uniform and consistent agreement from the Principals who testified that meaningful staff development, especially training new teachers how to teach at-risk children is essential to a successful school. Staff development also enhances and improves teacher quality among veteran teachers. Staff development should be ongoing and occur during the school day.

Good Principals meet with their teaching staff frequently and assist them in planning and implementing the process of teaching the SCOS. Good Principals provide in-house staff development on an on-going basis.

The Bridges Commission also concluded, based upon its review of educational research, that professional staff development is an essential tool for developing highly competent, caring teachers for all children, especially for those who teach at-risk children:

But assuming that new professional development is based on national models and standards and centered on the achievement problems that teachers face each day, one measure of sufficiency will be when teachers are successful in teaching groups of diverse learners, as outlined in the six core standards developed and adopted by the North Carolina Teaching Standards Board and the North Carolina Association of Educators representing the teachers of our state. The State Board of Education adopted these same standards for North Carolina's teachers in November 1999. (Report p.11)

The Bridges Commission included professional development as important parts of the program to reduce and close the achievement gap:

RECOMMENDATION FIVE

That the State Board of Education and the Superintendent immediately make a public commitment to design and fund a required, but flexible, professional development initiative that will ensure that classroom teachers acquire the knowledge, skills, and dispositions needed to be successful in teaching a diverse population of students.

RECOMMENDATION SIX

That the state provide the substantial TIME [sic] that classroom teachers need to update their skills and gain new skills in working with diverse populations by requiring that veteran classroom teachers accept paid 11-month contracts once during every four-year period. (Report, pp 12,13)

One would wonder why in the world would veteran classroom teachers need new training to "update their skills and gain new skills in working with diverse

populations"? The Court interprets diverse populations to be at-risk, minority students.

Strangely enough, the answer to this question was provided by the North Carolina Association of Educators (NCAE) in its Amicus Brief filed with the Court. In the Amicus Brief, the NCAE made some troubling, but candid, admissions about how teachers have failed to reach at-risk children in the past due to "recently discredited educational theory."

As a result of having taught certain children using a "discredited educational theory", the NCAE admits that some children were grouped and tracked by teachers. Children on lower tracks received poorer quality curriculum, less experienced teachers and were the subject of low expectations. The reason for this "discredited" educational approach is best explained in the NCAE's Amicus Brief which states in pertinent part:

> The Court has observed that low-expectations undermine achievement for at-risk students, and that too many teachers expect too little of students, with understandable consequences. NCAE supports the following findings of the Court as critical to the problem of teaching at-risk students.
>
> > *The students who come to public schools of North Carolina arrive from diverse and varied economic and cultural backgrounds. The students arrive with different learning abilities, different social skills and different levels of maturity. Based on these factors and others, children will learn at different paces and at different levels. It is undisputed that all children can learn.*

Memorandum of Decision, Section One, p. 152.

> *Although teachers and administrators may not do it consciously, they often assume that certain students will not learn as rapidly or as much as others. As a result of that kind of attitude, those students will not do as well as others.*

Memorandum of Decision, Section One, p. 122-23

Independent of this litigation, NCAE and the National Educator's Association have recognized the need to raise the expectations of educators who teach at-risk students…. But teachers do not raise expectations because they are told to do so -- they must be part of a comprehensive response to this issue that includes a major commitment to staff development. In order to understand how the phenomenon of low expectations can be resolved, one must first understand that it has a pedagogical origin. (emphasis added)

1. Traditional Grouping/Tracking Strategies Assumed Low Expectations for At-Risk Students

For decades American public education was built around the notion that educators should group and track students by perceived ability levels and adjust expectations accordingly. In fact, the sorting of students into homogenous ability and achievement groups is nearly as old as universal compulsory education in the United States. Ability grouping enjoyed wide professional and public acceptance beginning in the heyday of the "scientific" movement in education and continuing through the post-Sputnik era of emphasis on enriching curriculum for the gifted. Most people 30 or older remember, for example, reading groups in elementary school with names like "bluebirds,"

"cardinals" or "robins," which were simply the pleasant exterior of a system that stratified students by perceived ability.

2. Research has shown that "tracking" students by ability has had far-reaching consequences beyond serving as a means to organize instruction.

Elementary students in lower tracks not only were less likely to attend college, but also regularly received poorer quality curriculum. These students also had less experienced teachers who were trained to have lower expectations of them. The low expectations construct continued in middle and high school, where tracking grouped students for most of their day, determined what higher level classes (such as biology, physics and calculus) they were allowed to take, and so on. In the "old" economic order of what was then largely a rural and agricultural state where the primary industry was textile production, the pedagogy was understandable. As we move to an information-based economy, and a society that places greater value on equal educational opportunities, its limitations have become sorely evident. The critical importance of excising these old approaches has been recently reiterated in the *First Report* from the North Carolina Commission on Raising Achievement and Closing Gaps, Dr. Robert E. Bridges, Chair, December, 2001 (hereafter "Bridges Report") The new paradigm expects educators to challenge all students with rigorous curricula and high expectations -a dramatic shift from our previous orientation to student learning and student abilities. The shift leaves many teachers with the tasks of achieving to high levels of learning for all students when their training and teacher preparation prepared them for a much different approach. Thus, while some blame teachers for low expectations, the real need is the

retraining of educators to reassess the basic assumptions of recently discredited educational theory. (emphasis added). NCAE Amicus Brief pp 19-22.

The NCAE's solution to this acknowledged mistake and discredited method of teaching children is to have the State of North Carolina pay for it:

> *North Carolina must invest resources in solving this problem. We need to retrain teachers on working with at-risk students, particularly those students from different economic, cultural and/or racial backgrounds. This is a key recommendation of the Bridges Report. Additionally, we must also restructure our staff development programs generally so they provide meaningful, ongoing training. (Brief p. 23)*

Like it or not, this "mistake" is not the fault of the school children who are entitled to an opportunity to obtain a sound basic education which includes, as a primary objective, a competent, qualified teacher who has high expectations of each child, especially those at-risk.

Despite the NCAE's admission that for years many of our children have been the victims of the academic community's low expectations and the harm that was done as a result, the evidence is clear and convincing that meaningful staff development for teachers is necessary for teachers to be able to keep up and effectively teach all children, especially at-risk children.

The State of North Carolina acknowledges that staff development is important because it funds staff development for teachers who teach in smaller classes in grades K-5.

Section 28.28 requires the "Teacher Academy" to spend 10% of its budget for 2001-02 to fund staff development for teachers that are assigned to teach smaller classes in kindergarten through fifth grade. While there were no additional monies allocated for this requirement, the important fact here is that the State admits and acknowledges that staff development of those teachers is necessary to that they can be trained to teach effectively in a small class environment.

In enacting Section 29.1, the State of North Carolina recognized that staff development is necessary for teachers of children who are in low performing, "high priority" elementary schools require instruction on "methods to individualize instruction in smaller classes." This legislation provided for extension of teacher contracts for 5 days to obtain that staff development on methods to individualize instruction in the smaller classes prior to the opening of school last fall.

While the amount of money allocated to staff development of teachers in the lowest performing elementary schools was less than $9,000,000, for 2001-2, the importance of the legislation is not just the money. The enactment of the legislation to assist "high priority" elementary schools by funding staff development for teachers to learn how to teach small classes of at-risk children constitutes an irrefutable admission by the State of North Carolina that teachers of at-risk children in sorry elementary schools need re-training in order to teach a diverse at-risk population.

It logically follows that if staff development is a State recognized requirement for the "bottom of the barrel" schools, staff development for individual teachers who are teaching groups of at-risk children performing below grade level in large numbers, is just as important a requirement for the teachers of high

numbers at-risk children in other schools where high concentrations of at-risk children are present and not achieving acceptable grade level performance.

Principals, not just Teachers need to receive regular, high-quality professional staff development.

Just as teachers need meaningful staff development, the requirement for staff development for principals and administrators to keep abreast of techniques and programs is just as important. Principals and administrators must be provided with the opportunity for on-going professional development to that they can properly supervise their teaching faculty and administer the educational process and programs in their schools in an educationally effective manner and in a cost-effective manner using their resources properly and efficiently.

Students should be provided with the opportunity to learn and high time on task coupled with an effective educational program and strategy- Students should be provided the opportunity to learn in the classroom and to spend high time on the task of learning the Standard Course of Study. The evidence shows that there are multiple strategies and programs which achieve success with at-risk students and that no one program fits all schools.

Effective Principals with populations of at-risk children are creative in finding many strategies and programs that will provide opportunities to learn. All the Principals who testified used a wide variety of policies, practices and educational programs in achieving success with their at-risk students. The evidence is clear that no one program or instructional technique is required.

Good Principals can be flexible and must be allowed to carry out their own ideas and policies provided they

are successful in doing so. Having said that, however, all the Principals who testified provided their students with the opportunity to learn the curriculum and included in that opportunity, high time on task. Each Principal's method differed, but in terms of opportunity to learn and high time on task, all were similar in meeting those two objectives for their at-risk students.

The various strategies consisted, in part, but not all, of (a) small class size (b) small group instruction during the day using media and teacher assistants (c) tutoring (d) differentiated instruction (e) individualized instruction (f) homogeneous grouping for multi-age reading instruction based on reading levels (g)night school (h) multiplication school (i)before and after school instruction (j) weekend tutoring (k) remediation sessions during breaks in year round schools (l) Project Achieve (m) summer break instruction (n) Baldridge/Covey (o) Cooperative Learning Groups and more.

Regardless of what educational method or program each Principal employed, the goals were the same - to provide each student with the opportunity to learn and sufficient time on task to accomplish the goal of mastering the SCOS.

The Principals also utilized a wide variety of prepared educational programs, such as Accelerated Learning; Math Blaster; Excel Math; Reading Renaissance; SACS Evaluation Phonics and SACS Evaluation Math; A Plus Program; Skills Bank; Reading Recovery; Accelerated Math; Success for All and more.

> *It is clear that imposing the same kind of program in every school will not work. Principals must know their school and use appropriate strategies. T. 9/21/01, at 123 (McNeal).*

The evidence presented verifies Superintendent McNeal's testimony. There is no single program required for every school. However, every school must implement an effective and cost-efficient educational program.

Frequent monitoring of student progress - the teacher must always know where the child is in the instructional cycle and be prepared to help the child catch up if he or she is falling behind:

This necessary characteristic of a successful instructional program within a school fits hand and glove with the requirement that each child should receive individualized and differentiated instruction. When that is done, the teacher should always know where the child is and should be during the instructional period. As an explanation of this important factor, evidence of what a good school system provides in this regard is in the record.

The Court cites as an example of a common sense explanation as to how a teacher should keep up with each child's progress, the nuts and bolts of the Wake County Schools' Project Achieve. Project Achieve is a program designed to bolster at-risk student performance in schools that are not successful.

Project Achieve is now underway in several of the elementary and middle schools in the Wake County Public Schools, a system whose stated goal is to have 95% of its children tested to be performing at or above grade level EOG tests in grades 3 and 8 by 2003.

The Principals and teachers in those schools were "offered" the opportunity to embrace Project Achieve. Put another way, Wake County Public Schools made them an "offer they could not refuse" in an attempt to get the students' performance to acceptable levels.

By putting a school into Project Achieve, the Administration of the Wake County Public Schools is employing good management practices by stepping in and exercising centralized control over the educational practices in those schools so as to assert additional quality control on the lesson plans, instruction, and assessments performed by the classroom teachers.

The State, in its brief, cites Wake County's intervention through Project Achieve as an example of what the Superintendent and central office staff of a school system can do to step in and exercise control over educational practices within a particular school that lacks successful leadership and effective instruction to students. The State also contend that it is the duty of the central office staff of every school district to step in and provide instructional support to any school not meeting expected growth. (Defs' Br. Pp 42,44, 54-56)

Make no mistake, the Wake County Public Schools considered lesson plans and pacing guides to be important for improving student performance, especially at-risk student performance, long before deciding to implement Project Achieve in the 2001-2 school year.

Project Achieve is based on a successful instructional method developed in Brazzosport, Texas. The Brazzosport model, however, is based on similar principles as used by DPI assistance teams assigned to help low-performing schools across the State. These principles are the same used by good principals in good schools. The teacher must know the curriculum, teach the curriculum, assess the student's mastery of the curriculum with appropriate tests and provide focused remediation to students that have failed to master the subject matter in the curriculum.

Project Achieve offers scripted lesson plans and assessments based on the SCOS to teachers in specific

Wake County elementary and middle schools with high percentages of low performing students that have not achieve success on their own. The teachers (staff development is crucial here) are given instruction in how to deliver the lesson plans, conduct the assessments and implement the remediation. For thirty minutes each day, the Project Achieve method assists teachers in delivering the lesson aligned to the SCOS and assessing and monitoring the extent to which the child has mastered the lesson.

While successful teachers utilize different methods of monitoring their students' progress, it is undisputed that good, effective teachers monitor and stay abreast of each individual student's progress at all times and in doing so, keep the child from falling behind others.

In addition to focused lesson plans and assessment for at-risk students, is also important that the school provide intervention for at-risk children whose performance is not at grade level, to wit: timely and effective remediation.

<u>At-Risk Children Need Adequately Targeted Remediation Services.</u>

The record is replete with evidence that tutorial and expanded schedule programs are among the remediation strategies that have proven successful in raising performance levels for at-risk students.

The principals and administrators who testified during the September 17th hearings clearly and convincingly bolstered the undisputed evidence relating to the positive value of individual and small group tutoring as important tools for raising the achievement levels of at-risk students. Witnesses praised after-school tutorials in which teachers, and in some cases, trained volunteers, worked with individual students.

Some expressed frustration that limited funds often prevented their schools from serving all students, especially those whose academic performances were among the lowest.

As discussed above in more detail, some of the principals restructured their school's academic day to assure that more small-group and one-on-one instruction could be provided students who were struggling to master the material. While they restructured in different ways, the goal was the same, to get instruction delivered to their at-risk students in a more concentrated dose.

The evidence in this case is clear and convincing that focused and well-taught remediation is needed to keep moving at-risk students from failure to success.

The evidence also clearly and convincingly demonstrates that by strategically allocating resources effective principals can improve at-risk performance in an impressive fashion considering the level of resources available and the student population at their schools. Each of the Principals that testified, although using different educational methods, stressed the same necessary ingredients for success with at-risk children, to wit: high expectations, commitment, proper staff development with proper funding, strong leadership, and teaching the Standard Course of Study coupled with continuous evaluation and assessment of the students.

The State has recognized that focused educational intervention and remediation are effective tools for improving the performance of at-risk children by adopting policy and enacting Legislation in furtherance of the ABCs Accountability System with the stated educational goal of all LEAs implementing personal education (remediation) plans for individual children

in Grades Three through Eight who are not performing at grade level. N.C.G.S.115C-105.41

Leandro specifically authorizes and directs this Court to consider State educational goals and standards in considering whether or not the State is living up to its constitutional obligations.

> *Therefore, we must remand this case to the trial court to permit plaintiff-parties to proceed on these claims.*
>
> *Educational goals and standards adopted by the Legislature are factors which may be considered on remand to the trial court for its determination as to whether any of the state's children are being denied their right to a sound basic education. (citations omitted) They will not be determinative on this issue, however. (Leandro p. 357)*

The State has also acknowledged and recognized the educational goal of remedial intervention and preventative education for children who are not performing at grade level (Level III) or above by first adopting policies to require a plan for remediation and in 2001, enacting legislation to require a remediation plan all for children in grades three through eight who are not performing at grade level. Remediation is now required as one important component of the new Student Accountability Standards under the ABC's of Education.

Under the Student Accountability Standards, referred to on occasion as the No-Social Promotions Policy adopted by the State Board in April, 1999, local school officials were required to develop Personal Education Plans ("PEPs") for students in the Gateways grades-three, five and eight, who are not performing at or above grade level. In 2001, the General Assembly enacted legislation that goes further and *requires that all students who have not demonstrated grade level*

proficiency and are placed at risk of academic failure have a PEP. Sec. 28.17(e); N.C.G.S. 115C-105.41.

Sec 28.17(e) requires the PEP to include, as an educational goal, " focused intervention and accelerated activities [which] should include research-based best practices" and requires LEAs to provide these services and transportation to participate in them free of charge. The legislation, however, does not provide specific allocated funding to the LEAs to cover the cost of carrying out the PEPs for children who have failed to perform on the "Gateway" EOG test at grade level.

While the plaintiff-parties characterize the legislation as an un-funded mandate, the importance of the legislation lies in the State's acknowledged educational goal to ensure that each child identified as at-risk of educational failure receives a PEP, additional intervention and remedial educational services. As a result of this acknowledged goal, those children who have failed to achieve grade level performance of subject matter on "Gateway" EOG tests are receiving additional intervention and remediation services.

By enacting this legislation, the State irrefutably acknowledges that it is the State's educational policy to require that each failing student be offered "focused intervention," a remedial plan designed to address the child's demonstrated areas of weakness so that the child can be helped to achieve Level III or above and get on track to obtain a sound basic education.

The Legislature also mandated specific expenditures of funds to improve student accountability to complement the requirements of N.C.G.S. 115C-105.41. Section 28.33(a) requires, in part, that " *Funds appropriated for the 2001-2002 fiscal year and the*

2002-2003 fiscal year for Student Accountability Standards shall be used to assist students in performing at or above grade level in reading and mathematics in grades 3-8 as mandated by the State's end-of-grade tests..... Funds in this allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end of grades test in grades 3-8 and (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of- course tests.

The legislation is important in that the State has adopted a policy that mandates specific allocation of educational funding for increased educational opportunity to each student placed at risk of academic failure through the requirement of extra individual tutorial and remediation.

It is also important in that it constitutes an irrefutable admission by the State that each student at risk of academic failure who is performing below Level III on the EOG and EOC tests needs more focused assistance, intervention and that financial resources are necessary to accomplish the action mandated. North Carolina's ABCs accountability system is indeed driving more than just teachers and students.

Make no mistake about the pressing need for such action. The Gateways, no promotion-policy, "high-stakes" component of the ABC's has arrived. In the spring of 2002, all North Carolina students in the third, fifth, and eighth grades will face EOG tests that, by statute, will largely determine whether they can advance to the next grade. Principals must consider the EOG test scores when determining whether to promote or retain the student. N.C.G.S. 115C-288(a).

In 2001, in addition to the legislation already discussed, the General Assembly enacted what can be characterized as "preventitive" legislation to attempt to improve elementary reading performance before the students reach the first Gateway at the end of the 3rd Grade. Sec. 28.30(c); N.C.G.S. 115C-105.27 requires every elementary school to prepare a plan for insuring that all children are reading on grade level by the time they enter the 2d grade.

Positive Home-School Relations - Parents must be informed and take responsibility for their children

Good Principals encourage and foster home-school relations. This is important for all children, but is a tough goal to achieve with a lot of at-risk students. The Bridges Commission's First Report focused on this important relationship:

> *The Role of Home and Community*
>
> *Parental involvement has been thoroughly recognized as a powerful force in a child's experience. Social and academic skills development are key elements of the overall development process. They must happen to varying degrees in both the home and school settings. This being the case, the serious case of disconnectedness that exists between a large percentage of minority families and their schools must be recognized as a significant root cause of the achievement gap between minority students and their white counterparts. Under the most strained nonrelationships examined by the Commission, both parents and school officials typically adopt an independent and sometimes hostile attitude toward each other while becoming convinced that better achievement outcomes can only be realized when the other party does his/her job. Even when*

there is no significant friction or conflict, there is still enough discomfort with interaction to inhibit effective and productive communication.

Schools that have made substantial progress in closing the achievement gap have first been successful in closing the communication and interaction gap between home and school. School personnel are very clear about what middle class white parents can and wish to do to be involved in schools and in their students' education. They are not as clear about minority parents and are often reluctant to press for answers in this regard. In most cases, the absence of knowledge and understanding of minority cultures gives rise to this reluctance. (Bridges Commission Report, pp 7,8)

The Bridges Commission recommended a public information campaign statewide to get parents and local communities' attention, especially those with at-risk, underachieving students. The suggested "message" of the campaign included the following:

Parents must begin early and continue helping their children think and feel positively about themselves as academic achievers. They must be convincing in this effort by whatever means necessary.

Home and school must be on the "same page" with the child if the child is to read and compute well when it is time. When parents have a problem with the school, they should define it and "work it out" rather than withdrawing and becoming adversarial.

An overdose of TV time can be deadly where a child's development is concerned. Highly credible studies have shown that too much TV can negatively affect learning on the part of

children. African American children have been shown to be overexposed to TV at home. This minority group is experiencing the lowest achievement level of all ethnic groups.

School/community mentoring programs are providing adult partners for young people in need of guidance and someone who cares and is available to advise and encourage. (Bridges Report pp 8-9)

The importance of these suggestions and parent involvement in a child's learning are critical. The schools cannot be expected to shoulder the entire responsibility for parenting and education of children. Yet, with uneducated and irresponsible biological parents having illegitimate children by the thousands in North Carolina, the public schools will continue to have to attempt to educate an ever increasing number of children who come to the school house doors unprepared to enter the educational process and be successful.

Statistics published by the State Center for Health Statistics, North Carolina Department of Health and Human Services provide a grim picture of the future with respect to the numbers of illegitimate children being born in North Carolina:

1997 - There were 34,441 illegitimate births in N.C. Of these, 15,036 were white and 19,405 were minority. The 34,441 illegitimate births constituted 32.2% of all children born in North Carolina in 1997.

1998 - There were 36,592 illegitimate births in N.C. This was an increase of 2,151 from 1997. Of these, 16,495 were white and 20,097 were minority. The 36,592 illegitimate births constituted 32.8% of all children born in North Carolina in 1998.

1999 - There were 37,756 illegitimate births in N.C. Of these, 17,649 were white and 20,107 were minority. The 37,756 illegitimate births constituted 33.2% of all children born in North Carolina in 1999.

2000 - There were 40,090 illegitimate births in N.C. Of these, 19,430 (an increase of 4,394 over 1997) were white and 20,660(an increase of 1,255 over 1997)were minority. The 40,090 illegitimate births constituted 33.3% of all children born in North Carolina in 2,000. (Source: NCPH CTR Health Statistics for 2000 and 1996-2000, 2-1).

To put in bluntly, the cause of 40,090 illegitimate births in North Carolina in 2000 was 80,180 irresponsible individuals engaging in unprotected sex without regard for the consequences of their actions. The sad result of that irresponsible behavior is children who are placed at-risk of academic failure from the day they are born. It is not their fault nor is it a result of anything they have done. It is the fault of their biological parents.

It is undisputed that one of the major causes of a child being at-risk is being born in an environment where the parent is not socially, economically or educationally equipped to assist the child in obtaining the early childhood development skills needed to come to school and be successful.

Unfortunately, illegitimacy as one of the major causes of putting a child into an environment where he or she is at-risk of academic failure is not receiving the attention it deserves, but instead is a subject not adequately addressed, uncomfortably ignored and getting worse each year. The consequences of the actions of these irresponsible biological parents does, however, cause great harm to the innocent children and places an unnecessarily heavy burden on the public schools that

are charged with providing each child with an equal opportunity to obtain a sound basic education.

These sobering statistics show that the numbers of future at-risk students who will come to school from non-traditional environments is steadily on the rise. That is why it is so important to get the parent who has the day-to-day responsibility for one or more of these children involved with the children's learning in the manner recommended by the Bridges Commission, regardless of race.

The statistics also show that illegitimacy is hardly a minority problem. Based on the rate of increase in white illegitimate births since 1997, it appears more than likely that there will be more white illegitimate children born in the future than minority. All of the 40,000 illegitimate children born in 2000 are headed for the schoolhouse door in at most five years, and those who are at-risk, a high number of them, are headed for *More at Four* or another Pre-K program in only four years.

The economic impact of this ever-growing problem is staggering. Consider, as an example, that each kindergarten class has a maximum of 18 students, with one certified teacher and a teacher assistant. The 40,000 children born out of wedlock in the year 2000 will fill 2,222 classrooms, and require the employment of 2,222 certified teachers and 2,222 teacher assistants.

Regardless of the causes of the problem between some parent(s) and the schools, the need for good parent-school communication and relationships cannot be down played. Good parent-school communication and relationships are a necessary component of helping children, especially those at-risk, achieve a sound basic education.

Good Principals involve parents in the school as volunteers. They invite parents to school meetings, including PTA/PTO events. They also find different ways to contact and inform parents about the progress of their children. Lucy Edwards expressed the need to communicate with parents and students:

> *I always let them (parents and students) know where we are, but this is not where we are going to be. We need to hold our heads up, we need to work hard and get out of this (low performing school). And that's what I presented to everyone… we can do better. And what we did with our students, we always say to them that you are smart. You are just as smart as anybody. …. So you can do better. You will do better. (Tr.9/19/01 pp. 240-241)*

In addition to these necessary criteria required for parents, communities, schools and faculty to be successful in teaching children and especially at-risk children, evidence was presented which corroborated and re-affirmed that reduction of class size in the early elementary grades, a technique already identified by the Court as helpful in providing at-risk children with the opportunity to obtain a sound basic education.

<u>At-risk children need smaller classes in early grades.</u>

Witnesses for all parties who testified during the first hearings in this case agreed that lowering class size is an effective means of improving performance for at-risk students.

Thus, it came as no surprise to the Court that witnesses called to testify during the September 17th hearings agreed with this premise as well. In fact, the class sizes in all of the schools and/or districts examined by the Court during the September 17th evidentiary hearings—where test scores indicated that

the programs were succeeding– were well below the state average.

The State of North Carolina presented evidence that it has enacted additional legislation which affirms the importance of small class size for at-risk children in low performing schools as well as other legislation acknowledging the importance of many of the criteria discussed above as essential for the education of at-risk children.

In addition to the recent legislation adopted and discussed above, the State also presented evidence about legislation enacted to assist at-risk children in schools that are really low performing by State standards, as well as other legislation that the State contends demonstrates its on-going commitment to see that all children have an opportunity to receive a sound basic education.

Immediate assistance and intervention for the 37 lowest performing elementary schools.

The State has also recognized the need for immediate assistance and intervention, including funds for smaller class sizes in the 37 lowest performing ("high priority") elementary schools in the State. To qualify for this immediate assistance, the elementary school had to had (a) over 80% of the students qualified for Free and Reduced Lunch and (b) no more than 55% of the students performing at or above grade level.

In Section 29.1, the sum of $8,062,603 was allocated to reduce class size in the "high priority" elementary schools to "ensure that no class in kindergarten through third grade has more than 15 students for 2001-2002 school year; and the same amount for 2002-2003.

While the amount of money allocated to reducing class size to no more than 15 students in K-3 in the 37 lowest performing elementary schools was less than $9,000,000, the importance of the reduction of class size component of the legislation, just like the staff development component, is not the money. The adoption of educational policy to assist "high priority" elementary schools by enacting legislation to fund at-risk class size reduction in K-3, constitutes an irrefutable admission by the State of North Carolina that at-risk children in elementary schools need smaller class size in order to have an improved learning environment, especially where many students are performing below grade level.

It logically follows that if small class size in K-3 is a requirement for at-risk children unlucky enough to be assigned to the "bottom of the barrel" schools, small class size, just like staff development for individual teachers who are teaching groups of at-risk children performing below grade level in large numbers, is just as important for at-risk children who attend schools that are not just the "bottom of the barrel."

Legislation focusing on closing the achievement gap between white students and minority students.

In 2001, the legislature amended N.C.G.S. 115C-105.35 to require the State Board to include in the ABC growth component measures, a "closing the achievement gap" component as well as legislation mandating the State Board to establish a model for an LEA to use as a guideline for establishing a local task force to attempt to close the achievement gap. N.C.G.S. 115C-12(30).

Legislation requiring State intervention and assistance to LEAs that have schools that are deemed continually low performing.

In schools which the State has determined are continually low performing, it is the educational policy of the State to require the State Board of Education to "provide a series of progressive assistance and intervention strategies" to those schools "whenever a local board of education, superintendent and principal have been unable to improve performance in that school. N.C.G.S. 115C-105.37A. This policy of intervention, when the LEA is unable to improve student performance on its own, subjects the LEA to increased State control of the LEA's assigned responsibilities.

The State, in its brief, characterized this recent legislation as evidence that *demonstrates that the State is continuing to appropriate additional funds and initiate new programs to assure that students enrolled in North Carolina public schools are receiving the opportunity to acquire a sound basic education. The legislation that specifically addresses low-performing schools demonstrates that the State is committed to provide those schools with the resources necessary to provide appropriate educational opportunities. Along with previously enacted legislation,(citation omitted), this legislation demonstrates that the State will not permit local board of education, superintendents or principals to endanger their students' constitutional right to the opportunity to acquire a sound basic education. (Brief, 1/31/01 pp 52-54)*

SUMMARY OF WHAT THE EVIDENCE PRESENTED AT THE HEARINGS DEMONSTRATED RELATING TO IMPROVING AT-RISK STUDENT PERFORMANCE:

The evidence presented at the hearings clearly demonstrates that at-risk children can be taught effectively when effective educational programs implemented by good leadership and competent, qualified classroom teachers, are made available to those children.

The evidence also demonstrated, as discussed in detail above, that there are certain essential ingredients necessary for any school to be successful:

Each school must have a good Principal who is an effective, energetic leader. An effective Principal can improve the performance of at-risk students by using a wide variety of policies, educational practices and programs in combination with high expectations, dedication, commitment, proper staff development with proper funding, strong leadership and competent teachers who effectively teach the Standard Course of Study to all of their students using individualized and differentiated instruction.

Each classroom must have a good teacher who is competent, certified, effective and energetic. An effective Teacher can improve the performance of at-risk students by having high expectations of each child in the classroom and by providing: (1) meaningful opportunity to learn and time on task; (2) lesson plans aligned with the SCOS; (3) effective delivery of individualized and differentiated instruction on the lesson plan for each child; (4) continued monitoring and assessment of the child's understanding and mastery of the lesson; and (5) individualized remediation for each child who has not demonstrated that they have mastered the lesson.

No single educational method or program is necessary so long as the educational program effectively encompasses the criteria that the Court has identified as essential for a successful school and so long as the program ensures that all students are being provided with the opportunity to learn and high time on task coupled with educational programs, methods and strategies that teach the Standard Course of Study in a focused and effective manner.

A Safe and orderly environment in the School is essential in order for students to learn.

High expectations of teachers and students are essential.

The State of North Carolina agrees and admits that a good principal is critical to a successful school with a high percentage of at-risk children. The State's Brief speaks for itself in this regard:

A. Experienced Leadership is Important but Not Essential. Whatever the value of experience, it is clear that good leaders in schools with a high percentage of at-risk students focus their energy and resources on achieving a few basic goals. (Brief 1/31/02, p 8,10) These Goals are:

B. Good Principals in Schools with High Percentage of At-risk Students Demand High Expectations: (Brief 1/31/02, p 10)

C. Good Principals Find a Way to Provide Differentiated Individualized Instruction to Their Students. (Brief 1/31/02, p 15)

D. Good Principals Use Available Technology to Enhance Individualized Instruction. (Brief 1/31/02, p 31)

E. Good Principals Ensure Good Discipline in Their Schools. (Brief 1/31/02, p 33)

F. Good Principals Require Their Teachers to Teach the Standard Course of Study. (Brief 1/31/02 p 37)

G. Good Principals Require Teachers to Work Hard. (Brief 1/31/02 p 43)

H. Good Principals Need Flexibility to Succeed. (Brief 1/31/02 p 46)

The evidence presented during this phase of the proceedings clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the resources currently available to North Carolina public schools..... All the evidence shows that the keys to improving student performance are Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to the students; Continual assessment of the students' understanding of the lesson; and Individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means. (Brief 1/31/02, p 55)

There can be no question that the State of North Carolina has the educational expertise to implement educational policies that are effective in teaching all children, especially those at-risk of educational failure. There can also be no question that the State of North Carolina knows how critical and necessary these educational practices and policies are to an at-risk child's educational opportunity.

This is shown time and time again by the evidence presented throughout this case as well as by the evidence of educational policy enacted by the Legislature in the recent session and presented during the hearings.

The State, by enacting these legislative policies in support of education and at-risk children has admitted and acknowledged: (1) the effectiveness and importance of pre-kindergarten programs for at-risk

children; (2) the effectiveness of small class size for at-risk children in the early elementary grades; (3) the necessity for all children to be reading on grade level by the second grade (4) the necessity for focused intervention with children who are not performing at grade level; (5) the need to close the achievement gap between white students and minority students; and (6) the necessity for intervention in schools that are not successful with high populations of at-risk children.

Review of 2000-01 Student Performance on the ABCs, Statewide, in selected school districts and Hoke County.

In its *March 26 Memorandum of Decision*, the Court, utilizing the Green Book and the ABC's data, conducted an analysis of statewide student performance data on the EOG and EOC tests administered by the State under its ABC's accountability system. The results of that analysis formed the basis for the Court's determination that there were at-risk children throughout North Carolina not obtaining a sound basic education based on their objective test scores under the ABCs. Those test results, while not the ultimate determining factor, are valid indicators that this Court can use to measure performance under *Leandro*.

Accordingly, it is appropriate to review the performance of students on the 2000-2001 EOG and EOC tests in Hoke County and throughout North Carolina to see if there was any improvement in student achievement statewide and in the 14 selected school districts identified and analyzed by the Court in the decision. The Court has received into evidence the 2000-2001 school year testing results and relevant data from the Green Book and the ABC's Reports.

To remain consistent with the form and scope of the analysis conducted by the Court in the March 26 Memorandum of Decision, the Court reviewed the EOC and

EOG data for 2000-2001 and has incorporated that data into the same format utilized in the March 26 Memorandum of Decision. The Court has compiled data from the Green Books for the years 1995-96 updated through 2000-01 that show the numbers of white, black, Asian, Hispanic & American Indian students who are performing below grade level (below Level III) in the 8th grade reading and math and in 6 core high school courses, all of which are an essential component of the *Leandro* sound basic education. This data put the number of students by each percentage of student performance per ethnic group for those who have failed to achieve grade level.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In both Reading & Math in Grade 8 using composite scores for Reading and Math.

Year	White	Black	Asian	Hispanic	American Indian
95-96	15,751 (27.9%)	15,262 (83%)	331 (29.2%)	618 (49.7%)	857 (60.4%)
96-97	14,606 (25.5%)	15,197 (60%)	359 (29.6%)	760 (49.6%)	702 (54.3%)
97-98	11,410 (19.6%)	12,600 (50.9%)	366 (26.2%)	763 (43.5%)	597 (45.1%)
98-99	11,481 (19.4%)	12,747 (49.6%)	348 (23.2%)	889 (43.5%)	531 (41.4%)
99-00	9,336 (15.8%)	11,534 (44.6%)	300 (18.6%)	904 (38.6%)	454 (34.6%)
00-01	9,496 (16.0%)	12,170 (45.1%)	317 (19.5%)	1,196 (40.3%)	506 (36.4%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Algebra I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	24,020 (46.2%)	16,643 (76.6%)	396 (33.2%)	677 (61%)	966 (78.5%)
96-97	19,804 (35.4%)	15,409 (66.1%)	413 (28.9%)	648 (51.4%)	720 (67.4%)
97-98	16,588 (29.7%)	13,732 (60%)	367 (24.7%)	604 (42.5%)	494 (50.2%)
98-99	15,149 (26.3%)	13,430 (55.6%)	376 (21.1%)	630 (36.8%)	491 (43.6%)
99-00	13,306 (22.3%)	12,821 (52%)	369 (21%)	787 (37.6%)	586 (47.9%)
00-01	9,307 (15.4%)	11,391(42.9%)	334 (17.4%)	779 (30.2%)	394 (32.3%)

NOTE: Algebra I is generally taken in the 9th and 10th grades by the majority of students. The students who take Algebra I in the 7th and 8th grades score at higher levels of proficiency (99-00 7th gr. 96.9%; 8th gr. 90.9%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In English I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	20,379 (39.4%)	17,428 (73.1%)	446 (41.2%)	759 (62.5%)	957 (70.6%)
96-97	17,836 (39,8%)	16,773 (63.3%)	503 (35.9%)	847 (55.5%)	875 (66.7%)
97-98	16,568 (28.9%)	15,660 (60.2%)	503 (35.2%)	852 (52.4%)	839 (62.6%)
98-99	14,860 (25.6%)	14,508 (55.5%)	532 (34%)	931 (49.5%)	744 (53.4%)
99-00	13,415 (22.2%)	13,625 (51.7%)	473 (28.3%)	1134 (48.3%)	709 (51.7%)
00-01	13,277 (21.8%)	13,687 (50.6%)	503 (28.1%)	1300 (47.2%)	678 (48.6%)

NOTE: English I is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In ELP ECG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,786 (47.4%)	17,889 (80.1%)	568 (54.8%)	909 (70.7%)	872 (76.6%)
96-97	14,617 (27.1%)	13,866 (59.1%)	538 (34.6%)	769 (50.8%)	854 (55.6%)
97-98	11,718 (23.1%)	11,914 (54.2%)	516 (33.8%)	675 (44.8%)	540 (51.1%)
98-99	11,822 (23.0%)	11,423 (53.6%)	604 (36.0%)	780 (47.3%)	564 (53.2%)
99-00	11,505 (22.4%)	11,940 (54.1%)	556 (31.7%)	912 (46.7%)	686 (58.1%)
00-01	11,776 (20.0%)	12,994 (51.1%)	553 (29.4%)	1048 (43.5%)	503 (45.4%)

NOTE: ELP is taken in the 9th grade by the majority of students

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Biology ECG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,934 (51.2%)	17,578 (84.9%)	528 (51.3%)	757 (70.3%)	966 (80.0%)
96-97	16,155 (31.2%)	15,720 (69.1%)	421 (33.5%)	605 (50.6%)	589 (61.8%)
97-98	15,077 (29.1%)	15,287 (67.2%)	493 (34.1%)	685 (51.7%)	577 (57.6%)
98-99	15,145 (30.1%)	15,278 (68.7%)	579 (39.8%)	789 (54.4%)	512 (55.7%)
99-00	17,474 (31.4%)	14,630 (68.0%)	684 (41.0%)	984 (56.0%)	692 (63.4%)
00-01	14,199 (26.8%)	15,164 (65.0%)	644 (36.1%)	1,143 (52.8%)	528 (53.3%)

NOTE: Biology is taken in the 10th grade by the majority of students. It may also be taken as early as the 9th grade. In 1999-00 the 9th graders who took biology scored at a proficiency level of 70.4%.

*Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Physical Science EOG Tests * Physical Science EOG testing did not begin until 1998-99 **

Year	White	Black	Asian	Hispanic	American Indian
98-99	13,750 (32.0%)	13,885 (68.4%)	533 (47.3%)	880 (58.3%)	629 (65.4%)
99-00	13,010 (30.5%)	13,350 (67.0%)	450 (40.4%)	995 (57.4%)	764 (67.6%)
00-01	6,885 (28.0%)	7,507 (62.9%)	218 (34.9%)	649 (55.9%)	257 (59.8%)

NOTE: Physical Science is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In U.S. History EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	22,610 (56.3%)	14,388 (84.4%)	488 (52.3%)	628 (81.9%)	819 (80.8%)
96-97	18,978 (41.3%)	13,804 (72.1%)	446 (40.1%)	523 (57.9%)	600 (69.9%)
97-98	18,866 (41.3%)	13,667 (71.5%)	524 (42.6%)	616 (58.3%)	603 (72.1%)
98-99	18,502 (39.6%)	13,788 (70.6%)	591 (41.3%)	684 (57.8%)	622 (70.5%)
99-00	20,598 (43.5%)	14,696 (75.4%)	714 (49.7%)	807 (61.4%)	634 (72.6%)
00-01	19,594 (39.9%)	14,202 (71.5%)	699 (43.9%)	958 (58.8%)	575 (64.7%)

NOTE: U.S. History is taken in the 11th grade by the majority of students. Of those taking the course whose post high school plans did not include a 4 year college, no group scored greater than 32% proficient. Of those who planned to go to a 4 year college, 59.6% scored at proficiency (Level III) in 1999-00.

While there was some improvement, there was also some slippage in some courses. The high school EOC results are dismal when looking at the sheer number of children below grade level in important courses. A thorough review of the data contained in The Green Book for each year from the 1995-96 edition to the 2000-2001 edition, shows that black, Hispanic, and Native American students in North Carolina consistently score lower percentage-wise than Asian and White students on EOC and EOG tests. However, the numbers of white students who are performing below grade level on the tests is actually higher than black students in some of the EOC subjects tested.

The Court has also reviewed the data for student performance on the EOG tests for 2000-2001 in grades 3 through 8 as shown below. While the white percentages of students scoring at or above grade level on the EOG tests is higher than other groups, the actual number of white students failing to achieve grade level or above is second only to the black students who are failing to achieve grade level or above on the EOC tests.

2000-01 Number and Percentage of N.C.'s public school children scoring below grade level in both reading and math, by race, in grades 3 through 8 on EOG tests. Table 14, Green Book.

Grade	White	Black	Asian	Hispanic	American Indian
3	13,002 (21.4%)	16,625 (53.3%)	488 (52.3%)	2,042 (45.0%)	604 (40.1%)
4	10,725 (17.6%)	13,957 (46.4%)	378 (22.5%)	1,500 (38.1%)	587 (40.8%)
5	8,121 (13.1%)	11,188 (38.0%)	257 (14.6%)	1,186 (32.6%)	483 (34.7%)
6	13,042 (21.0%)	16,301 (54.1%)	419 (24.1%)	1,660 (47.6%)	591 (44.1%)
7	11,622 (19.0%)	14,227 (50.7%)	375 (22.1%)	1,405 (43.8%)	534 (40.1%)
8	9,496 (16.0%)	12,170 (45.1%)	317 (19.5%)	1,196 (40.3%)	506 (36.4%)

The following tables show the performance data for three years for the 14 LEAs utilized by the Court in its March 26, Memorandum of Decision. The last comparison covers the school year 2000-01. Unfortunately, the Department of Public Instruction dropped the Statewide Comprehensive Test given at the end of the Tenth Grade to measure reading and mathematics comprehension of what a child should know by the end of the Tenth Grade. The 2000-01 comparison also substitutes U.S. History ECC tests for ELP EOC. All other comparisons remain the same as with the prior years.

Even without the inclusion of the N.C. Comprehensive Test results for 2000-2001, the data show little overall improvement in EOG and EOC scores for the students in the LEAs analyzed.

1998-99 Grade 3 (R&M) Grade 8 (R&M) NC COMPREHENSIVE TEST - ALG I ELP ENG I

	B	W	B	W	(R) B	W	(M) B	W	B	W	B	W	B	W
ORANGE	43	78	41	81	41	70	35	74	56	77	51	79	40	78
CH/CA	41	92	60	97	43	94	47	93	46	88	47	94	55	95
HARNETT	50	73	55	79	37	69	37	68	48	67	60	82	47	70
WAKE	43	84	52	91	50	84	49	85	57	85	47	84	48	85
DURHAM	42	81	50	88	44	82	43	81	42	72	45	80	48	84
FORSYTH	35	77	50	82	40	79	40	79	68	82	44	79	49	80
GUILFORD	39	78	49	84	45	78	41	79	34	70	51	84	45	80
RANDOLPH	38	68	33	71	46	61	42	64	60	79	79(9)	98	39	66
N.HANOVER	42	81	50	88	45	79	38	77	42	73	42	80	49	82
ROBESON	45	69	43	73	27	58	26	54	54	69	41	74	40	64
HALIFAX	61	80	48	41	33	34(9stu.)	29	50	43	35	47	62	29	24(17st.)
PITT	40	77	53	89	45	79	42	82	65	85	58	86	46	82
CMS	40	83	42	83	34	75	32	77	28	63	38	81	39	82
HOKE	41	75	51	82	22	53	22	57	39	63	52	81	47	70

1998-99. R=reading M=math Statewide Results-Green Book

	GRADE 3(R&M)		GRADE 8(R&M)		- NC COMPREHENSIVE TEST -			ALG I		ELP		ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W
State %	42	75	51	82	39	72	37	72	46	74	47	77	45	75

1999-00 GRADE 3(R&M) - GRADE 8(R&M) - NC COMPREHENSIVE TEST - ALG I - ELP - ENG I

	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W
ORANGE	37	80	57	81	46	73	47	78	67	81	41	81	43	83
CH/CA	44	93	64	98	36	96	51	95	48	94	60	95	63	98
HARNETT	50	76	62	80	35	66	43	80	52	67	56	77	54	75
WAKE	45	89	60	92	50	86	50	87	60	88	51	89	53	90
DURHAM	47	85	54	89	44	80	46	84	38	76	40	79	52	86
FORSYTH	38	80	54	86	33	80	38	80	61	84	47	81	51	83
GUILFORD	43	80	56	87	44	78	43	80	43	77	54	85	50	84
RANDOLPH	40	65	59	78	33	62	35	66	55	78	64	86	31	67
N.HANOVER	40	84	56	88	47	82	45	82	43	72	37	79	46	83
ROBESON	43	71	47	73	34	67	33	67	41	64	33	52	40	60
HALIFAX	51	69	54	50	28	23(9stu)	42	84	30	36	44	45	32	43
PITT	41	78	57	88	41	80	33	45	58	86	58	90	52	86
CMS	43	82	45	87	37	79	39	81	30	71	40	79	47	86
HOKE	45	73	57	76	31	69	41	79	49	59	56	75	47	66

1999-00. R=reading M=math Statewide Results-Green Book

	GRADE 3(R&M)		GRADE 8(R&M)		- NC COMPREHENSIVE TEST -			ALG I		ELP		ENG I	
	B	W	B	W	Read B	W	Math B	W	B	W	B	W	B	W
State	44	77	56	85	40	72	41	75	48	78	46	78	50	78

2000-01	GRADE 3 (R&M)		GRADE 8 (R&M)		NC COMPREHENSIVE TEST -				ALG I -		U.S.HIST.-		ENG I	
	B	W	B	W	Read B	W	Math	B W	B	W	B	W	B	W
ORANGE	39	80	55	80	Test dropped by DPI				73	91	46	74	41	75
CH/CA	50	94	63	98					56	94	22	83	59	95
HARNETT	50	77	57	80					56	80	27	62	48	76
WAKE	52	91	62	93					71	93	35	74	56	90
DURHAM.	50	85	53	88					55	84	29	69	55	87
FORSYTH	40	80	52	86					67	89	29	64	49	81
GUILFORD	43	81	51	86					45	80	33	68	49	83
RANDOLPH	44	69	53	76					73	88	29	49	68	41
N.HANOVER	50	84	51	89					61	88	23	64	52	85
ROBESON	52	76	52	71					52	73	28	55	34	62
HALIFAX	43	63	54	62					46	69	48	29	39	53
PITT	48	82	59	92					75	91	29	69	54	86
CMS	46	86	48	87					35	75	31	70	47	85
HOKE	43	72	54	76					53	75	12	46	50	72

2000-01. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M)		GRADE 8 (R&M)		NC COMPREHENSIVE TEST -				ALG I -		U.S.HIST.-		ENG I	
	B	W	B	W	Read B	W	Math	B W	B	W	B	W	B	W
State	47	79	55	84	Test dropped by DPI				57	85	29	60	50	78

The Court also reviewed the ABC scores for the schools whose principals testified at the hearings in September and October. The plaintiffs appropriately pointed out that several of the schools that had previously achieved success with at-risk populations, did not maintain the levels of success during 2000-2001.

The majority of successful schools whose principals testified at the hearings still have many Students below Grade Level and have not been able to maintain their levels of at-risk success in 2000-01

The schools whose principals testified have had some success as measured by an increase in their composite scores on the ABCs. Their composite scores for the 2000-01 school year, however, show that even at these "successful" schools, many students are not performing at the level the Court has determined is

reflective of a sound basic education. As shown by the following chart, at three of the schools, the school composite reflects that for one-third or greater of the tests taken, students at those schools performed below grade level. At a fourth school, Winstead Elementary, students performed below grade level on nearly 28% of the tests given. The performance composite *declined* from 1999-2000 to 2000-01 at four of the five schools identified by the Court as successful.

ABC Scores, 1997-98 to 2000-01

	Composite				ABC Growth Status			
School	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
Baskerville ES	59.3	62.1	72.00	66.4	Exm	Exm	Exm	NR
Gaston MS	74.4	81.6	79.20	63.9	Exm	Exm	Exp	NR
Kingswood ES	91.0	90.9	95.30	94.1	Exm	Exm	Exm	Exm
West Hoke MS	60.1	69.5	64.30	66.5	Exm	Exm	NR	NR
Winstead ES	61.6	72.7	75.70	72.6	Exm	Exm	Exp	NR
Mt. View ES (State-selected school)	52.8	59.6	78.60	86.8	Exp	NR	Exm	Exp

Status: Exp-Expected Growth/Gain; Exm-Exemplary Growth/Gain; NR-No Recognition

In addition, four of the five schools the Court identified as successful failed to meet even expected growth for 2000-01, receiving "no recognition" status. See Chart ABC Scores, 1997-98 to 2000-01, supra. Thus, at Baskerville Elementary, Gaston Middle, West Hoke Middle, and Winstead Elementary, the growth from past years was not sustained. These results were disappointing to the dedicated principals and their faculty.

Disappointing results for last year aside, the hearings in September and October provided the Court with valuable knowledge into the necessary and important leadership skills and teaching methods these Principals and their teachers utilize in order to get their composite percentages to the levels they achieved in 2000-2001 considering the demographics of the student populations they serve. Those schools serve high concentrations of at-risk children.

The disappointing ABC data simply highlights and reflects the difficulty in sustaining gains achieved with at-risk students concentrated in such high numbers and from poverty backgrounds where home support and resources are limited.

That these "exemplary" schools have been unable to sustain and build on the growth they have achieved, is not due to lack of hard work and effective educational leadership by the exceptionally dedicated principals and teachers in those schools.

A review of Hoke County ABC Scores show little improvement across the Board for the past four years, with some rare exceptions.

The following chart tells the continuing disappointing tale for HCSS. With only a few "bright" spots of improvement showing up sporadically in some of the HCSS schools, the overall trend shows that HCSS schools remain stuck in academic mediocrity from elementary school through high school. Each school's ABC Recognition Category for the years 98-99,99-00 and 00-01 is set out below the performance composite for each year.

(EXM=Exemplary Growth; EXP=Expected Growth; NR=No Recognition; DST=School of Distinction)

	Reading				Math			
McLauchlin	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	58.2	77.3	62.9	63.5	58.2	86.4	61.1	67.3
4th	52.8	47.4	67.5	47.2	56.6	63.8	82.5	61.1
5th	53.1	59.6	51.2	65.1	57.1	73.6	47.7	69.8
Perf Composite					53.8	65	62.5	63
						EXM	NR	NR
Rockfish	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	77.8	73.8	81.4	87.1	75.9	63.6	74.6	77.4
4th	83.8	82	81.4	72.6	86.5	90.9	89.9	91.8
5th	74	83.3	87.2	77.9	68.3	91.7	93.6	89.7
Perf Composite					75	77.1	80	80.3
						EXM	EXMDST	NR-DST
Sandy Grove	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	N/A	N/A	56.4	55.4	N/A	N/A	54.4	44.6
4th	N/A	N/A	48.9	47.4	N/A	N/A	85.1	77.6
5th	N/A	N/A	73.2	69.8	N/A	N/A	82.9	71.9
Perf Composite					N/A	N/A	62.5	58.1
							NR	NR
Scurlock	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	60.7	65	65.2	57.8	52.5	61.3	59.2	48.4
4th	58.6	56.4	54.7	60	58.6	76.4	73.8	75
5th	53.4	72.7	78.2	75.8	65.5	75.8	80.4	77.4
Perf Composite					53.5	63.9	63.2	65.9
						EXM	EXM	EXP
South Hoke	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	52.5	57.4	74.5	76.1	45.6	71.3	78.4	69.4
4th	52.4	46	69.4	61.2	54.2	76.4	92.5	78
5th	61.5	60.5	50	57.4	61.8	67.9	57.1	75.9
Perf Composite					50	60.7	65.5	70
						EXM	NR	NR
Upchurch	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	58.4	75.9	71.7	69.8	63.7	63	78.8	71.6
4th	63.3	60	67.2	72.6	70.6	78.4	81.8	78.2
5th	73.8	69.4	82.7	76.4	86	82.9	85.6	84.3
Perf Composite					63.1	68.4	70.6	71.8
						EXM	EXP	EXP
West Hoke	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3rd	50	47.6	48	47.6	51.4	50	36.8	31.7
4th	37.3	58	47.7	45.8	53.8	69	62.9	69.4
5th	68.8	56.9	58.4	58	68.2	59.3	64.1	57.8
Perf Composite					54	55.4	52.8	53.7
						EXM	NR	NR
East Middle	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
6th	62.4	70	63.7	65.5	69	80.9	79.7	83.8
7th	61.4	66.9	70.3	67.9	68.1	65.3	78	75.2
8th	70.5	71.7	72.4	73.9	62.3	74.3	69.4	68
Perf Composite					63.4	69.9	73.5	72.2
						EXM	NR	NR

West Middle	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
6th	54.6	68.6	57.5	48.9	70.7	80.1	74.3	67.2
7th	59.1	64.4	64.9	64.7	63.4	68.4	70.8	69.6
8th	66.3	65.9	71.3	73.8	60.8	74.3	75.1	73.3
Perf Composite					60.1	69.5	64.3	66.5
						EXM	NR	NR
Turlington	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
7th	None	66.7	25	25	25	100	25	37.5
8th	50	None	28.6	50	None	None	14.3	None
Perf Composite								

Sandy Grove is a brand new school (Fall, 99). Sandy Grove has been a No Recognition School for the two years it has been in existence. Sandy Grove proves the point that it's not the physical plant that provides a sound basic education, it's the quality of leadership and presence of competent, qualified teachers in each classroom who know how to provide individualized and differentiated instruction to their students.

Hoke High	97-98	98-99	99-00	00-01
Algebra I	42.4	37.8	48.6	51.9
Algebra II	32.6	37	46.5	45.6
Biology	44.3	38.3	36.6	40.8
Chemistry	23.3	12.1	16.4	46.2
ELPS	65	64.6	62	54.3
English I	48.4	55.7	54.8	60
Geometry	29.6	35	26.4	31.7
Physical Science	25.9	30.8	44.4	24
Physics	50	37.5	71.4	50
US History	43.8	33.6	30.4	25
English II	22.5	25.4	41.6	48.4
Performance Composite	41.2	38.4	43.5	46.7
		EXM	EXM	EXP

Turlington	97-98	98-99	99-00	00-01
Algebra I	9.1	None	None	None
Algebra II	50	None	None	None
Biology	38.5	None	17.6	22.2
Chemistry	100	None	N/A	None
ELPS	100	21.1	48	33.3
English I	23.1	10	16.7	15
Geometry	None	None	None	None
Physical Science	16.7	None	20	35.7
Physics	N/A	N/A	N/A	N/A
US History	N/A	None	10	None
English II	16.7	12.5	28.6	None
Performance Composite		13.8	21.9	18.3

HCSS's ABC composite scores and growth/gain data show that as a system, HCSS' overall academic performance can only be described as dismal. There are way too many children within HCSS that are at-risk of academic failure today, just as they were four years ago despite the professed dedication of many of the teachers who testified at the original hearings.

Unfortunately, when the 2000-2001 ABC results are factored in with all the evidence and the ABC results from the prior years, nothing has occurred to cause the Court to change its prior findings and the Court finds that in 2002:

THERE ARE STILL TWO DISTINCT GROUPS OF STUDENTS IN NORTH CAROLINA'S PUBLIC SCHOOLS, INCLUDING HOKE COUNTY'S PUBLIC SCHOOLS - THOSE AT-RISK AND THOSE NOT AT-RISK OF FAILING TO OBTAIN A SOUND BASIC EDUCATION.

Make no mistake as to this finding. *Leandro's* guarantee is only one of equal opportunity to obtain a sound basic education. However, the numbers of students whose performance on the ABCs EOG and EOC tests show that they are failing to obtain a sound basic education, combined with the other credible evidence in the record, constitutes strong evidence that the equal opportunity to obtain a sound basic education is not being provided to at-risk children throughout North Carolina.

The Court initiated the September and October 2001 hearings to focus on successful educational programs and strategies and the answer as to why those programs and strategies have not been implemented by the plaintiff-parties' LEAS in schools with low performing at-risk populations.

The purpose of the hearings was to assist the Court in seeking the answer to the question of whether the failure to implement successful educational programs and strategies in schools with low performing at-risk populations is due to (a) lack of funding; (b) the lack of proper allocation of resources with the LEA; (c) lack of cost-effective implementation of successful strategies because of a lack of leadership and effort; or (d) a combination of two or more of these factors?

VERDICT

THE COURT, HAVING CONSIDERED ALL OF THE EVIDENCE PRESENTED, AND THE LAW AS SET FORTH IN THE LEANDRO DECISION AND THE CONSTITUTION OF THE STATE OF NORTH CAROLINA, ANSWERS THE QUESTION AS FOLLOWS:

The clear and convincing credible evidence presented in this case shows that:

1. At-risk children can learn with effective, individualized and differentiated instruction delivered by a certified, well-trained, competent teacher with high expectations.

2. At-risk children require more resources, time and focused intervention in order to learn.

3. A certified, well-trained, competent teacher who knows how to reach at-risk children can produce results and at-risk children can perform at or above grade level.

4. There are many different, but effective, teaching methods that are successful for all children, including at-risk children.

5. A well-trained, competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers, can

implement an effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

6. When at-risk children are not being taught by a competent, certified and well-trained teacher who knows how to teach them, many do not achieve grade level or above academic performance and thus, the Court concludes that they are not receiving the equal opportunity to obtain a sound basic education mandated by *Leandro* and the North Carolina Constitution.

The Constitutional right to the opportunity to receive a sound basic education belongs to each and every child in North Carolina. *Leandro, at 354.*

Leandro's guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a school which has the following educational resources, at a minimum:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational method(s) that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

THAT MAY BE WELL AND GOOD IN PRINT, BUT WHO IS RESPONSIBLE FOR SEEING THAT THESE BASIC EDUCATIONAL NEEDS OF ALL CHILDREN ARE MET IN EACH CLASSROOM AND SCHOOL IN NORTH CAROLINA? THE ANSWER IS FOUND IN *LEANDRO*.

> *Because we conclude that the General Assembly, under Article IX, Section 2(1), has the duty of providing the children of every school district with access to a sound basic education, we also conclude that it has inherent power to do those things reasonably related to meeting that constitutionally prescribed duty. Leandro, p. 353.*

THE STATE OF NORTH CAROLINA IS ULTIMATELY RESPONSIBLE TO ENSURE THAT THE CONSTITUTIONAL GUARANTEE TO EACH CHILD OF THE OPPORTUNITY TO RECEIVE A SOUND BASIC EDUCATION IS MET. THE STATE OF NORTH CAROLINA ALSO HAS THE INHERENT POWER TO DO THOSE THINGS REASONABLY RELATED TO MEETING THAT CONSTITUTIONAL DUTY.

In attempting to meet its constitutional duty to provide each child with the equal opportunity to obtain a sound basic education and to provide a General and Uniform System of schools, the Legislature has enacted legislation creating a system for delivering educational services to children, governance for that system, and has delegated responsibilities to local boards of education. The Legislature has also adopted educational goals and standards that this Court may properly consider in determining whether any children

are being denied their right to a sound basic education. *Leandro, p. 355.*

Chapter 115C of the North Carolina General Statutes is home to many educational goals and polices, as well as the structure of the general and uniform system of schools. The Court has previously discussed newly enacted and recent legislation. Additional, pertinent sections of Chapter 115C follow and provide additional, clear and convincing evidence that the State of North Carolina is in fact, and in law, ultimately responsible for providing every child with the equal opportunity to obtain a sound basic education and that the educational goals adopted as policy closely align with the constitutional definition of a sound basic education:

N.C.G.S. 115C-1. General and uniform system of schools.

> A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with Article IX of the Constitution.

STATE BOARD OF EDUCATION

N.C.G.S. 115C-12. Powers and duties of the Board generally.

> The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:
>
> (1) To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student

performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

C4. To develop guidelines, procedures and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

9(a) Power to Develop Content Standards.--- The Board shall develop a comprehensive plan to revise contents standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography and civics..... The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, wherever possible, in a reliable, valid and efficient manner for accountability purposes.
High school course content standards shall include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of the University of North Carolina. The Board shall develop and implement a

plan for end-of-course tests for the minimum courses required for admission to the constituent institutions of the University of North Carolina..... (emphasis added)

9(b) Power to Develop Exit Exams.– The Board shall develop a plan to implement high school exit exams, grade level student proficiency benchmarks, student proficiency benchmarks for academic courses required for admission to constituent institutions of the University of North Carolina, and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce..... The high school exit exams and student proficiency benchmarks shall be aligned with G.S.115C-9(a) and may contain pertinent components of the school-based accountability annual performance goals.

LOCAL BOARDS OF EDUCATION

115C-35, et seq.

115-36. Designation of board.

All powers and duties expressly conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

115C-47. Powers and duties generally.

In addition to the powers and duties designated by G.S. 115C-36, the local boards of education shall have the power or duty:

(1) To Provide an Adequate School System.—It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units as directed by law.

GENERAL EDUCATION

115C-81. Basic Education Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.... It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communications skills, physical education and personal health and safety, science, second languages, social studies, and vocational and technical education...

115C-81.2. Comprehensive plan for reading achievement.

(a) The State Board of Education shall develop a comprehensive plan to improve reading achievement in the public schools. The plan shall be fully integrated with State Board plans to improve student performance and promote local flexibility and efficiency. The plan shall be based on reading instructional practices for which there is strong

evidence of effectiveness in existing empirical scientific research studies on reading development. (emphasis added)

SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

115C-105.20. School-Based Management and Accountability Program.

(a) The General Assembly believes all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to enhance student performance. (emphasis added)

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to: (3) recognize low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37.....

N.C.G.S. 115C-105.21. Local participation in the Program.

(a)Local school administrative units shall participate in the School-Based Management and Accountability Program..... (c) The School-Based Management and Accountability Program shall be based upon an accountability, recognition, assistance, and intervention process in order to hold each school and the school's personnel

accountable for improved student performance in the school. (emphasis added)

N.C.G.S. 115C-105:27. Development and approval of school improvement plans.

In order to improve student performance each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. ..... Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans..... The strategies for improving student performance:

(1) shall include a plan for the use of staff development funds that may be made available to the school.....

(2) Shall include a plan to address school safety and discipline in accordance with the safe school plan developed under Article 8C of this Chapter.----------

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school..... (emphasis added)

N.C.G.S. 115C-105.37. Identification of low-performing schools.

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards as defined by the State Board, and a majority of

students are performing below grade level. (emphasis added)

COMPREHENSIVE ASSISTANCE TO CONTINUALLY LOW PERFORMING SCHOOLS.

N.C.G.S. 115c-105.37A. Continually low-performing schools; definition; assistance and intervention; reassignment of students.

-- (c) The State Board of Education shall develop and implement a series of actions for providing assistance and intervention to schools that have previously received State-mandated assistance and have been designated by the State Board as low performing for three or more consecutive years or for at least three out of four years. These actions shall be the least intrusive actions that are consistent with the need to improve student achievement at each such school and shall be adapted to the unique characteristics of each such school and the effectiveness of other actions developed or implemented to improve student achievement at each such school.

N.C.G.S. 115C-105.38. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. ----------(c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance

continues or that the State Board take further action under G.S.115C-39. (emphasis added)

N.C.G.S. 115C-105.38A. Teacher competency assurance.

To assure teacher competency at low-performing schools, teachers, after evaluation by the assistance team and designated as Category 3 teachers, may be required to take a general knowledge test upon recommendation. Certified teachers who do not pass the test shall undergo remediation and have a remediation plan at state expense. If the teacher fails to pass the general knowledge test a second time, the State Board is authorized to start dismissal proceedings.

N.C.G.S. 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.

This section authorizes a process whereby the principal of a low-performing school can be transferred or dismissed and provides for the appointment of an interim superintendent in an LEA where more than one-half of the schools are low-performing.

N.C.G.S. 115C-105.40. Student academic performance standards.

The State Board of Education shall develop a plan to create rigorous student academic performance standards for kindergarten through eighth grade and student academic performance standards for courses in grades 9-12. ---------- (emphasis added)

SAFE SCHOOLS - MAINTAINING SAFE & ORDERLY SCHOOLS. Article 8C.

N.C.G.S. 115C-105.45. Legislative findings.

The General Assembly finds that all schools should be safe, secure, and orderly. If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons. All school must have plans, policies and procedures for dealing with disorderly and disruptive behavior. All schools and school units must have effective measures for assisting students who are at risk of academic failure or engaging in disruptive and disorderly behavior. (emphasis added)

ACADEMICALLY OR INTELLECTUALLY GIFTED STUDENTS. Article 9B.

115C-150.5. Academically or intellectually gifted students.

The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. --------- (emphasis added)

Section 28.3 of the Budget provides:

FUNDS FOR ACADEMICALLY GIFTED STUDENTS. Section 28.3

The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of eight hundred seventy-nine dollars and ten cents ($879.10) per child. A local administrative unit shall receive funds for a maximum of four percent (4%) of its 2001-2002 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 52,042 children for the 2001-2002 academic year.

(52,042 x $879.10 = $45,750,122)

FINANCIAL POLICY OF THE STATE OF NORTH CAROLINA AS IT RELATES TO THE PUBLIC SCHOOL SYSTEM.

N.C.G.S. 115C-408. Funds under the control of the State Board of Education.

(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. (b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study. - (emphasis added)

Under Chapter 115C's statutory scheme, the responsibility for administering and operating a

general and uniform system of public schools is delegated to the State Board of Education, and the local boards of education (LEAs). Thus, by law, each LEA is statutorily responsible for providing the children within the district with the constitutionally mandated opportunity to receive the sound basic education.

Under the Constitution, however, the obligation to provide each child with the equal opportunity to obtain a sound basic education may not be abdicated by the State of North Carolina nor may the ultimate responsibility be transferred to and placed on the LEAs.

The State acknowledges that it may not abdicate its obligation to assure that every child has the opportunity to acquire a sound basic education in its brief. "But, while emphasizing local control, the General Assembly, the State Board of Education and the Department of Public Instruction are not abdicating their constitutional responsibility to provide every student with the opportunity to acquire a sound basic education." (Brief 1/31/02, p. 49) (emphasis added)

It is, therefore, undisputed that the constitutional responsibility to provide each child with the equal opportunity to obtain a sound basic education remains with the State of North Carolina acting through its General Assembly. *Leandro, p 353.*

> Accordingly, where there are children in a classroom, or in an entire school or school district, who are not being taught by competent, qualified caring teachers, led by competent, qualified, caring principals, using targeted, effective and valid educational methods and programs that work with the particular group of children, at-risk, or not, then the constitutional

rights of the children in that classroom, school or school district are being violated.

The State of North Carolina, while acknowledging its constitutional obligation, has denied any liability for the poor academic performance of at-risk students. Instead, the State has continually engaged in placing the blame for at-risk children not receiving the equal opportunity for a sound basic education on the individual LEA, its central office staff, finance officer, teachers and principals.

ZIKO: *The State of North Carolina does not fund its school system on a one size fits all basis. In partnership with local boards of education, the State provides sufficient funding for every child and every school system to have the opportunity to acquire a sound basic education. If the local school board is irresponsible, ignores it's constitutional duties and fails to apply the money where constitutional need exists, that's not--that will not support a claim that the State system of general and uniform free public schools is unconstitutional. (Tr. 8/18/99)*

"The evidence presented during this phase of the proceedings clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the resources currently available to North Carolina public schools. In light of that fact, Defendant submit that if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can only be due to lack of leadership and sustained effort..... In fact, Defendants contend that it is the duty of the central office staff in the LEA's to provide that type of instructional support whenever there is evidence that the students in a particular school are not achieving expected growth. (citation

omitted) One program is not necessary for all schools and one program will not work for all schools..... Based on all the evidence, Defendants contend that Plaintiffs have failed to prove that the State is responsible for any alleged constitutional deficiencies in HCSS." (Brief 1/31/02, pp. 55-56)

This argument will not let the State off the hook where there are children at-risk of educational failure not receiving a sound basic education because of the failures of LEAs to carry out their legislatively mandated duties effectively and efficiently.

While there may be multiple explanations and excuses offered as to why an LEA cannot put a competent, certified, well-trained and qualified teacher who is employing targeted, effective educational methods and programs that work with the particular group of children in each and every classroom, there is no legally justifiable excuse for the absence of a competent, certified, well-trained teacher in each classroom.

In classrooms, schools and school districts where all the children are not being taught by competent, certified, well-trained teachers, such as in Hoke and the other low-wealth counties, the State cannot escape its constitutional obligation and ultimate responsibility by blaming the circumstances on lack of educational leadership and inefficient allocation of educational resources. Put another way, the State cannot escape by arguing that it has sent the LEA sufficient funds and it is the LEA's fault for not being able, for whatever reason, to put competent, certified, well-trained and qualified teachers in every classroom who are actually capable of teaching all the children, including at-risk children, using effective, focused and appropriate teaching methods.

Likewise, the State cannot escape its constitutional responsibility by creating and then hiding behind its own self styled burden of proof:

> State's Proposed Finding 708. *However, it is not defendants' burden to show whether the funds allotted for any particular purpose are sufficient. Rather, plaintiffs have the burden to prove by clear evidence that a particular educational program is a necessary component of the opportunity for a sound basic education; that the program is not provided; and that all available financial resources-State, federal and local-have been exhausted to provide other programs necessary to provide the opportunity to obtain a sound basic education. Otherwise, there is no basis to complain that a particular State allotment is insufficient.*
>
> Note to State's proposed finding 628. *HCSS alleges that is does not currently have the resources to provide these programs and practices. If the Court finds that students in HCSS do not currently have the opportunity to obtain a sound basic education, then the Court will need to address the question of whether HCSS can provide the opportunity for a sound basic education within its currently available resources. How to best spend additional resources to improve student performance in HCSS becomes relevant only after the Court finds that HCSS cannot provide constitutionally required educational opportunities within its available resources.*

The prima facie burden of proof that children are not obtaining a sound basic education in a classroom, school or entire district has been met when the ABC scores are published and show that children are at-risk of academic failure by failing to perform at grade level or above on the EOG and EOC tests. The ABC scores

for Hoke County, as well as the many other LEAs analyzed by the Court in this case clearly and convincingly demonstrate that there are way too many at-risk children not obtaining a sound basic education in this State.

The State cannot escape or deny the importance of the ABC system as proof of the failure of thousands of students to obtain a sound basic education by failing to perform at or above grade level all the way through high school.

As convincing evidence of the reliability and importance the State of North Carolina places on the ABC scores and data, consider the undisputed fact that the State has, and still relies on, the ABC system to pay millons of dollars in teacher bonuses each year, to publicly report the success or failure of student performance in every single school and to determine when a school is so "low performing" to the point it requires state intervention.

More importantly, for purposes of determining whether or not children are receiving a sound basic education, the ABCs are a valid and reliable indicator of an educational problem in a classroom, an entire school, or school district or with a segment of the student population within a classroom, school or school district.

What has been going on in *Leandro* is a shell game between the LEAs and the State of North Carolina as to which governmental unit is at fault when the fact remains, they are both at fault. The LEA is at fault for failing to provide the appropriate level of instruction. The fault is the failure to provide and administer effective, targeted educational programs for an LEA's at-risk students administered in a cost effective manner.

The root causes of the failure of an LEA to provide and administer effective, targeted educational programs for its children, including at-risk children, may vary from LEA to LEA. The root causes may be varied and in combination such as:

1. The failure of the LEA to have an effective superintendent who has good leadership and management skills.

2. The failure of the LEA to employ and provide effective, capable principals that are able to provide the instructional leadership, programs and high expectations of all teachers and students within the school so that academic achievement can flourish and each student is offered the equal opportunity to obtain a sound basic education.

3. The failure of the LEA to employ and provide effective, capable classroom teachers that have high expectations of their individual children, that have the qualifications, competency and educational know how to provide each child in their classroom with individual and differentiated instruction which is undisputedly necessary for the child to have the opportunity to learn and obtain a sound basic education.

4. The failure of the LEA to manage and cost-effectively administer the funding provided by the State of North Carolina for education within the LEA so that each and every child within the LEA is provided with a competent, qualified, caring teacher who is giving each child individualized and differentiated instruction needed for the child to succeed academically.

5. The failure of an LEA to exercise the flexibility provided by the State of North Carolina within the school district so as to cost-effectively allocate or

re-allocate its existing resources in an educationally effective manner so that all children are provided with the equal opportunity to obtain a sound basic education.

6. The failure of the LEA's superintendent and/or its governing board to exercise the political will power to make unpopular choices in teacher, student and principal assignments, or reallocation of funding so that all children will be reached effectively.

7. The failure of the LEA, after utilizing its funding in a cost-effective and properly allocated manner to provide educational services to each child sufficient to provide each child with the equal opportunity to obtain a sound basic education, to ~~have~~ sufficient funds to carry out the constitutional mandate for each child.

The particular failure, or combination of failures, notwithstanding, if the failure results in one child, or a group of children, not receiving effective, focused, individualized and differentiated instruction from a competent, well-trained teacher in a school with an effective educational program receiving sufficient resources then the child or a group of children are not receiving the opportunity for a sound basic education.

In any such event, the constitutional mandate of *Leandro* has been violated and action must be taken by both the LEA and the State to remedy the violation.

Hoke County's ABC scores are terrible and have been terrible for years. The clear and convincing evidence shows that many children in Hoke County are not receiving the equal opportunity to receive a sound basic education. It is also patently clear that HCSS is not getting the job done in terms of providing each and every child with the opportunity to receive a sound basic education. There are many children in Hoke

County, as well as throughout North Carolina in the same boat. The bottom line is that those children's constitutional right to a sound basic education are being violated. That is as far as this Court needs to go. It is not the Court's responsibility to referee and conduct hearings to determine the precise causes of the educational breakdown in Hoke County or any other county for that matter.

Children at-risk of not obtaining a sound basic education are not being afforded their constitutional right to receive that education be it the fault of the classroom teacher, the LEA, or the State by not providing sufficient educational resources to the LEA.

The North Carolina Constitution clearly provides that it is the obligation of the State to provide each and every child with the equal opportunity to obtain a sound basic education. That obligation includes not only funding, but providing assistance to LEAs who are not carrying out their duties in regard to the sound basic education.

HCSS cannot be allowed to "sink or swim" on its own by the State of North Carolina when the ABC scores show consistently that large numbers of its students, at all grades, are not performing at or above grade level. Remember, the constitutional right to receive the opportunity belongs to the children, not to the LEA or to the State of North Carolina.

The same principle applies to any other school districts such as Wilson, Halifax, Northampton, Charlotte-Mecklenburg, Robeson, Harnett, Guilford and Forsyth, Chapel Hill/Carrboro where particular groups of students are failing to achieve academically because they are not receiving the constitutionally mandated level of educational support.

This is so because the root causes for the failure of at-risk children to achieve academically are the same whether the school district is low wealth, or wealthy. Whatever the particular root cause or causes are in a particular LEA is irrelevant to the fact that at-risk children, black, white, Hispanic or Native American, are not being provided with an effective, targeted educational program that reaches those children and helps them obtain grade level proficiency.

What is important is that whatever the cause, the failure of the State of North Carolina's educational establishment to provide such an effective, targeted educational program is a violation of those children's constitutional right to the equal opportunity to obtain a sound basic education. The violation of those rights must be remedied by the State of North Carolina. That is not an impossible task.

The State of North Carolina has clearly and repeatedly demonstrated through legislation and otherwise, that the State knows what steps should be taken and how local resources should be allocated to improve at-risk academic performance in an LEA or in an individual school where students are failing to obtain a sound basic education.

There is no question that the State of North Carolina has the educational expertise and fiscal know-how to be able to analyze and evaluate the effectiveness of classroom teachers, Principals and instructional strategies in an LEA that has numbers of low performing at-risk students and individual schools that are having problems with academic performance as shown through the ABC's data each year.

The State of North Carolina also has the educational expertise and fiscal knowledge to weigh, evaluate and assess whether each LEA is effectively

utilizing its available resources to provide each child with the equal opportunity to receive a sound basic education.

The State has been unwilling to step in and provide that assistance unless and until the performance of children in a school is so bad that the school is, for all intents and purposes, academically dead. The State accomplished this by adopting a "hands-off" policy for the sake of "local control and flexibility," by sending a check to the LEA and by letting the LEA, sink or swim, until one of its schools became "low-performing" or "high-priority." The State consciously set the alarm threshold too low.

As a result of this flawed policy, the State of North Carolina, from the beginning of this lawsuit through today, has not voluntarily elected to apply its awesome educational knowledge and authority to assist local boards of education, such as Hoke County, or individual schools located within "wealthy systems" that have students floundering in the educational basement.

Instead, in this case, as the Court has earlier pointed out, the State has elected, through its education and political leadership, to justify its hands off policy by hiding behind two legally untenable arguments with respect to a child's right to the equal opportunity to receive a sound basic education:

First, that where at-risk students are not obtaining a sound basic education, an LEA has the burden of proving that the LEA is utilizing all of its resources in a cost-effective, educationally sound manner, and then and only then, if more resources are required to provide children with the equal opportunity for a sound basic education, does the State have to provide those necessary resources.

Second, that the State of North Carolina has no responsibility to the children who are being deprived of their constitutional right to the opportunity to receive a sound basic education if there are constitutional deficiencies that are the fault of the LEA to properly provide the educational opportunity.

When all is said and done, the truth is that the ultimate responsibility to see that all children are provided with an equal opportunity to obtain a sound basic education by providing competent, qualified administrators, principals and classroom teachers who teach effectively belongs to the State of North Carolina.

> *Because we conclude that the General Assembly, under Article IX, Section 2(1) has the duty of providing the children of every school district with access to a sound basic education.....Leandro, p. 353.*

HAVING FOUND THAT THERE ARE AT-RISK CHILDREN IN HOKE COUNTY AND THROUGHOUT THE STATE THAT ARE NOT OBTAINING A SOUND BASIC EDUCATION AND HAVING ESTABLISHED THAT THERE IS NO EXCUSE FOR NOT PROVIDING EACH CHILD WITH THE OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION THROUGH MANY SUCCESSFUL EDUCATIONAL STRATEGIES AND PROGRAMS AND HAVING DETERMINED THAT THE STATE OF NORTH CAROLINA IS ULTIMATELY RESPONSIBLE FOR CHILDREN NOT RECEIVING THE EQUAL OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION, WHAT IS THE COURT NOW REQUIRED TO DO?

The Supreme Court has provided the answer to this question:

> *If on remand of this case to the trial court, the court makes findings and conclusions from competent evidence to the effect that the defendants in this case are denying children of the state a sound*

basic education...it will then be the duty of the court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government. Corum v. University of N.C.,330 N.C. 761,784, cert. denied, 506 U.S. 985. Leandro, p. 357.

The Supreme Court of North Carolina has determined as a matter of law that:

The Constitutional right to the opportunity to receive a sound basic education belongs to each and every child in North Carolina. *Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution; Leandro, at 347, 354.*

On remand, this Court has determined from *Leandro* and clear and convincing credible evidence that *Leandro's* guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers, can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

The clear and convincing evidence also shows that there are children in HCSS, and in other LEAs throughout North Carolina who are at-risk of academic failure and not receiving an equal opportunity to a sound basic education because the State, through its LEAs, is not providing the minimum necessary educational resources described above and beginning with a classroom teacher who is competent, certified, and well-trained and who is teaching the Standard Course of Study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to those children.

Make no mistake, the evidence shows that North Carolina is making steady progress in education and that the vast majority of students are being provided with the equal opportunity to obtain a sound basic education.

Unfortunately, the clear and convincing evidence also shows that there are thousands of children scattered throughout the State in low-wealth counties, such as Hoke, Northampton, and Halifax, and "wealthy" counties, such as Guilford, Charlotte-Mecklenburg and Forsyth, who are not being provided with the minimum educational resources necessary for them to have the equal opportunity to receive a sound basic education.

It is these children whose constitutional rights are being violated by the lack of the equal opportunity to receive a sound basic education that must be the focus of the State's efforts and methods to locate and remedy the constitutionally deficient educational opportunities being provided to them.

The solution to this problem is properly left to the State working with its LEAs, including the plaintiff-parties. The solution lies first in the hands of the General Assembly and the State Board of Education. The solution may or may not require the expenditure of additional funds so long as the *Leandro* mandate is followed.

DISCUSSION

The State of North Carolina admits that the evidence presented during the September and October hearings "clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the current resources available to North Carolina public schools."

The State of North Carolina admits that "all the evidence shows that the keys to improving student performance are: Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to students; Continual assessment of the students' understanding of the lesson; and Individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means." (Br. 1/31/02, pp 54-56)

The clear, convincing and credible evidence presented in this case, for the reasons set forth in

this Memorandum of Decision and in Sections One, Two and Three (as amended) of the prior Memoranda of Decision, demonstrates that the State of North Carolina knows full well what needs to be done to effectively provide each child with an equal opportunity to obtain a sound basic education.

The clear, convincing and credible evidence presented in this case also demonstrates that there are many children at-risk of academic failure who are not being provided with the equal opportunity to obtain a sound basic education as mandated by the Constitution of this State. These children are located in Hoke County, as well as throughout the State. The primary provider of their education, in each instance, is the LEA in whose district they reside.

Up until now (except for the most grievous schools) when the at-risk children in an LEA, such as HCSS, are not being provided with the equal opportunity to obtain a sound basic education, the State of North Carolina stands back and points the finger of blame at the LEA for the failure of the children to obtain a sound basic education.

In the case of HCSS, the State argued that due to the fact that there are successful educational programs and strategies that can be implemented with the resources the State provides, then and in that event, "if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can only be due to lack of leadership and sustained effort." (Br. 1/31/02)

The bottom line is that the State of North Carolina has consistently tried to avoid responsibility for the failures to provide at-risk students with the equal opportunity for a sound basic education in LEAs throughout the state by blaming the failures on lack of leadership and effort by the individual LEAs.

The Supreme Court in Leandro clearly and unmistakably held to the contrary and found that the North Carolina Constitution provides every child with the right to receive an equal opportunity to a sound basic education and that it was the General Assembly, under Article IX, Section 2(1) that "has the duty of providing the children of every school district with access to a sound basic education." (Leandro p. 353)

This Court, following Leandro's mandate, has rejected the State of North Carolina's flawed argument that "it" is not responsible for educational failures in LEAs that are not providing their at-risk children with the equal opportunity to receive a sound basic education and has determined, just like the Supreme Court did on July 24, 1997, that the State is ultimately responsible and cannot abdicate its responsibility to the LEA.

That having been said, the State's denial of responsibility fails as a matter of law. It is now, and always has been, the ultimate responsibility of the State to provide the equal opportunity to a sound basic education to all children. (Article I, Section 15; Article IX, Section 2(1), North Carolina Constitution)

This Court has, in accordance with Leandro, Ordered the State, not the LEAs, to fix the deficiencies that exist with at-risk children. This is so because the LEAs, like the counties themselves, are mere subdivisions of the State. The LEAs were created by the State for its own convenience in order to assist the State in performing its constitutional duty to provide each and every child with the equal opportunity to obtain a sound basic education through its free public school system. It is up to the Executive and Legislative Branches to provide the solution to the constitutional deficits with at-risk children. These branches can no longer stand back and point their

fingers at individual LEAs, such as HCSS, and escape responsibility for lack of leadership and effort, lack of effective implementation of educational strategies, the lack of competent, certified, well-trained teachers effectively teaching children, or the lack of effective management of the resources that the State is providing to each LEA.

The State of North Carolina must roll up its sleeves, step in, and utilizing its constitutional authority and power over the LEAs, cause effective educational change when and where required. It does not matter whether the lack of an equal opportunity to obtain a sound basic education is caused by teachers, principals, lack of instructional materials or other resources, or a lack of leadership and effort.

The State must step in with an iron hand and get the mess straight. If it takes removing an ineffective Superintendent, Principal, teacher, or group of teachers and putting effective, competent ones in their place, so be it. If the deficiencies are due to a lack of effective management practices, then it is the State's responsibility to see that effective management practices are put in place.

The State of North Carolina cannot shirk or delegate its ultimate responsibility to provide each and every child in the State with the equal opportunity to obtain a sound basic education, even if it requires the State to spend additional monies to do so.

The State of North Carolina has steadfastly represented to this Court and to the citizens of North Carolina that the State is "continuing to appropriate additional funds and initiate new programs to assure that students enrolled in North Carolina public schools are receiving the opportunity to acquire a sound basic education."

In the final analysis, if the State is true to its word about providing sufficient appropriate funding for each child to have the equal opportunity to obtain a sound basic education, the State should be able to correct the educational deficiencies which are denying at-risk children the equal opportunity to obtain a sound basic education by requiring LEAs that are not getting the job done to implement and maintain cost-effective, successful educational programs in their schools as required by Leandro. If not, then the State will have to look for other resources to get the job done.

Make no mistake. While the State can require the LEAs to take corrective action, it remains the State's responsibility, through forceful leadership and effective management, to show an ineffective LEA, or an ineffective school within an LEA: (1) how to get the job done if the LEA's leadership and educational staff is ineffective and inept; (2) how to cost-effectively manage the resources which the State contends it so adequately provides to support each child's equal opportunity to receive a sound basic education; and (3) how to implement effective educational programs, using competent, well-trained certified teachers and principals.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution, as interpreted by Leandro, guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is

teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

2. That there are children at-risk of educational failure who are not being provided the equal opportunity to obtain a sound basic education because their particular LEA, such as the Hoke County Public Schools, is not providing them with one or more of the basic educational services set out in paragraph 1, above.

3. That the State of North Carolina is ultimately responsible for providing each child with access to a sound basic education and that this ultimate responsibility cannot be abdicated by transferring responsibility to local boards of education. *Leandro pp. 347,351*

4. That the State of North Carolina is ORDERED to remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in paragraph 1, whether they are in Hoke County, or another county within the State.

5. The nuts and bolts of how this task should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government. By directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best to remedy the identified constitutional deficiencies.

6. This Court's prior Memoranda of Decisions entered on October 12, 2000 (Section One); October 26, 2000 (Section Two); March 26, 2001 (Section Three) as amended by Order entered May 29,2001, are incorporated as part and parcel of this Memorandum of Decision and Judgment. All Four Memoranda of Decision constitute the Decision and Judgment of this Court.

7. The State of North Carolina is directed to keep the plaintiff-parties fully informed of the progress of its efforts to remedy the constitutional deficiencies identified and the plaintiff-parties are directed to fully cooperate with the State of North Carolina in accomplishing its task.

8. The State of North Carolina is directed to keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court.

9. This Court retains jurisdiction over this matter for purposes of resolving any remaining issues, including, but not limited to, enforcement of this Judgment as provided by Leandro.

This the 4th day of April, 2002.

Howard E. Manning, Jr.
Superior Court Judge

State of North Carolina
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July 5, 2002

The Honorable Howard Manning, Jr.
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Re: *Hoke County Board of Education v. State*

Dear Judge Manning:

In your Memoranda of Decision Section Four entered on April 4, 2002, you ordered the State, among other things, "to keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court." Section Four, p. 111, ¶ 8. As you know, the State defendants and the plaintiff parties have filed notices of appeal from the decision. We are currently preparing the record on appeal and anticipate filing the record with the Court of Appeals sometime in August. In the meantime, none of the parties has sought a stay of the decision. Consequently, the State is filing this report in fulfillment of its obligation to keep the Court apprised of remedial actions it has taken.

When composing this report, the State has kept in mind your findings that, while the State is providing the vast majority of students in the public schools with the opportunity to obtain a sound basic education, the State is not providing all students who are at risk of academic failure an equal opportunity to obtain a sound basic education. Section Four, p. 104. The State has also focused on your determination that at a minimum the constitution requires the State to guarantee that every child has the opportunity to attend a public school which has the following resources:

> First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.
>
> Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have

the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

Section Four, pp. 109-110.

Aside from those concerns, the State was mindful that the Court had previously found that pre-kindergarten educational programs for at-risk children must be expanded at a reasoned and deliberate pace to serve all of the at-risk children in North Carolina that qualify for such programs. Section Two, p. 43.

In fulfillment of its reporting obligations, the State is submitting the attached materials. These materials document some of the actions that the State has taken since the last hearing to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools.

Of course, all of the State's present efforts to improve educational opportunities in the public schools must be examined and evaluated in the context of the present budget crisis. At this point in time, the General Assembly has not passed and the Governor has not signed a revised budget for the 2003-03 fiscal year. When the revised budget is passed and signed, we will provide you with a copy.

Sincerely,

Thomas J. Ziko

Thomas J. Ziko
Special Deputy Attorney General

cc: Robert Spearman
Ann Majestic

Leandro
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July 5, 2002

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STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

RECEIVED
JUL 3 2002
ATTORNEY GENERAL'S OFFICE

To: Chief Deputy AG Edwin Speas

From: Franklin Freeman, Senior Assistant for Governmental Affairs

Re: The State's 90-Day *Leandro* Report

Date: 3 July 2002

We have earlier provided a number of items for inclusion in the *Leandro* filing you are making on July 5.

In particular, Governor Easley wants the Court to know that he strongly believes that his statewide prekindergarten initiative for at-risk four-year olds, known as More At Four, is critical to making significant educational progress and is fully consistent with a major component of the Court's orders. His budget for 2002-03 proposes an important expansion of this prekindergarten initiative, along with an appropriation to continue class size reduction in grades K-3 that should serve as another particular benefit for at-risk students.

While the state Senate's current budget proposal does not reflect the Governor's More At Four and class size reduction requests, he is committed to ensuring that the final state budget for 2002-03 will. Based on conversations with the House leadership, Governor Easley believes that his More-at-Four and class size reduction initiatives will be included in that chamber's soon-to-be released budget.

Governor Easley would also like to direct the Court's attention to the recently released report of his Education First Task Force. Among the Task Force's recommendations of particular interest are such proposals as:

(i) instituting an "earned flexibility" structure that strengthens the performance and accountability standards for low-performing schools (See strategy 6);
(ii) intensifying our schools' focus on reading (See strategy 1); and
(iii) developing superior leaders for our schools (See strategy 3).

2002-2003 Recommended Adjustments
General Fund - Department of Health and Human Services - Continued

Recommended Expansion and Alternative Source of Funding

Central Administration	2002-03
1. More at Four Pre-Kindergarten Program The More at Four Pre-Kindergarten Program is a voluntary pre-kindergarten initiative to prepare at–risk four-year-olds for success in school. During the 2001-02 school year, grants were awarded to 28 communities, which include 34 counties throughout the western, piedmont, and eastern regions. One hundred sixty-six classrooms served 1,621 children. An additional 2,800 children are projected to be served in 2002-03. More at Four will be phased- in over five years to reach the estimated 40,000 four-year-old children in the state who are at risk for school failure. Funding for the More at Four program is included in the Education Lottery proposal.	$ 28,065,300
2. T.E.A.C.H. Program The Teacher Education and Compensation Helps (T.E.A.C.H.) program pays for scholarships for child care teachers and center administrators to take classes at community colleges in order to meet educational requirements. The average cost to assist a T.E.A.C.H. scholarship recipient meet his/her educational goals is $519. Funding is included in the Education Lottery proposal.	2,600,000
Total Recommended Expansion and Alternative Source of Funding	
Requirements	$ 30,665,300
Receipts	
Appropriations	$ 30,665,300

TOTAL Recommended Adjustments for Department of Health and Human Services (including Entitlement Adjustment, Reductions and Expansion and Alternative Source of Funding)

TOTAL Recurring Adjustments	
Requirements	$(132,524,539)
Receipts	(44,002,293)
Appropriation	$ (88,522,246)
Number of Positions	(235.15)

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More at Four Pre-Kindergarten Program:

Second Progress Report to the General Assembly

On Section 21.76B

Submitted by

More at Four Pre-Kindergarten Program
Governor's Office

Department of Public Instruction

Department of Health & Human Services

More at Four Pre-Kindergarten Task Force

May 1, 2002

Progress Report on the *More at Four* Pre-Kindergarten Program

In response to Session Law 2001-424, Section 21.76B.(g), a second progress report due May 1, 2002 on the development and implementation of the *More at Four* Pre-Kindergarten Program is submitted to the:

- Joint Legislative Commission on Governmental Operations,
- Joint Legislative Education Oversight Committee,
- Senate Appropriations Committee on Health and Human Services, and
- House of Representatives Appropriations Subcommittee on Health and Human Services.

All sites have been funded for the 2001-02 school year and will be continued for the 2002-03 school year. A total of 1621 child positions have been approved in 166 classrooms in 34 counties. Information on the 28 funded sites is included in the following Attachments:

- Attachment A — List of grant sites, 34 counties, and classrooms
- Attachment B — Number of children to be served, curriculum chosen, and types of service delivery setting(s) for the classrooms
- Attachment C — Number of children by types of settings
- Attachment D — Grant Contract Budgets for Start-up, Operating and Local Contributions
- Attachment D-1 — Local Operating Budget Categories
- Attachment D-2 — Start-Up Funding Budget Categories
- Attachment E — Geographic Distribution of Grant Recipients
- Attachment F — Grant Site Implementation Data: Authorized Children, and Enrollment Data
- Attachment G — Mini-Profiles of Children's and Teachers' Experiences in *More at Four* Pre-K Programs

Status of Legislative Requirements

This report is organized by each sub-section in the legislation (Section 21.76B), with the sub-section and a brief description listed in the left column and the status of implementation in the right column. Since this status report was also included in the January 1, 2002 Legislative Report, updated information is shown in **bold-faced type.**

Sub-Section of Section 21.76B	Status of Implementation
Section 21.76B(a) The Department of Health and Human Services in consultation with the Department of Public Instruction shall develop *More at Four* Pre-K Program.	A "management team" consisting of designees from the Governor's Office, the DHHS, the DPI was formed to oversee the development of the *More at Four* Pre-Kindergarten Program. The management team also consults with The NC Partnership for Children, Inc.. An Interim Director of the program, Dr. Carolyn Cobb, was hired on November 6, 2001. After the Director of the Program was hired, the management team was asked to continue functioning as an advisory group to the *More at Four* Pre-Kindergarten Program Office. Since that time, this group has been included on the Executive Committee of the *More at Four* Pre-Kindergarten Program Task Force. (See next Section.)

Section 21.76B.(b) Establish a *More at Four* Pre-K Task Force to oversee the development & implementation of the pilot program	The Task Force was jointly established by the DHHS and the DPI and is chaired by the Secretary of DHHS and the Superintendent of DPI. It includes representatives of the groups named in this sub-section: early childhood experts from both departments, state and local Smart Start partnerships, Head Start programs, parents, teachers certified in early childhood, private for-profit and not-for-profit child care, and other early childhood education experts. Membership also includes representatives from the UNC-General Administration, private universities and colleges, and the N. C. Department of Community Colleges.
Section 21.76B.(c) DHHS & DPI, with guidance from Task Force, shall develop/implement program. Pilot shall be distributed geographically. Program shall be consistent with standards & assessments established jointly by above groups.	**The *More at Four* Pre-Kindergarten Initiative Program Guidelines and Requirements document, which was approved by the Task Force and details the requirements to be followed by the local Pre-K sites, was attached to the January report and is also available on the Governor's web site at www.governor.nc.state.nc.** **Two rounds of competitive applications were held, with grantees first selected based on review team ratings of several aspects of program quality. Additional consideration was given to economic need and geographic distribution of the applicant communities. The map in Attachment E depicts the geographic distribution of the sites across the state. A total of 28 grants (including 34 counties) comprise the final list of grantees.**
Section 21.76B.(c)(1) and (2) Process for identifying children at risk of academic failure, and children who have never been served…	See Program Guidelines and Requirements, "Defining, Identifying and Recruiting At-Risk Children" (pages 12-16). Also see "Program Standards and Curriculum" Section, page 20, which addresses required health screening of Pre-K children, and page 22, which addresses screening in various developmental domains.
Section 21.76B.(c)(3) Curricula that are recommended by Task Force.	This requirement is addressed in the Program Guidelines and Requirements, page 19. Research-based curricula that address the developmental domains in the legislation and the five domains listed in the Ready for School Goal Team Panel were considered. Recommended curricula currently include: Bright Beginnings, Creative Curriculum, High Scope, Montessori, and Bank Street Explorations. The *More at Four* Pre-Kindergarten Program Office can review other research-based curricula. That office has established a committee of curriculum experts to conduct such reviews. **At least three other curricula have been reviewed to date and were not approved.**
Section 21.76B.(c)(4) An emphasis on family involvement.	An emphasis on family involvement is included and can be found in the Program Guidelines and Requirements, page 21.
Section 21.76B.(c)(5) Evaluation of child progress by pre- and post-assessment and ongoing assessment by teachers.	See Program Guidelines and Requirements, "Outcomes, Critical Success Factors and Evaluation Section, pages 25-27. Pre- and Post-assessment of children will be carried out by the outside evaluation starting with the 2002-03 school year. Because children will receive only a partial year of pre-K access this fiscal year, pre-post assessments were not considered to be reliable measures for evaluation purposes or to be cost-effective. **Frank Porter Graham Child Development Institute, the outside evaluator, is collecting child-specific information and survey data from staff and programs during the Spring of 2002.** Ongoing assessment by teachers is addressed in the Program Guidelines and Requirements, page 23 under "Instructional Assessment."

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Section 21.76B.(c)(6) Guidelines for reimbursing entities that provide Pre-K programs.	A system of reimbursement **for 2001-02 has been** finalized in conjunction with the DHHS Controller's Office, with input from DPI and The NC Partnership for Children, Inc. **In working with the DHHS Controller's Office, we determined that the** existing child care subsidy system **was not feasible** for funding stable Pre-Kindergarten programs. The system established is a blend of per student funding and funding for classrooms. When a pilot site is selected, funding to the site is based on the number of *eligible* children to be served. If a child leaves that site, the money does not automatically stop. The classroom/site will have 60 days to fill the position with another eligible child before it runs the risk of losing the funding **(starting with the 2002-03 school year).** This system provides more stability for classrooms and continuity for quality programs. **The system of reimbursement is under continuing study. Other strategies will be explored that may provide for less paperwork burden on the grant contractor and subcontractors as well as provide for fiscal accountability. If feasible any such funding and tracking mechanism could be put in place for the next fiscal year.**
Section 21.76B.(c)(7) System built upon existing local school, private child care providers, & other entities with ability to establish or expand Pre-K capacity.	The application and selection of *More at Four* Pre-K sites is based on existing service delivery providers. The communities selected include classes in public Pre-Kindergartens, Head Start classes, and private for-profit and non-profit child care providers. [See **Attachment B for types of settings. See Attachment C for numbers of child positions by type of setting.**]
Section 21.76B.(c)(8) and (9) Quality control system. Providers meet standards/guidelines as established by DHHS, DPI & Task Force. May use child care rating system. Standards for minimum teacher qualifications (licensure)	Requirements for staff (administrators, teachers, and teacher assistants) and for classroom/center licensing are set at a quality program level: public school licensure for teaching staff, AAS certification for assistants (staff may start with lower credentials but have 4 years to reach these standards), and a minimum of 3-star rating by DCD to be accepted as a participant (must reach 4- or 5-star rating within 3 years). [See pages 17-19 of Program Guidelines and Requirements for requirements for staff and classrooms. A number of the sites already have teachers who meet the requirements, as specified by this sub-section. **Other sites, especially rural counties, are having trouble finding qualified staff. (See attachment F for more detailed information.)**
Section 21.76B.(c)(10) A local contribution is required	The application sets forth requirements for a local contribution beyond the *More at Four* Pre-Kindergarten Program funds. Applicants are required to specify what other sources of funding will be used to support the children/classrooms included in the *More at Four* Pre-Kindergarten Program sites. The intent of this program is to provide, on average, no more than half the costs of a quality program. No site will receive more than $400 per child per month. **Sites received between $282 and $350 per child per month. One rural, poor county received $395 for this first year.**
Section 21.76B.(c)(11) A system of accountability	The Program Guidelines and Requirements address this need in the "Program Standards and Curriculum" Section on pages 24. **The procedures for fiscal accountability were developed in early January and are in place. Tool(s) for ongoing program monitoring and accountability are nearing completion and will be ready for use in the 2002-03 school year. The child-specific database, along with teacher and program databases, have been developed in paper form for the Spring 2002 data collection. Web-based data entry will be developed via contractor for the 2002-03 school year.** The system will include data collection on children served, as well as information about staff, programs, and expenditures. Approval of invoices by the *More at Four* Pre-Kindergarten Program Office is required for reimbursement by the DHHS Controller's Office to the local contract administrator.

Section 21.76B.(c)(12) Collaboration with State agencies and other organizations.	As noted above, there has been ongoing collaboration on the development and implementation of this program prior to and continuing with the establishment of the *More at Four* Pre-Kindergarten Program office among DHHS, DPI, and the NC Partnership for Children. The original Task Force, comprised of even more groups developed the Program Guidelines and Requirements, and provided preliminary assistance with the funding of sites and application requirements. **The Executive Committee of the Task Force helps review materials and to make policy/program decisions between Task Force Meeting dates.** At the local level, collaboration is required as addressed in the Program Guidelines and Requirements, page 23.
Section 21.76B.(c)13) Consideration of reallocation of existing funds.	To be submitted to the 2003 General Assembly in the second year of the pilot after more experience is obtained and input received from local communities and state agencies.
Section 21.76B.(c)(14) Recommendation for long-term placement and administration of the program.	To be included in the 2002-03 report to the 2003 General Assembly.
Section 21.76B.(d)(1) Contract with an independent research organization…for design of evaluation component.	A contract with the Frank Porter Graham Child Development Institute (FPGCDI) has been established. FPGCDI is nationally known for its research in early childhood, including Pre-K programs. The evaluation design will include child-specific outcomes (starting in 2002-03), long-term follow-up plans, assessment of how well the programs are able to meet quality standards, and the impact on the existing service delivery system.
Section 21.76B.(d)(2) Develop a system to collect & maintain child-specific information for long-term evaluation of pilot	A child-specific database will be part of the ongoing system of accountability. It will facilitate the evaluation of the program, provide the basis for following children into the public school system (interfacing with the Student Information Management System and/or the NC WISE), and provide information on whether the appropriate children are being served. **To best utilize limited funding and resources, the development of the child-specific database will be carried out by FPG Child Development Institute as part of their evaluation contract. They will be developing a web-based data entry system based on one already in existence. The end-of-year specific child data collection for 2001-02 will be handled by a paper/pencil version.** *Refinements* will be made as necessary, moving toward a web-based application in 2002-03. **FPGCDI will develop databases related to staff and program information as well, since this information is also critical to their evaluation. They will provide data analyses requested by the *More at Four* Pre-K Office for monitoring and reporting purposes.**
Section 21.76B.(e) *More at Four* Pre-Kindergarten Program funds shall not supplant current state or federal expenditures.	The non-supplant provision is emphasized in the local application and is reviewed as part of the budget provided by the applicant in the selection process.
Section 21.76B.(f) Recommendations on the reallocation of funds from existing State and local programs providing Pre-K related care and services…	To be submitted to the 2003 General Assembly in the second year of the pilot after more experience is obtained and input received from local communities and state agencies.
Section 21.76B.(g) Required reports due January 1, 2002 and May 1, 2002. Final report due to 2003 General Assembly.	This report constitutes the second of the required reports.

Other Activities

In order to address the supply of qualified teachers and the level of training and understanding of the curricula required, several strategies are being pursued from the state level to assist local sites.

- **A partnership with the T.E.A.C.H. Early Childhood® Project was established** to provide scholarships for all *More at Four* Pre-K teachers and teacher assistants who are taking college courses to upgrade their skills. Scholarships provided through the T.E.A.C.H Early Childhood ® Project assist teachers in obtaining bachelors degrees and B-K licensure and assist teacher assistants in obtaining associate degrees in early childhood. Through an amendment to the existing contract between DHHS and T.E.A.C.H., *More at Four* Pre-K funds are being used for two new scholarship options that help meet short- and long-term *More at Four* Pre-K teacher qualification and staffing needs:
    1. The T.E.A.C.H. Early Childhood® B-K Licensure Scholarship to help increase the pool of teachers with B-K licensure.
    2. The T.E.A.C.H Early Childhood® Scholars Program to attract qualified individuals into the field of preschool education by substantially contributing to the costs of their college education
- **A contract with the University of North Carolina-Greensboro was issued** to provide statewide professional development for staff in the selected sites that will facilitate their knowledge of specific curricula and further their ability to attain the appropriate license and/or certificate. **Professional development activities include: (1) orientation session for staff, (2) training sessions on curriculum being used by the programs (High Scope, Creative Curriculum, and Bright Beginnings), (3) a mandatory two-day summer institute, and (4) an optional five-day summer institute that will offer credit-based coursework toward required licensure credentials.**

Summary and Recommendations

Mid-Year Implementation: Overview

Due to the late date for finalizing the state budget, the *More at Four* Pre-Kindergarten Program began enrollment of children in January 2002 for the first round of applicants. The second-round of applicants began enrolling children in early March of 2002. The mid-year start-up posed special challenges for the state office, local grant contractors, and actual classroom sites. A fiscal accountability and reimbursement procedure as well as procedures for recruiting and identifying at-risk children had to be developed and implemented quickly. Local expenses and budgets had already been established for the various service delivery sites when the *More at Four* Pre-K requirement for local contributions to the budget was announced.

In spite of these special challenges, the collaboration among all relevant constituent groups at the state and local levels was impressive. The Governor's Office, the Department of Health and Human Services, the Department of Public Instruction, the North Carolina Partnership for Children, and the appointed *More at Four* Pre-K Task Force have worked collaboratively and quickly to implement the grant application, review, and selection process; the reimbursement system and procedures; and to provide policy and program guidance as new issues arose. The local communities, many of which were already collaborating in important ways around the care and education of children, put quality applications together with extraordinarily quick turn-around. Since their selection, they have worked hard to move as quickly as possible to identify children, hire staff, set up classrooms, and enroll children in order to provide children with have several months of Pre-Kindergarten experience before entering Kindergarten in 2002-03.

Local communities have experienced special challenges in some areas in finding staff due to their rural location and the mid-year start-up. Others have experienced difficulty in reaching parents and identifying unserved pre-k children in the middle of the year. A few programs noted that they enrolled children, only to have the parent decide they wanted them at home. All grantees have expressed confidence that they can meet their authorized enrollment for the 2002-03 school year, as they will have the program in place and will have a number of opportunities to recruit children from the end of this school year through the summer, using more comprehensive community outreach, finding siblings of entering Kindergarten children, and having a longer period for recruitment.

Grantees and their *More at Four* Pre-K sites were surveyed in mid-April 2002 to determine the number, percentage, and demographics of children enrolled. Information was also requested regarding the number/percentage of teachers and teacher assistants hired, as well as the credentials of teaching and administrative staff. Results of this survey are described below. Information on the children by site and total is included in Attachment F. The numbers may change slightly by the end of the year as new children are identified and as new staff are added.

Children Served (see Attachment F)

Of the 1621 child positions allocated statewide, 1549 were eligible for enrollment this year and 72 are to start in programs in 2002-03. Some sites are implementing full classrooms with *More at Four* Pre-K funding; others are including several *More at Four* Pre-K children in existing classrooms, expanding the number of at-risk positions served. Of the 1549 authorized child positions, 1181 children (76%) have been enrolled as of mid-April 2002. The percentage of children enrolled ranges from 0 to 100%. One of the 28 grantees was approved to begin serving children in the 2002-03 school year, leaving 27 grants with operating programs this spring. Of those 27, another grantee was approved to

start with 36 children this spring (in the public schools and in Head Start) and to add 18 children (in private child care) in 2002-03. Three of these 27 grantees with operating classrooms have fewer than 50% of the allocated children enrolled. Anson County (0%) has identified the children to fill its 36 positions, but has been unable to recruit teachers for those classes – one of the mid-year challenges some sites have faced. Seven grant communities have filled between 50 and 75% of their positions. This example reinforces the need to continue funding the TEACH (Teacher Enhancement and Compensation Helps) Program that provides scholarships for college students pursuing elementary education degrees and B-K licensing and who commit to teach in *More at Four* Pre-K classrooms in return for tuition assistance. Most of the grant communities (70%) have between 75% to 100% of their allocated positions filled.

Demographic information on the children served currently includes ethnicity, children with disabilities or health problems, and children who have limited English proficiency. Most of the children served are Black (40.3%) or White (34.5%), followed by Hispanic/Latino (14.5%), American Indian (4.7%), Multi-racial (3.6%), Asian/Pacific Islander (2.3%), and "Other" (three children or 0.25%). The *More at Four* Pre-Kindergarten Program Guidelines and Requirements specify a target of including 10% of the *More at Four* Pre-K enrollment as children with specific disabilities. Of the currently enrolled children, approximately 11.5% have an identified disability, and another 12% have a health concern or problem. About 15% of the children have limited English proficiency (typically Latino or Asian children).

Teaching and Administrative Staff Information

The number of classes authorized to have all or some *More at Four* Pre-K children is 166, with 155 starting during the current school year. Teachers have been hired for 91% of those 155 classes. Credentials of the teachers in these classes include the following:

- 45% hold a Birth-Kindergarten (B-K) license or have a BA or MA degree with the preschool add- on;
- 30% hold a BA and are working toward the B-K license;
- 14% hold the two-year (AA) degree and are working toward the BA degree with B-K license;
- 11% were noted as "Other." The "Other" category as described in the site surveys includes teachers who hold master's degrees in elementary education or other fields and a teacher hired on an interim basis.

All of the classroom sites except the one unable to find teachers and two that are starting in 2002-03 have teacher assistant (TA) positions. There are 160.5 TA positions, with a few sites hiring more than one (part-time) TA per class. These TAs hold the following credentials:

- 22% hold the Early Childhood Education/Associate Degree.
- 22% hold the CDA credential.
- 28% have a high school degree or GED.
- 28% were designated as "other". The predominant composition of the "other" category described by sites includes many assistants with bachelor degrees in non-education related fields and one with a non-education related associate of applied science degree.

The scholarship assistance offered to *More at Four* Pre-K teachers and teacher assistants through the T.E.A.C.H. Early Childhood® Project is an important component in upgrading the qualifications of existing *More at Four* Pre-K staff to meet program standards and in recruiting new qualified teachers. These data reinforce the need to continue funding T.E.A.C.H. scholarships.

Administrative Staff Information

At the classroom site level, 117.5 administrators were reported. The goal for site-level administrator credentialing is a Level III Child Care Administrative Certification or a principal license (preferably with a major in Early Childhood Education or Child Development). Fifty-five percent (64.5) of the administrators hold principal licenses, closely paralleling the number of classrooms and children in the public schools. Of these 64.5 principal administrators, 29.5% hold a degree in Early Childhood Education or Child Development. Administrators in other types of service delivery settings, comprise the following percentages of all administrators.

- 9% have Level III Child Care Administrative Credentials.
- 12% hold Level II Child Care Administrative Credentials.
- 11% were listed as "other". This category primarily covered administrators who held degrees in other areas.

Budget Allocations and Expenditures

More at Four funds allocated to grantees for 2001-02 totaled $3,415,215 - $1,134,700 in start-up funds and $2,280,515 in ongoing operating funds. Local contributions are required and totaled $4,068,684 in cash or in-kind. The largest single local contribution came from Smart Start in many counties, followed by public school funds, Head Start, state child care subsidy, local appropriations, and preschool disabilities funds. Public school funds are broken into local school contributions and federal Title I funds. (See attachment D.)

Attachments D-1 and D-2 show the breakdown of local program operating expenses and start-up expenses by category of expenditure. Operating costs (D-1) were primarily personnel (86%). The next largest category was for educational and other supplies and assessments (6%). Student services (e.g., food/nutrition, transportation) comprised 4% and staff development 3%. One-time start-up costs (D-2) were designated primarily for education related supplies (70%), followed by student transportation (8%), staff development (7%), and equipment (6%).

Fiscal and Monitoring Procedures

Local contract administrators have worked diligently to meet the system guidelines and timelines for budgeting and reimbursement established by the *More at Four* Pre-K Office and the DHHS Controller's Office. It has created an enormous time commitment on the part of the contractors, as well as the subcontractors. Fiscal and contract management has also been a critical and time-consuming job for the state *More at Four* Pre-K Office. Yet everyone realizes this program component is essential and has worked to meet timelines and procedures with great cooperation and flexibility. On the other hand, local contract administrators are putting in a large amount of time to administer and oversee this program without receiving any reimbursement for that time. Contractors also need to provide both fiscal and program monitoring and oversight of local subcontractors (classroom sites). These tasks require funding that was not included in the *More at Four* Pre-K grants; only classroom-related expenses were included in the first year of funding.

First-Year Evaluation

The full evaluation is to be implemented with the 2002-03 school year. However, the outside evaluator is collecting end-of-year data on individual children, teachers, and programs during the spring of 2002. In the interim, this report includes aggregate data on the numbers of children enrolled,

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demographic descriptions of children (see Attachment F), teachers hired and their current credentials, and other staff data. It also includes a summary of start-up funding, operating funding, and local contributions (cash or in-kind) for the 2001-02 school year (see Attachment D, break downs by category of expenditures are show for both start-up and program operating expenses in Attachment D-1 and D-2).

It was not feasible to measure child progress with pre- and post-assessments for the half year or less that children were served during the start-up phase of 2001-02. Those measures will be included in the evaluation for 2002-03. However, some stories or descriptions that describe the kinds of children being served and their experiences have been included in Attachment G in order to provide examples of what the *More at Four* Pre-K classrooms are intended to do.

Conclusions and Recommendations

While it is premature to make extensive recommendations regarding the program, the following issues need to be pursued for the 2002-03 school year based on experiences during the start-up year.

- As funds are available, a small amount of funding (e.g., maximum of 5%) may be allotted to local contractors for monitoring the local program, technical assistance to subcontractors, and their time in administering the program.
- As funds are available, additional staff assistance (either on a contractual or time-limited position basis) is needed at the state level to provide program monitoring and technical assistance in implementing appropriate educational programs for at-risk Pre-Kindergarten children, as well as for providing fiscal operations and oversight.
- The mid-year start-up presented challenges for a few sites that could not be surmounted. These classrooms have been approved to start in the 2002-03 school year.
- The system of reimbursing local grant contractors continues to be studied. The goal is to find the least cumbersome method of reimbursement that provides sound accountability. Any recommended changes will be sent to the *More at Four* Pre-Kindergarten Program Task Force for review.
- As funds are available, continue supporting the T.E.A.C.H. Early Childhood® Scholarship Project to provide tuition assistance to *More at Four*-Pre-K teachers and to attract new qualified teachers to the preschool education field.

Attachment A

More at Four Pre-Kindergarten Program
Grants, Counties, and Sites

Grantee	County/Region	Classroom Sites
Alamance-Burlington School System	Alamance	Garrett Elementary E.M. Yoder Elementary North Graham Elementary Ray Street Complex
Union County Community Action, Inc.	Anson	Central Center for Children and Families
Ashe County School System	Ashe	Even Start Family Literacy Pre-K Program at Ashe Family Central
Beaufort County Partnership for Children	Beaufort	Eastern Elementary Chocowinity Primary Care-O-World Enrichment Center
Brunswick County Partnership for Children, Inc.	Brunswick	Bolivia Elementary Lincoln Primary School Supply Elementary Babies Learning Center Cuddle Bears For Kids Only Little Sandpipers Earth Angles
Buncombe County Partnership for Children, Inc.	Buncombe	Asheville City Schools Preschool Bell Elementary School Head Start Williams Elementary School Head Start Emma Elementary School Head Start Johnston Elementary School Head Start Hominy Valley Elementary School Head Start Community Child Care Center
Carteret County Schools	Carteret	Beaufort Elementary Newport Elementary Morehead Primary My School-Private Enterprise
Catawba County Partnership for Children	Catawba	South Newton Elementary Oakwood Elementary Tyndall Center at Sipe's Orchard Home

Craven County Board of Education	Craven	Craven County Even Start Family Literacy Program James W. Smith Elementary School
Cumberland County Partnership for Children, Inc.	Cumberland	Manchester Elementary School Stedman Primary School Lake Rim Elementary School Ferguson-Easley Elementary School Lewis Chapel Day Care Center Wonder Years Child Care and Learning Center FTCC Early Childhood Educational Center
Davidson County Partnership for Children	Davidson	South Lexington Elementary Southwest Elementary Thomasville Primary Churchland Elementary Lexington Family Enrichment Center The Learning Place (Thomasville)
Forsyth Early Childhood Partnership, Inc.	Forsyth	Easton Elementary Kimberly Park Petree Elementary Mudpies Child Development Center Old Town Community Development Center New Horizons Child Development Center East Winston Primary School-Charter School
Gaston County Schools	Gaston	Cline Learning Center of Dallas Forest Heights Elementary
Granville County Schools	Granville	West Oxford Elementary
Guilford County Partnership for Children, Inc.	Guilford	Jones Elementary Erwin Elementary Falkener Elementary Poplar Grove Head Start Southside Children's Center of Developmental Day Care KIDS, Inc.
Hertford County Public Schools	Hertford	Bearfield Primary CADA Head Start
Hoke County School System	Hoke	Rockfish Hoke Elementary Scurlock Elementary South Hoke Elementary West Hoke Elementary

Charlotte-Mecklenburg Schools	Mecklenburg	Highland Renaissance Elementary Childcare Network
New Hanover County Schools	New Hanover	J. C. Roe Pre-K Center Noah's Ark Winter Park Pre-School II New Hanover County Community Action Head Start (Peabody Center)
Northampton County Schools	Northampton	Seaboard-Coates Elementary Rich-Square Elementary Willis-Hare Elementary
Orange County Partnership for Young Children	Orange	Carrboro Elementary Seawell Elementary Glenwood Elementary Chapel Hill High School Carr Court Second Baptist Lincoln Center Pathways Elementary Head Start Efland Cheeks Elementary Head Start New Hope Elementary Head Start Community School for People Under Six
Pamlico County Schools	Pamlico	Pamlico County Primary
Region A Partnership for Children	Cherokee, Clay, Graham, Swain, Macon, Jackson, Haywood	Backyard Preschool Ranger Preschool Scott's Creek Bright Adventures New Horizon's II Head Start Hayesville CDC Elf CDC Silver Bluff CDC St. John's CDC Cashiers CDC Cherokee Methodist Nursery Webster Enterprises CDC Morningstar CDC Murphy Early Care and Education Ranger CDC Valley River Extension Learning Center Hazelwood Early Care and Education Center Hampton School Jean's Kid's Place Little Hands Playskool Haywood Community College CDC

Public Schools of Robeson County	Robeson	Cottonwood Pre-Elementary Shining Stars – Bryan Shining Stars – Pembroke
Scotland County Schools	Scotland	Scotland Accelerated Academy
Vance County Schools	Vance	Zeb Vance Elementary
Wake County Smart Start	Wake	Jordan Child & Family Enrichment Center Fuquay-Varina Early Learning Center Childcare Network-Brentwood Avenue
Wayne County Partnership for Children, Inc.	Wayne	Brodgen Elementary Chestnut Street Head Start Small World Child Care Center

Attachment B

More at Four Pre-Kindergarten Program
Fiscal Year 2001-02
Funded Grants, Curricula Chosen, Number of Children, & Classroom Settings

Grant Sites	Curriculum(s) Chosen	# of Children	Classroom Settings
1. Alamance/Burlington	Bright Beginnings	24	Public preschools
2. Anson County	Creative Curriculum	36	Head Start
3. Ashe County	Creative Curriculum	15	Public preschool
4. Beaufort County	Creative Curriculum	72	Public preschools, Private non-profit child care
5. Brunswick County	Creative Curriculum & High Scope	54	Public Schools, Private child care
6. Buncombe County	Creative Curriculum	24	Public schools/Head Start blend*, Private non-profit child care
7. Carteret County	Creative Curriculum	61	Public preschools, Private for-profit child care
8. Catawba County	Creative Curriculum	54	Public preschools (one in building with other non-profits)
9. Craven County	Creative Curriculum	28	Public preschools
10. Cumberland County	Creative Curriculum	112	Public preschools, Private for profit and non-profit child care
11. Davidson County	Creative Curriculum & Bright Beginnings	96	Public preschools, Private non-profit child care
12. Forsyth County	Creative Curriculum	110	Public preschools (including 1 charter school), Non-profit child care, For-profit/Head Start blend
13. Gaston County	Creative Curriculum	36	Public preschool, Private for-profit child care
14. Granville County	Creative Curriculum	16	Public preschool
15. Guilford County	Creative Curriculum	118	Public preschool, Head Start, private non-profit child care
16. Hertford County	Creative Curriculum & High Scope	36	Public preschools, Head Start
17. Hoke County	Bright Beginnings	90	Public preschools, Head Start
20. Mecklenburg County	Bright Beginnings	54	Public preschools, private for-profit child care
18. New Hanover County	Creative Curriculum	54	Public preschools, Private child care
19. Northampton County	Creative Curriculum	54	Public preschools
21. Orange County	Creative Curriculum	100	Public preschools, Head Start/public preschool blend, Private child care
22. Pamlico County	Creative Curriculum	15	Public preschool
23.Region A**	Creative Curriculum & High Scope	106	Public preschools, Head Start, private child care
24. Robeson County	Creative Curriculum	58	Public Preschools/Head Start blend, Private for-profit child care
25. Scotland County	Bright Beginnings	36	Public preschools
26. Vance County	High Scope	18	Public preschool
27. Wake County	Creative Curriculum	90	Private child care (profit and non-profit)
28. Wayne County	Creative Curriculum	54	Public preschool, Head Start, private child care
Total Number of Children		1621	

*Blend refers to two primary programs – usually Public Schools and Head Start – combining to become an overall class that meets *More at Four* Pre-Kindergarten Program standard

**Region A: Cherokee, Graham, Swain, Macon, Clay, Haywood, Jackson

More at Four Pre-Kindergarten Program

Number of Children by Grant and Type of Setting

Grantee	Number of Children by Type of Setting							
	Total	Schools	Head Start	Head Start in Schools	Private For Profit	Private Non-Profit	Head Start/ Private For Profit blend	Other*
Alamance	24	24						
Anson	36		36					
Ashe	15	15						
Beaufort	72	54				18		
Brunswick	54	13			32			9
Buncombe	24			20		4		
Carteret	61	43			18			
Catawba	54	36						18
Craven	28	28						
Cumberland	112	64			16	16		16
Davidson	96	78				18		
Forsyth	110	48				16	32	14
Gaston	36	18			18			
Granville	16	16						
Guilford	118	54	36			28		
Hertford	36	18	18					
Hoke	90	72	18					
New Hanover	54	18	18		9	9		
Northampton	54	54						
Mecklenburg	54	36			18			
Orange	100			88		12		
Pamlico	15	15						
Region A	106	44	3		6	38		15
Robeson	58	40			18			
Scotland	36	36						
Vance	18	18						
Wake	90				36	54		
Wayne	54	18	18		18			
Total Number	1621	860	147	108	189	213	32	72
% of Children	100%	53.05%	9.07%	6.66%	11.66%	13.14%	1.97%	4.44%

*Other includes charter schools, community colleges

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More at Four Pre-Kindergarten Program
Grant Contract Budgets for Start-up, Operating and Local Contributions

Grant Sites	Start-up Budget	Operating Budget	Local Contributions (Cash and In-kind)								
			State Child care Subsidy	Title I	Smart Start	Pre-school Disabilities	Local Appropri ation	Head Start	Public School	Other*	Total
Alamance County	16,800	25,200	-	-	-	19,046	-	-	37,969	-	57,015
Anson County	25,200	27,701	8,500	7,000	18,500	1,000	5,000	5,615	-	-	45,615
Ashe County	10,500	24,375		6,000	41,416	1,000	-	-	-	12,400	60,816
Beaufort County	50,400	122,658	-	-	10,767	-	22,500	-	-	39,610	72,877
Brunswick County	37,800	-	-	-	-	-	-	-	-	-	-
Buncombe County	16,800	39,000	123,000	17,515	53,000	4,265		32,865	91,620	15,330	337,595
Carteret County	42,700	68,744	-	16,378	-	-	-	-	26,860	10,044	53,282
Catawba County	37,800	94,500	-	4,000	2,500	8,700	-	-	-	55,300	70,500
Craven County	19,600	29,400	-	25,000	3,000	700	48,548	-	-	27,235	104,483
Cumberland County	78,400	217,449	-	14,436	120,858			-	30,000	23,895	189,189
Davidson County	67,200	83,694	-	2,880	1,500	14,760	4,511	-	-	39,022	62,673
Forsyth County	77,000	134,750	20,000	-	169,531	-	-	-	12,600	18,706	220,837
Gaston County	25,200	38,935	-	5,000	6,120	18,200	16,000	-	-	15,304	60,624
Granville County	11,200	16,800	-	-	21,688	-	14,243	-	-	-	35,931
Guilford County	82,600	206,500	25,000	18,149	-	-	1,563	68,664	70,883	22,241	206,500
Hertford County	25,200	36,900	-	-	420	9,000	7,000	-	11,850	600	28,870
Hoke County	63,000	177,750	14,412	65,495	160,970	29,627	18,396	5,832	8,543	-	303,275
Mecklenburg County	37,800	87,750	-	-	41,859	-	-	-	63,599	-	105,458
New Hanover County	37,800	63,000	-	30,000	7,500	7,500	-	30,000	-	-	75,000
Northampton County	37,800	57,240	-	4,850	-	500	6,857	800	-	-	13,007
Orange County	70,000	170,806	69,333	8,133	37,313	68,777	109,628	466,791	-	80,801	840,776
Pamlico County	10,500	15,750	-	-	20,000	2,000	-	-	3,000	2,374	27,374
Region A **	74,200	170,680	170,682	35,000	30,000	25,000	-	1,500	10,000	11,000	283,182
Robeson County	40,600	101,618	8,333	-	59,450	62,500	22,900	-	-	75,298	228,481
Scotland County	25,200	44,100	-	3,500	8,313	3,500	45,730	-	-	20,899	81,942
Vance County	12,600	22,750	-	4,893	6,667	-	-	-	7,630	-	19,190
Wake County	63,000	107,965	100,625	-	120,415	-	-	-	17,500	116,832	355,372
Wayne County	37,800	94,500	-	-	82,500	12,000	-	11,000	13,000	10,320	128,820
Total	1,134,700	2,280,515	539,885	253,793	903,429	288,075	322,876	623,067	375,054	762,505	4,068,684

* Other Funds include private for-profit contributions, USDA/Meals, Even Start, private non-profit contributions, Medicaid and contributions from a wide variety of local, county and state agencies.

** Includes Cherokee County, Graham County, Swain County, Macon County, Clay County, Haywood County and Jackson County.

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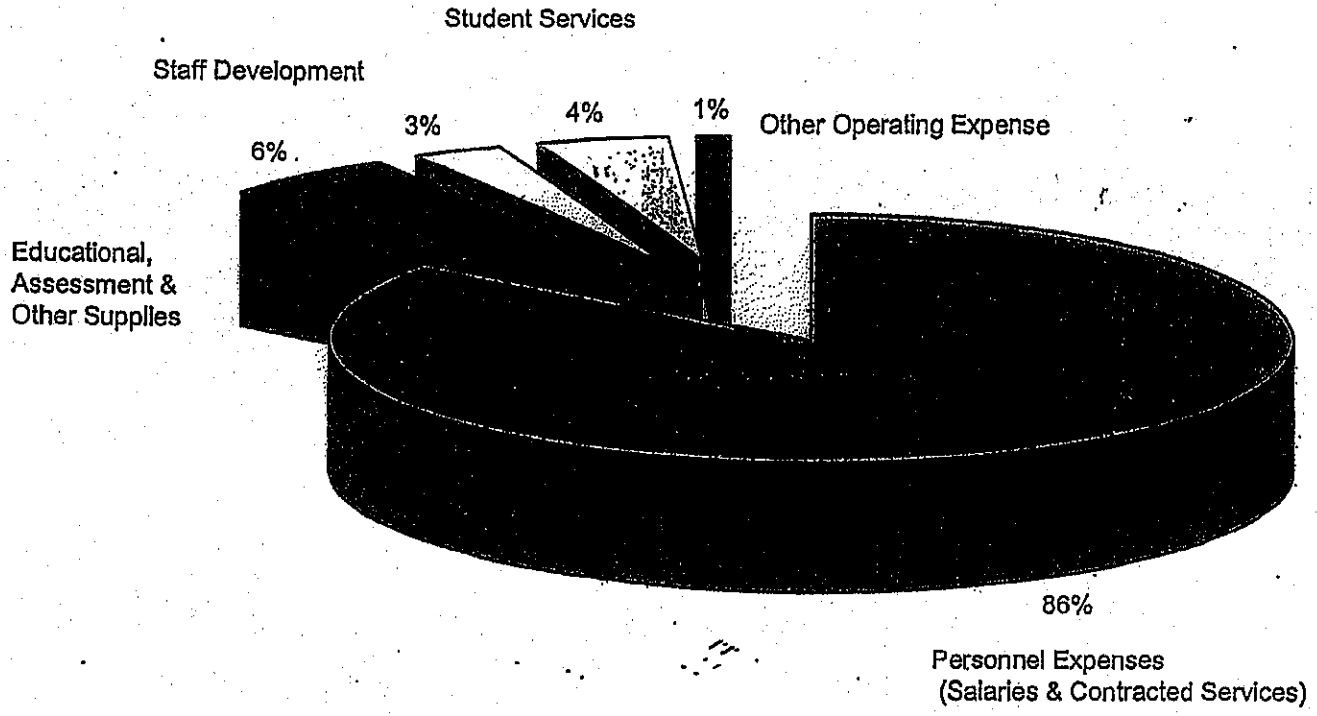
Attachment D-1

The *More at Four* Pre-Kindergarten Program
Program Operating Budget
Fiscal Year 2001-02



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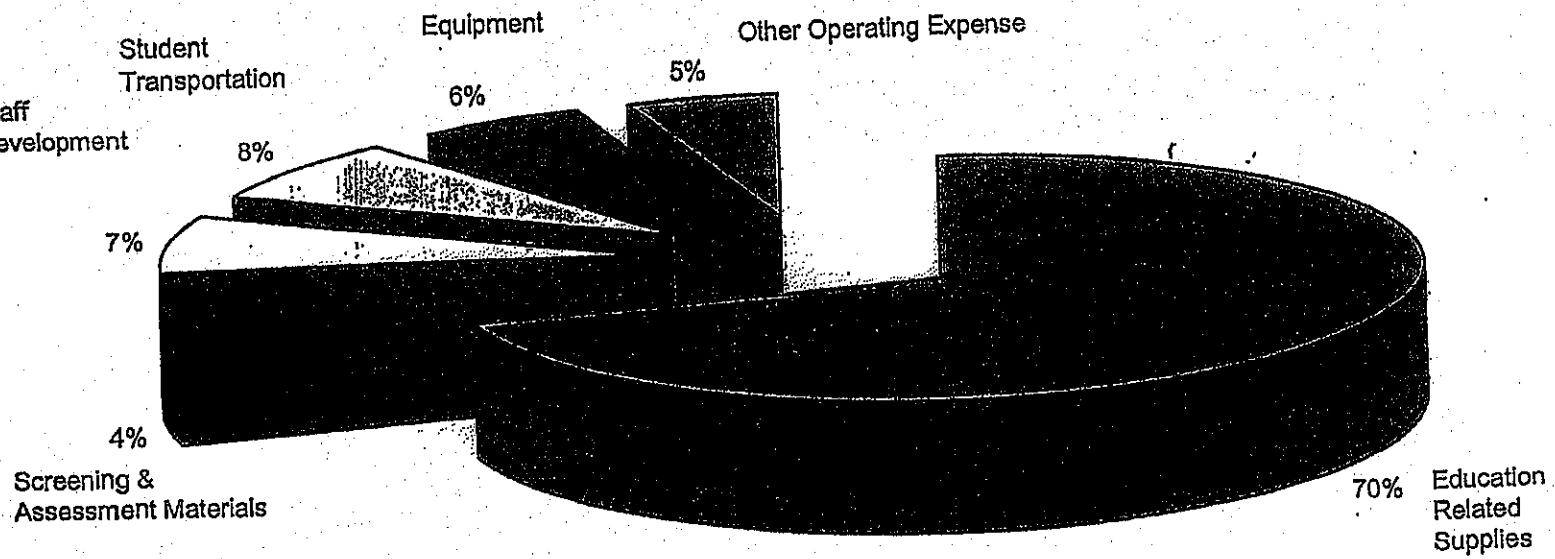
Attachment D-2

The *More at Four* Pre-Kindergarten Program
Program Start-up Budget
Fiscal Year 2001-02



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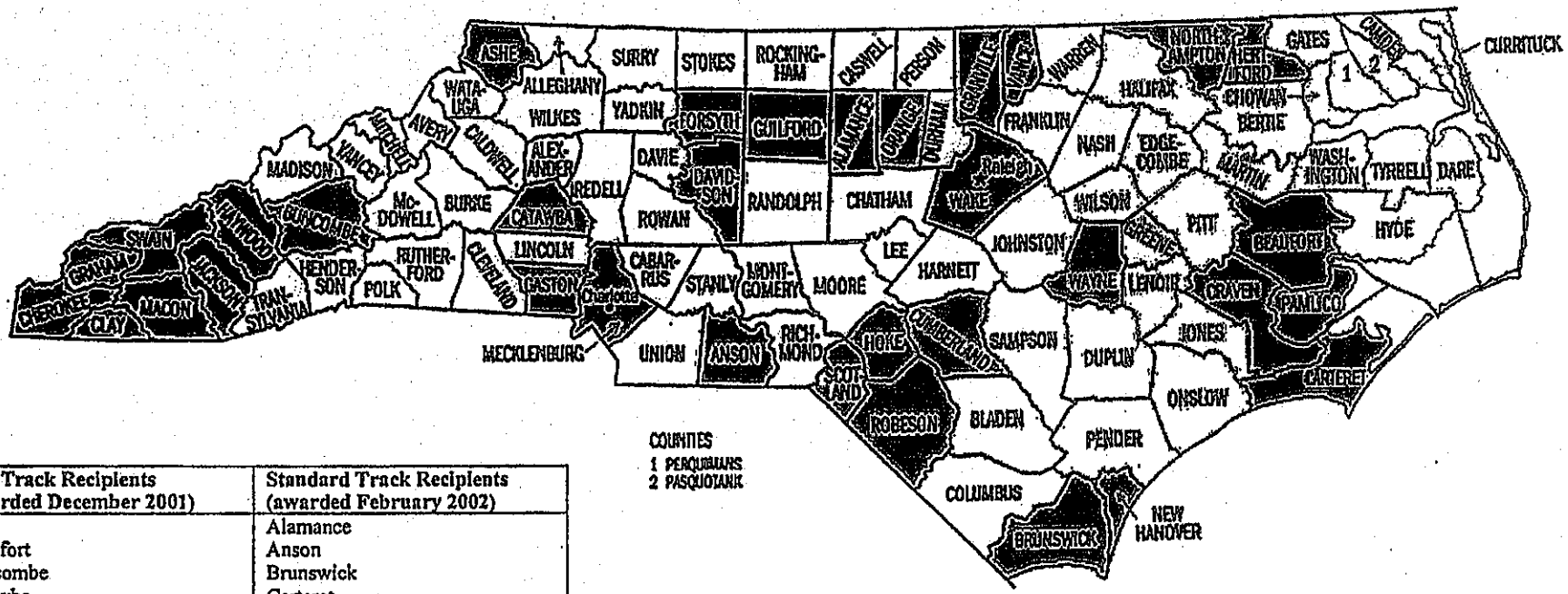
-R S 472-

More at Four Pre-Kindergarten Program
2001-02 Geographic Distribution of Grant Recipients



Fast Track Recipients (awarded December 2001)	Standard Track Recipients (awarded February 2002)
Ashe	Alamance
Beaufort	Anson
Buncombe	Brunswick
Catawba	Carteret
Cumberland	Craven
Guilford	Davidson
Hoke	Forsyth
Mecklenburg	Gaston
Orange	Granville
Robeson	Hertford
Wayne	New Hanover
Region A (Cherokee, Clay, Graham, Swain, Macon, Jackson)	Northampton
	Pamlico
	Scotland
	Vance
	Wake

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-R S 473-

More at Four Pre-Kindergarten Program
Fiscal Year 2001-02
Grant Site Implementation Data: Authorized Children, Enrollment, and Teacher Data

Grant Sites	Number of Pre-K Children		Number (and Percent) of Children Enrolled by Ethnicity							# (and %) with Disabilities	# (and %) Limited English Proficient	# (and %) with Health Problems
	# Positions Allocated	# Children Enrolled by April 02	Hispanic/ Latino	Black (non-Hispanic)	Asian/ Pacific Islander	American Indian	Multi-Racial	White	Other			
Alamance County	24	15	8	2	0	0	0	3	2	3	4	0
Anson County	36	0	0	0	0	0	0	0	0	0	0	0
Ashe County	15	15	2	0	0	0	3	10	0	1	2	1
Beaufort County	72	72	9	31	2	0	2	28	0	0	8	5
Brunswick County	54	N/A [1]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Buncombe County	24	20	3	2	0	0	2	13	0	8	1	3
Carteret County	61	52	11	3	1	0	1	36	0	1	9	2
Catawba County	54	54	23	5	13	0	1	12	0	5	34	4
Craven County	28	24	0	11	0	0	1	12	0	4	0	6
Cumberland County	112	91	4	48	0	2	11	26	0	13	3	35
Davidson County	96	86	13	21	3	0	4	45	0	2	12	6
Forsyth County	110	62	20	35	1	0	0	6	0	6	21	0
Gaston County	36	23	3	5	0	0	0	15	0	1	2	2
Granville County	16	16	7	6	0	0	1	2	0	1	7	2
Guilford County	118	106	4	86	2	0	3	11	0	10	6	6
Hertford County	36	17	0	15	0	0	0	2	0	8	0	2
Hoke County	90	89	10	29	0	18	0	32	0	0	7	11
Mecklenburg County	54	52	13	26	3	1	3	6	0	1	10	4
New Hanover County	54	36 [2]	5	20	0	0	0	11	0	8	4	3
Northampton County	54	11	0	7	0	0	0	4	0	1	0	0
Orange County	100	68	13	33	2	0	2	18	0	14	17	3
Pamlico County	15	13	0	0	0	1	1	11	0	2	1	5
Region A **	106	62	4	1	0	4	0	53	0	10	5	8
Robeson County	58	58	1	16	0	25	4	12	0	25	2	3
Scotland County	36	23	0	12	0	4	1	6	0	0	0	0
Vance County	18	16	1	5	0	0	1	9	0	1	1	1
Wake County	90	50	13	26	0	0	0	10	1	7	19	3
Wayne County	54	50	4	31	0	0	1	14	0	4	3	26
Total	1621	1181	171 (14.5%)	476 (40.3%)	27 (2.3%)	55 (4.7%)	42 (3.6%)	407 (34.5%)	3 (0.25%)	136 (11.5%)	178 (15.1%)	141 (11.9%)

[1] Brunswick County is authorized to start classes in the 2002-03 school year; these numbers are not included in other calculations.
[2] New Hanover County started 36 children in the current school year and will start 18 children in private child care in 2002-03.

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Attachment G

Mini-Profiles of Children's and Teachers' Experiences in *More at Four* Pre-Kindergarten Programs

1. "M" is one of my Hmong students. She spoke only a few words of English when she came to us. She was also very shy. Getting her to explain her artwork, even to my Hmong assistant, was impossible. Her vocabulary has increased very quickly. She is picking up the necessary words and phrases to communicate with me and the other children very well. She has become much less shy since the first day and is one of the first to raise her hand if she knows the answer.

2. "K" is also one of my Hmong students. He speaks very little English and is picking up English slowly. He comes from a household where he is allowed to roam freely, and his mother has a hard time controlling him. The first of week of school was very difficult for him. He did not follow directions and when he would get upset he would sit down in the middle of the floor and throw his shoes at us. Sometimes he would hit and kick us. He never participated in group time. These behaviors have happened much less frequently over the past three months. Most days he follows along and, although he does not always participate (I think largely because of the language barrier), he does sit and listen. We have not "cured" him from occasional fits, but they come less frequently with every week. Just yesterday I put him in time-out for hitting a little girl. He sat down like I told him to and he got up with no problem after a few minutes. That was a major accomplishment for him. I hope we can keep this up.

3. One child, "R", came to me with violent, serious behavior issues (as in kicking, hitting, knock-down, throw-down "hissy" fits). It literally took one-on-one with him during the first several weeks. He is a sad, angry, child--who wanted to play-- but simply did not know HOW to play.. His behavior was so unpredictable, I began to suspect that the mom was not being consistent in administering his ADHD medications. (Just giving him his medicine is a huge daily hurdle--and he gets it twice a day!) So after a conference with the mom, she agreed to turn over the medications to me completely. We have had several good days in a row now! She also agreed to the full DEC evaluation, which is in the works, and to having a clinical specialist from Smart Start to come and help us with some behavior strategies. I have helped "R" engage in play with his friends by modeling how to be the cashier at Wal-Mart. He likes being the "money man." Now when he hoards the money in the cash register and refuses to check out any more groceries in home living center, I might say, when the other children complain, "Well, I think "R" is having a little trouble playing right now. It's okay. You can play in blocks." "R" immediately changes his behavior so that the others will WANT to play with him. He still likes to maintain control, and perhaps always will, but at least he is enjoying some reciprocal play with his peers now. His peers are not as afraid of him now and are beginning to realize that not only will "R" not be allowed to hurt them, but also they will not be allowed to hurt "R." We are a community of learners. We care about one another. We also have a principal who makes it clear that at this preschool, we are part of something even bigger--our school, our community, and our world. The principal has been a wonderful influence on "R" and has been consistent, patient, and caring with "R" and his needs. As far as "R's" outbursts, they have subsided to a manageable point. It's not exactly a success story yet, but it's progress.

4. We have one child who has had extensive behavioral problems, a history of "displacements" with Child Care & Home Care Providers, etc. At the time of his referral to *More at Four* he was not served anywhere. So mother & child have been attending counseling sessions and the story goes on. C is in the referral process for additional testing and possible Developmental Delayed/Atypical Behavior (DD) placement. The referral is still pending and we have gotten most of the testing done. He has a DSMR-VI diagnosis, but WOW, he is doing great with Teacher A. in the *More at Four* classroom setting. So, we are waiting to see if we are on an extended honeymoon period or if he has truly found his "nitch" and was in inappropriate placements previously. Plus, we understand that he and his mother (a single, young parent) have benefited from counseling. The short of it is, we are going to hold out just another 2 or 3 weeks to see how we need to plan for his Kindergarten year

5. When I entered XYZ school yesterday, I was bombarded by administrators and other teachers with how well the *More at Four* students are doing; they look like they have been there all year long. The P.E. teacher said their ball handling skills were ahead of some of the other children who had been there since August. The teacher modestly admitted that ball throwing, kicking and balance beam walking had been a focus during recess time since they enrolled. So the moral of this story is, just give them a taste, a little bit to go on, and soon they soar like eagles. I can hardly wait to see the gains they show us in just 10+ weeks. We are working hard, but we are also having much fun!

6. A real success story for *More at Four* and for what it is really designed to do is "K." K is a child who is Hmong. The only English he spoke when he came to *More at Four* was, "Miss Gigi! Miss Gigi!" He said this often and loud during the early days as he made discoveries in the beautiful room here at South Newton. His eyes would light up with wonder as he leafed through books or built a castle in blocks. He spoke Hmong only to another Hmong child and no English to anyone. During group time, I could tell he so much wanted to contribute in some way other than pointing or gesturing or finger plays. He had no one to interpret for him, nor did I--so we just learned together. One day, after I had done a theme on nursery rhymes and traditional tales (since I realized these children were not familiar with any of them) "K" was playing on the monkey bars outside. He jumped down and came over to me and exclaimed loudly, "Miss Gigi! Miss Gigi! I NO FALL DOWN! I NO FALL DOWN!" (He was pretending to be Humpty Dumpty and he was telling me that he didn't fall down!) It was an exciting day for me and for him. He has come such a long ways in his language. In fact, today I let him be "teacher" by doing a part of our wind-down routine before nap. Each child, one at a time, comes up to the "teacher" and puts his picture/name in the container. Then the teacher issues a little two-step instruction, "Go to the potty, and then rest on your cot." "K" did it today without a single hesitation. I almost think the children who have no interpreter for them learn faster than those who do! At least this is true in K's situation. I must also give credit to "K's" mom who has been nurtured by his mom's parent educator with Parents as Teachers.

7. Overall, I have seen timid, clingy children from hard environments bloom into confident, fun-loving learners. I bought a software program for them and have introduced it to them. All of them can use the mouse now! And each child can either write his name or at least is learning to write his name and identify letters in his name. The children know what the front and back of the books are and what a title page looks like. They know what an author does and what an

illustrator does. They are learning to pattern, sequence, and problem solve. They have planted a garden outside our window and water it faithfully. The social advances I see in these children are so exciting to me. Instead of being "tattletales," they are learning to use their words to solve their problems with one another. And that is a pretty big thing to learn when you are four--or 44! We are learning to play--but most of all, we are playing to learn. It's been a great year.

8. I stopped by XYZ Pre-Elementary this morning and I wish you and the Governor could know what I saw and how I felt. One child came in who had not had high points on the rating scale but who was unserved. Come to find out not everything was recorded on the rating scale that reflected the home. The child's mother is in prison for a serious crime, the father is on drugs and does not want the children, the grandparents said no to the children so the children are with the great grandparents. To watch this child come in and not see the child's face, to watch the child be encouraged to visit the center only to stand as if the world has already whipped the life out of her at four years of age was too much. Please keep fighting for these children. I wondered why we took on more and daily I know more.

9. And finally, a letter to Governor Easley from a citizen about her observations in a *More at Four* Pre-K classroom:

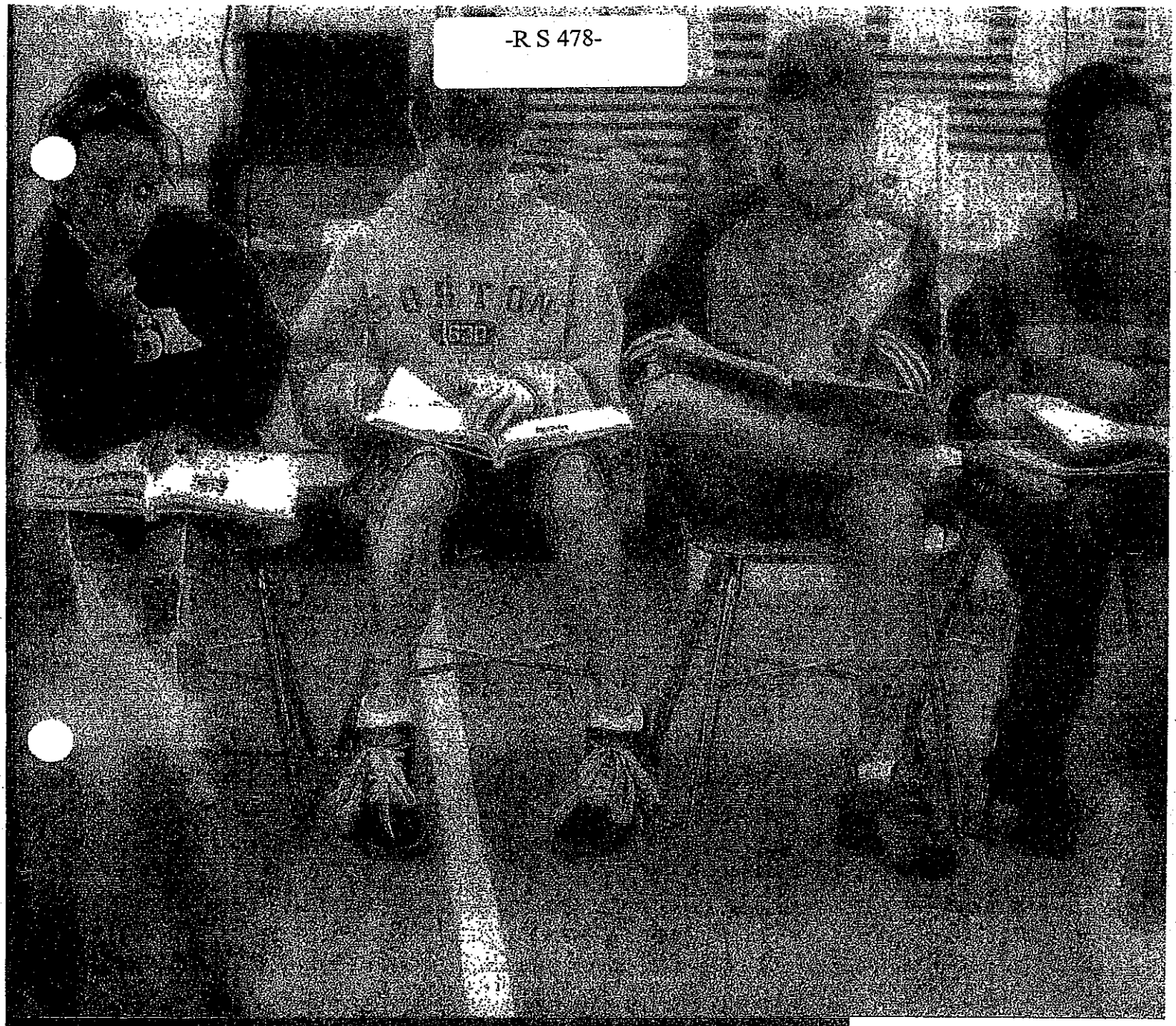
   "I am retired (clerical) from our public schools and now do some volunteer work in them. Frequently during January, February, and March of this year I have assisted in the *More at Four* classroom at XYZ School.

   In this classroom there is a very diverse group: two are Hmong (one of whom spoke no English and the other is fluent in Hmong and English); most are Hispanic and speak little or no English; one is Black with the remainder being White (one of whom is an Attention Deficit Disordered child who disrupts and delays the teaching/learning process.....). Remarkable, in spite of this difficult obstacle, the teacher and assistant are doing well with the children....

   The Hmong child has spoken several English words. The Hispanic (students) are beginning to understand (English) spoken instructions. The Black child has adapted well to this setting. The white children (apparently poor) are eager to learn and glow with excitement at that prospect.

   This is only a glimpse of the *More at Four* class with which I am familiar. These children are fortunate to have this golden opportunity for Kindergarten readiness, in my opinion. I applaud your *More at Four* program and hope you will continue it."

-R S 478-

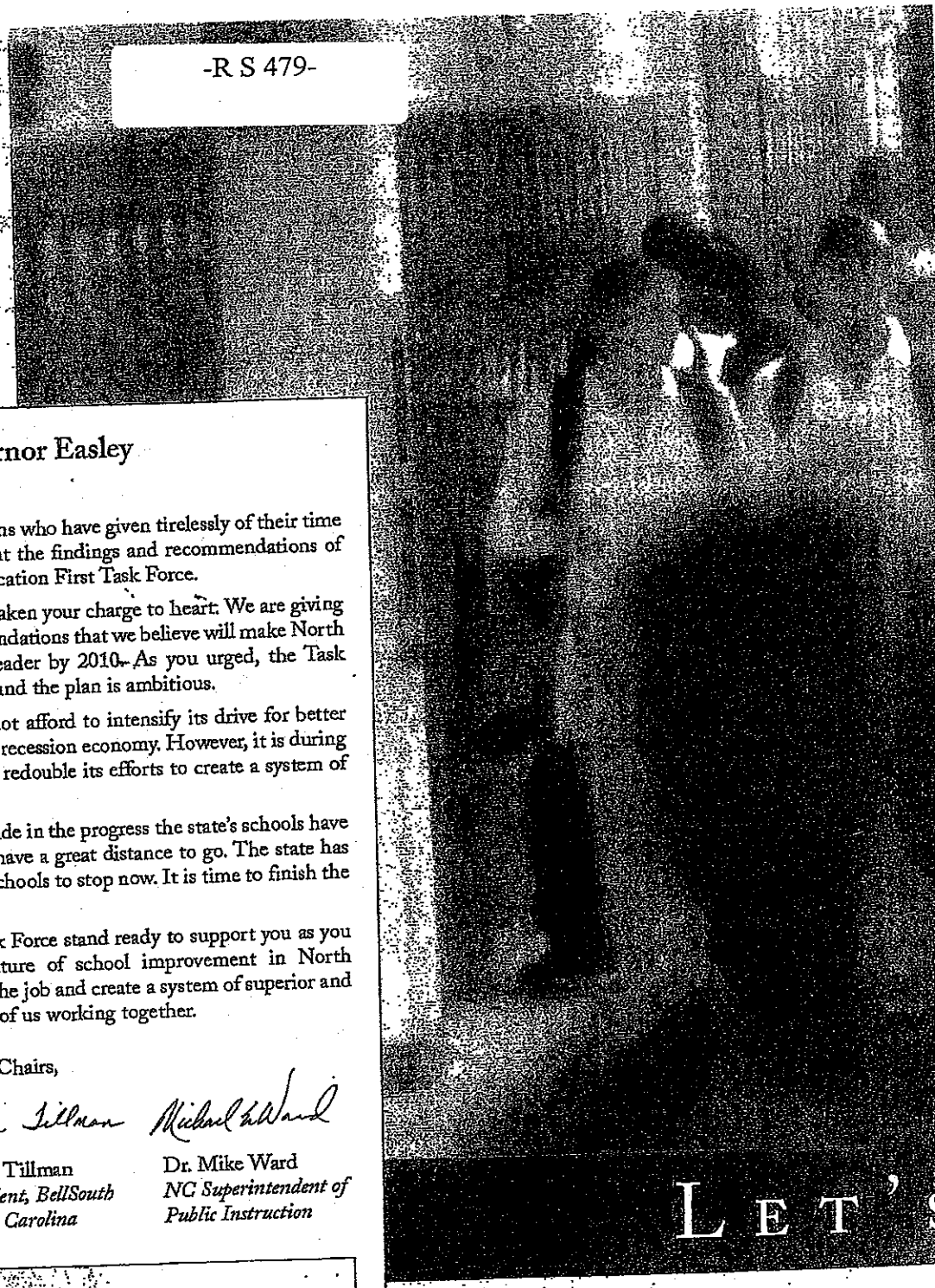


Let's Finish the Job

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002

SRI 00063



An Open Letter to Governor Easley

Spring, 2002

On behalf of the 41 North Carolinians who have given tirelessly of their time and energy, we are pleased to present the findings and recommendations of the members of the Governor's Education First Task Force.

As you will see, the Task Force has taken your charge to heart. We are giving you a research-based set of recommendations that we believe will make North Carolina the nation's educational leader by 2010. As you urged, the Task Force has been bold in its thinking and the plan is ambitious.

Some will argue that the state cannot afford to intensify its drive for better schools while we are in the grip of a recession economy. However, it is during this time that North Carolina must redouble its efforts to create a system of schools that serves all children well.

While the Task Force takes great pride in the progress the state's schools have made in the last ten years, we still have a great distance to go. The state has come too far in its drive for better schools to stop now. It is time to finish the job.

In closing, the members of the Task Force stand ready to support you as you build a consensus around the future of school improvement in North Carolina. We realize that to finish the job and create a system of superior and competitive schools, it will take all of us working together.

Sincerely from the Task Force Co-Chairs,

Willie J. Gilchrist Krista Tillman Michael K. Ward

Dr. Willie Gilchrist
Superintendent,
Halifax County Schools

Krista Tillman
President, BellSouth
North Carolina

Dr. Mike Ward
NC Superintendent of
Public Instruction

LET'S

Special Thanks
to William G. Enloe High School, Kingswood Elementary School and Magellan Charter School whose staff and students were photographed for this report.

FINISH THE JOB

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002

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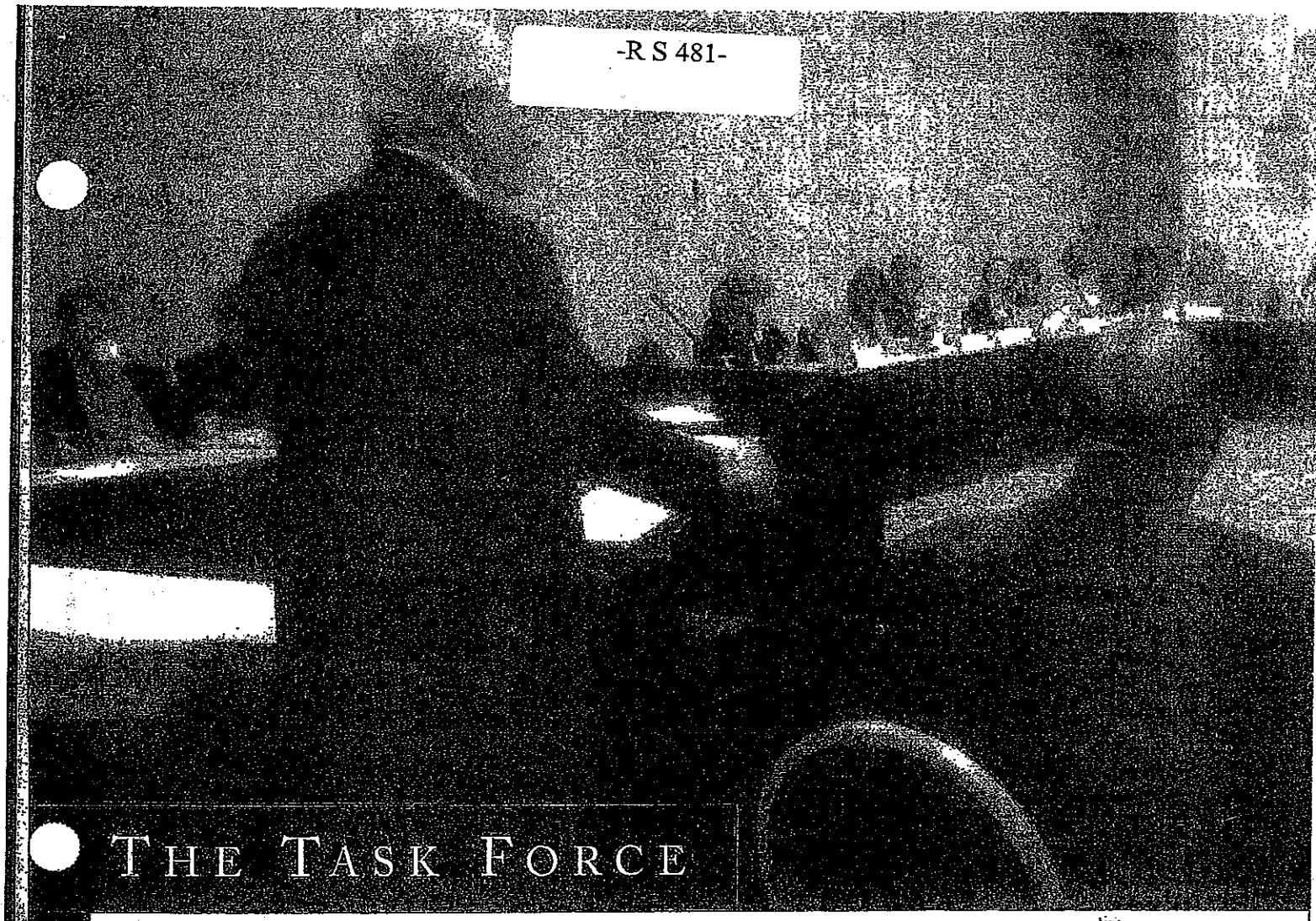


The Task Force

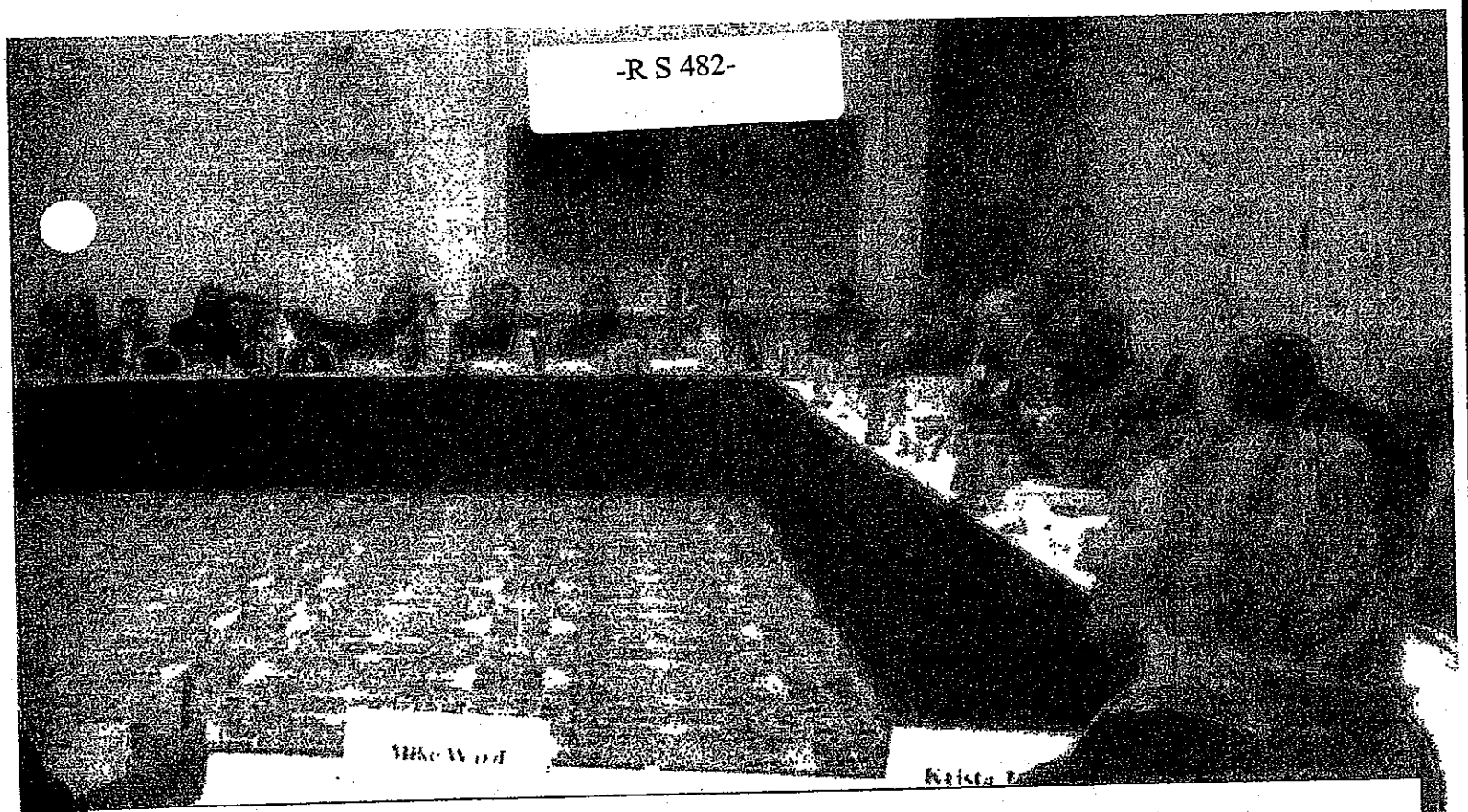
Within weeks of Governor Easley's November 2000 election victory, it became clear that he would confront the worst budget crisis any governor had faced since the Great Depression. Working to balance a budget in spite of a nearly one billion dollar deficit, the governor held firm on two major educational initiatives – the creation of "*More at Four*," a pre-kindergarten program for at-risk four-year-olds, and ambitious class size reductions in the early elementary years. Both initiatives were approved by the 2001 Session of the General Assembly. In addition, Easley sought and received funding for expansion of character education programs and new initiatives to recruit and retain high quality educators.

He was also the first governor in nearly 20 years to create a blue ribbon task force on education. The governor's Education First Task Force was composed of 41 people, including educators, business people, community activists, elected officials and concerned citizens from all corners of North Carolina. To provide leadership to the group, Governor Easley appointed three co-chairs: Halifax County Superintendent Willie Gilchrist, State Superintendent of Public Instruction Mike Ward, and President of BellSouth North Carolina Krista Tillman.

When the Task Force met for the first time in June 2001, the governor charged the group with developing a road map to make North Carolina the national leader in education by 2010. He said that the goal of the Task Force should be to go beyond creation of a system that was merely sound and basic. Instead, he called for the group to strive for creating a system that was superior and competitive.

The Task Force took the governor's charge to heart and devoted the next eight months to an exhaustive look at schools and schooling in North Carolina. Given the enormity of the subject, the Task Force was organized into three committees. Committee One undertook an examination of what came to be called "Hallmarks of Excellence" schools, schools that are succeeding in dramatically increasing student performance. Committee Two delved into the area of finance and resources, with an eye toward what research finds about educational investments and returns. Committee Three examined the myriad of issues related to teachers and teaching as well as the causes of dropouts and the structure of high schools.

The report that follows is the product of the Task Force. The report reflects the belief of Task Force members that the school improvement drive must continue unabated. The title of the report, "Let's Finish the Job," was chosen to acknowledge the efforts of many elected officials, educators, and others in bringing North Carolina's schools to a stronger position than they have occupied in the state's history. However, the Task Force firmly believes that it is up to today's generation of leaders to truly finish the job – to ensure that all of North Carolina's young people have access to a superior and competitive education.



Education First Task Force

Hallmarks of Excellence subcommittee

Willie Gilchrist, Committee Chair
Superintendent, Halifax County Schools

Eddie Davis, *NCAE*

Terry Greenlund, *AVID Program Coordinator, East Chapel Hill High School*

H. Leon Holleman, *Retired Superintendent, Educational Consultant*

Zoe Locklear, *Dean of Education, UNC Pembroke*

Tannis Nelson, *President, NC PTA*

Susan Phillips, *School Volunteer, Guilford County Schools*

Rita Roberts, *Academic Counseling and Training Sessions (ACTS), Chewning Middle School, Durham Public Schools*

Norma Sermon-Boyd, *Superintendent, Jones County Schools*

Joe Stanley, *Vice President, Joe & Mo's Auto Services*

Gary Steppe, *Superintendent, Cherokee County Schools*

George Sweat, *Secretary Dept. of Juvenile Justice & Delinquency Prevention*

Strategic Investment of Funds subcommittee

Mike Ward, Committee Chair
Superintendent, Public Instruction

Representative Donald Bonner, *NC General Assembly*

Virginia Cardenas, *Principal, Conn Elementary School*

Jim Causby, *Superintendent, Johnston County Schools*

Kerry Crutchfield, *Chief Finance Officer, Winston-Salem/Forsyth County Schools*

Senator Walter Dalton, *NC General Assembly*

Sarah Pratt, *Personnel Director, McDowell County Schools*

Ed Regan, *Deputy Director, NC Association of County Commissioners*

Gladys Robinson, *State Education Director, NAACP*

Anthony Rolle, *Professor and School Finance Analyst, Dept. of Educational Research and Leadership, and Counselor Education, NC State University*

Pam Seamans, *Immediate Past Chair, Covenant with North Carolina's Children*

John Modest, *Principal, Southeast Raleigh High School*

Craven Williams, *President, Greensboro College*

Bonnie Wright, *Program Director, Maureen Joy Charter School*

Prepared Graduates subcommittee

Krista Tillman, Committee Chair
President, NC Operations BellSouth

Bishop George E. Battle, Jr, *Presiding Prelate of the Eastern NC District of the A.M.E. Zion Church*

Don Cameron, *President, Guilford Technical Community College*

Charles Coble, *Vice President for University-School Programs, UNC General Administration*

Roy Cooper, *Attorney General, NC Dept. of Justice*

Ferrel Guillory, *Director, Program on Southern Politics, Media and Public Life, UNC Chapel Hill*

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Darleen Johns, *President, Alphanumeric Systems, Inc.*

Senator Bill Martin, *NC General Assembly*

Tom Lambeth, *Senior Fellow, Z. Smith Reynolds Foundation*

Bill McNeal, *Superintendent, Wake County Schools*

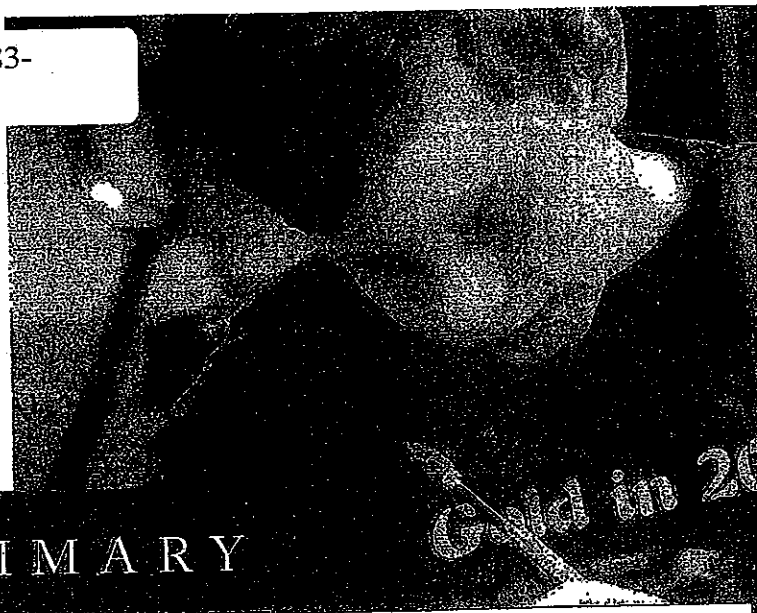
Edgar Murphy, *Community Relations Manager, Nortel Networks*

Delores A. Parker, *Vice President, Academic and Student Services, NC Community College System*

Leonard Peace, *President, NC School Boards Association, Inc.*

Clark Plexico, *Senior Vice President, AT&T*

Bill Shore, *GlaxoSmithKline*



Executive Summary

It's time to finish the job.

For the better part of a decade, North Carolina has led the nation in progress in public education. In the past year, the governor and legislature took steps unrivaled by any state in the nation to protect our progress in education and move forward in these tough budget times.

At the same time, many challenges remain. Our gains in reading have not kept pace with those in math. Troubling achievement gaps still exist, with minority and low-income students lagging behind, and North Carolina needs to raise the performance of all students. The state's drop-out rate is alarmingly high and its graduation rate unacceptably low. Teacher attrition is on the rise and extremely high in pockets of the state.

Educational improvement: an economic imperative

Today, North Carolina is in economic transition – moving to an economy that increasingly demands knowledge capital. North Carolina must build a skilled workforce that attracts industry and good jobs, strengthens our communities and quality of life, and creates opportunity in every corner of the state. To achieve these goals, improving pre-K through grade 12 public education must remain at the center of the state's agenda.

Constructing a system of superior schools

The Education First Task Force believes it is time for North Carolina to accelerate its drive for school improvement and put into place new efforts and drivers for success. It is time for the state to finish the job that it started in the 1980s. While the Task Force is cognizant of the tough economic times confronting the state, it also believes that North Carolina must fashion a strategy for the long term – one that looks beyond the economic short run and puts into place key efforts over the next decade.

The Easley Agenda

The Task Force endorses the immediate agenda for action on education proposed by Governor Easley. Specifically, the Task Force recommends that the state should:

- Expand the *More at Four* Pre-kindergarten Program to serve the state's 40,000 at-risk four-year-olds with high quality educational opportunities.
- Reduce K-3 class size to 18 students in all schools (and to no more than 15 in K-3 in low-performing and high poverty schools).
- Continue the state's efforts to exceed national teacher salary averages and recruit and retain high quality teachers.
- Make school quality information available to parents and communities through the governor's school report cards.

With North Carolina facing its most sustained fiscal crisis since the Great Depression, accomplishing the governor's immediate agenda will be a formidable task. Yet the Task Force believes that more must be done and it has embraced the governor's charge to look beyond his agenda and chart a course for continued progress.

Deepening the commitment to at-risk students and high achievement for all

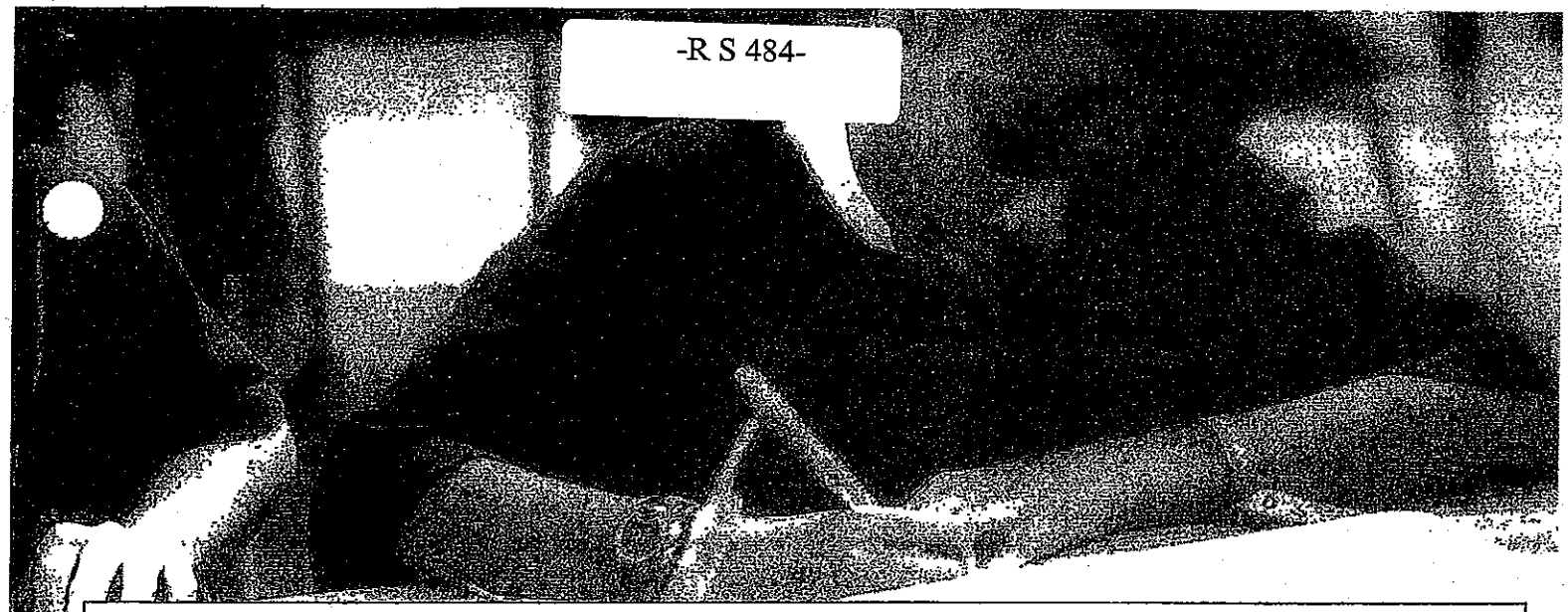
This report provides a set of proposals that maps out the next steps that the state must take to improve education for all students and make our public schools the best in the nation. Among the proposals are four that should be of special current interest to state policymakers.

The first is a new system of "earned flexibility." This proposal calls for strengthening our system of performance accountability for schools and school systems. This proposal would provide the state with far greater authority to guarantee the accountability and effectiveness of school spending in low performing schools and districts. At the same time, it would still retain the principle of "local control" by allowing local school officials to choose from a menu of specific options that are proven strategies for raising student performance. Schools and districts that perform at consistently high levels would receive increased flexibility with their budgets. (See Strategy Six)

The second is a school funding proposal that would provide new resources for at-risk students. The proposal calls for a new infusion of dollars through a single funding stream to school districts based on their share of students in poverty and students performing below grade level. The Task Force anticipates substantial resources to achieve this goal and not a redistribution among districts of existing dollars. (See Strategy Six)

The third is a "high school innovations fund." The fund is envisioned as a public-private partnership to spur the creation of smaller, workforce-focused high schools that reduce our unacceptably high drop-out rate, increase the college-going rate, and better prepare all students to meet the expectations of the workforce and our higher education institutions in North Carolina. (See Strategy Four)

Finally, the Task Force believes it is imperative that we modify our current accountability system to focus on eliminating the achievement gap. The Task Force recommends amending



the state's ABCs program and the performance bonuses for teachers to reflect the achievement levels of individual student groups in schools.

Recommendations of the Task Force

Along with these recommendations, the Task Force has identified six key strategies and 31 other recommendations that it believes the state must address to create a system of superior schools.

Strategy 1: Intensify the focus on reading.

- Help pre-K-12 teachers better address reading to ensure that children finish 3rd grade reading on grade level. Develop a massive training effort in reading instruction that begins with K-3 teachers and extends to all of the state's public school teachers.

Strategy 2: Ensure a high-quality and stable teacher corps.

- Focus on retaining good teachers and ensure that school leaders are trained and evaluated on teacher retention efforts.
- Expand existing recruitment programs such as the NC Teaching Fellows Program and NC TEACH for mid-career professionals.
- Create pay incentives to attract teachers to the places and subjects where they are most needed.

Strategy 3: Develop superior leaders for superior schools.

- Better prepare the next generation of school leaders by expanding the Principal Fellows Program and local leadership development efforts.
- Make quality professional development more accessible to principals by expanding the Principals Executive Program and other key efforts.

Strategy 4: Reform high schools.

- Establish a public-private High School Innovation Fund to create small and workforce-focused high schools.
- Create "early college" opportunities in new collaboratives between high schools and the state's community colleges and four-year institutions.
- Develop the next generation of high school assessment and refocus the NC High School Exit Exam on entrance needs for post-secondary and workplace institutions.

Strategy 5: Strengthen the home-community-school connection.

- Create a State Cabinet for Children and Youth bringing together the governor, heads of major state agencies, and other state-funded initiatives focused on the needs of young people and families.
- Put a home-community-school coordinator in high-poverty schools and develop high-quality parent training resources for all schools.

Strategy 6: Invest more resources, demand more accountability.

- Implement a system of graduated or "earned flexibility" for local schools and school systems that would restrict low-performing schools and districts to a menu of spending options based on research-backed strategies for improvement. For schools performing well above state performance standards, greater local flexibility would be granted.
- Create a funding stream for at-risk students that would provide more resources based on poverty and performance to districts and schools.
- Prepare to put another school facilities bond on the ballot to cope with $6.2 billion in school facility needs over the next five years.
- Make eliminating gaps a priority by revising the ABCs performance bonus structure.

In conclusion: Short run opportunities and long term investments

The recommendations in this report cannot be implemented in one or two years. What they represent is a strategy for addressing North Carolina's educational needs over an eight-year time frame. The Task Force has designed a funding and implementation strategy that enables schools more time to prepare for, and absorb, the impact of changes and helps ease the annual impact on the state's budget.

These recommendations are not without cost. The set of proposals amount to an average of just over $90 million a year in new spending for eight years. At the same time, the Education First Task Force has also included 16 recommendations that do not call for new expenditures of funds. Rather, they call for new or strengthened policy efforts or programs that can be delivered with alternative sources of funds. The Task Force believes that those recommendations should be acted on immediately.

For two decades, North Carolina has focused on school improvement and is now a leader in education progress. By the end of the next decade, North Carolina must finish its journey from the nation's educational basement to its top floor. The Education First Task Force believes that the state has the foundation, the vision and the leadership to accomplish this. Improving education for all North Carolina's young people is an economic imperative and the gatekeeper to the strong communities and quality of life this state's citizens deserve.

It is time to finish the job.

Building On Our Progress

North Carolina's school improvement story has attracted national attention. Emerging from the lowest rungs of educational achievement, North Carolina has risen to become an acknowledged leader in teacher quality, progress in student performance, and standards and accountability.

North Carolinians have long subscribed to the belief that education is the key to economic development, a strong economy, healthy communities, and individual economic opportunity. That belief has translated into a zeal for school improvement that led the state to adopt numerous reform models through the eighties and nineties. From the Career Ladder Program to the Basic Education Program to the Charter School Movement, North Carolina has been on the leading edge of reform.

Driving the state's educational progress through the nineties was a relentless focus on improving student performance. The effort began in 1989 with the introduction of statewide curriculum standards, testing, and public accountability. In 1995, the focus became even sharper when the State Board of Education, at the direction of the General Assembly, developed the ABCs of Public Education. The ABCs focused on basic skills and subject matter, provided greater flexibility to local districts, and held schools accountable for results. Today, the state's ABCs program is a national model.

Following the ABCs, the state invested its efforts and resources into building an early childhood program and improving teacher quality. Smart Start, an early education program that funds health care, childcare and other early educational needs, began in 1993 and has since expanded to each of the state's 100 counties and become a national model for early childhood initiatives. In 1997, the Excellent Schools Act dramatically boosted teacher pay and raised standards for entering and remaining in teaching.

The state's efforts have led to an impressive record of educational progress and achievement. Consider the following:

- The 2000 National Assessment of Educational Progress (NAEP) exams in 4th and 8th grade math showed that NC made the most gains of any state in both grades in the 1990s.
- NC now leads the Southeast on NAEP math tests and is ranked eighth and thirteenth respectively out of participating states on the 4th and 8th grade math exams.
- NC was one of only two states to close the gap between white and non-white students on the NAEP 4th grade math exams in the 1990s.
- NC ranked second in the nation in the achievement of 4th grade African-Americans on the 2000 NAEP math tests.
- NC ranked second in gains on the NAEP reading exam during the 1990s.
- NC's state testing results show gains in reading and math. Students scoring above grade level in reading increased from 63% in 1992-93 to 77% in 2000-01. During that same time period, math scores rose from 61% to 81%.
- NC has made more progress on the SAT than any state in the nation over the course of the 1990s.
- NC ranks eighth in the country in the percentage of public schools with advanced placement courses and in the number of advanced placement exams taken.
- NC leads the country in the number of National Board certified teachers, with roughly a quarter of all nationally certified teachers in the nation.
- NC has been first in improving teacher quality in the *Quality Counts 2001* and *Quality Counts 2002* rankings by *Education Week*.
- NC has, for the first time in its history, reached the national average for percentage of people attending college.

Finishing the Job

While a national recession, the events of September 11, and unique financial situations in North Carolina have placed the state in the worst sustained fiscal crisis since the Great Depression, the state can ill-afford to falter, much less roll back, its drive for an even better system of schools. Even after a decade of progress, young people in North Carolina have moved only from near the bottom of educational rankings to just above average. Barely above average, however, is not where North Carolina young people belong.

It is time for the state to finish the job that it started in the eighties. The drive for superior and competitive schools must continue unabated. Consider the following:

- Achievement gaps persist.
- Our drop-out and high school completion rates are at unacceptable levels.
- Under-prepared, unqualified, or out-of-field teachers teach too many children in our least advantaged counties and towns.
- Our teacher attrition rate is growing worse.
- Many of our high school graduates are ill equipped to meet the challenging workforce demands of the new economy.
- Too many students must enroll in remediation courses upon entering our community colleges and four-year institutions.

Rather than resting on past achievements, it is time for North Carolina to accelerate its drive for school improvement. Eliminating the achievement gap, preparing all graduates, making all schools "Hallmarks of Excellence," and creating a system of schools that is first in American education by 2010 should be the state's overarching goals through the first decade of this millennium.

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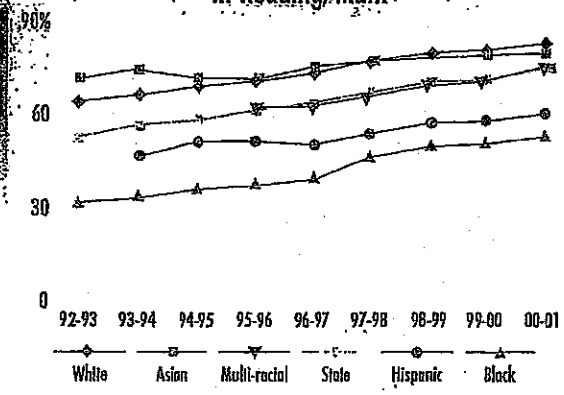
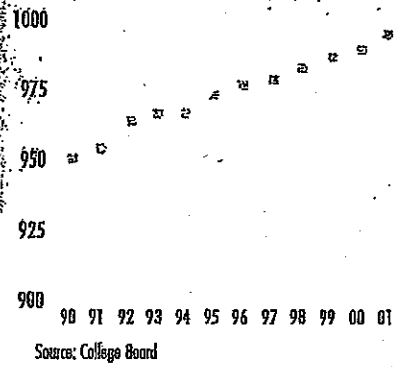
NC Students At or Above Grade Level in Reading/Math



Student performance in North Carolina reflects consistent improvement but significant gaps among student racial groups.

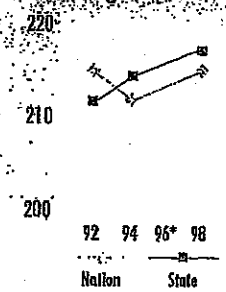
North Carolina SAT Scores



Source: College Board

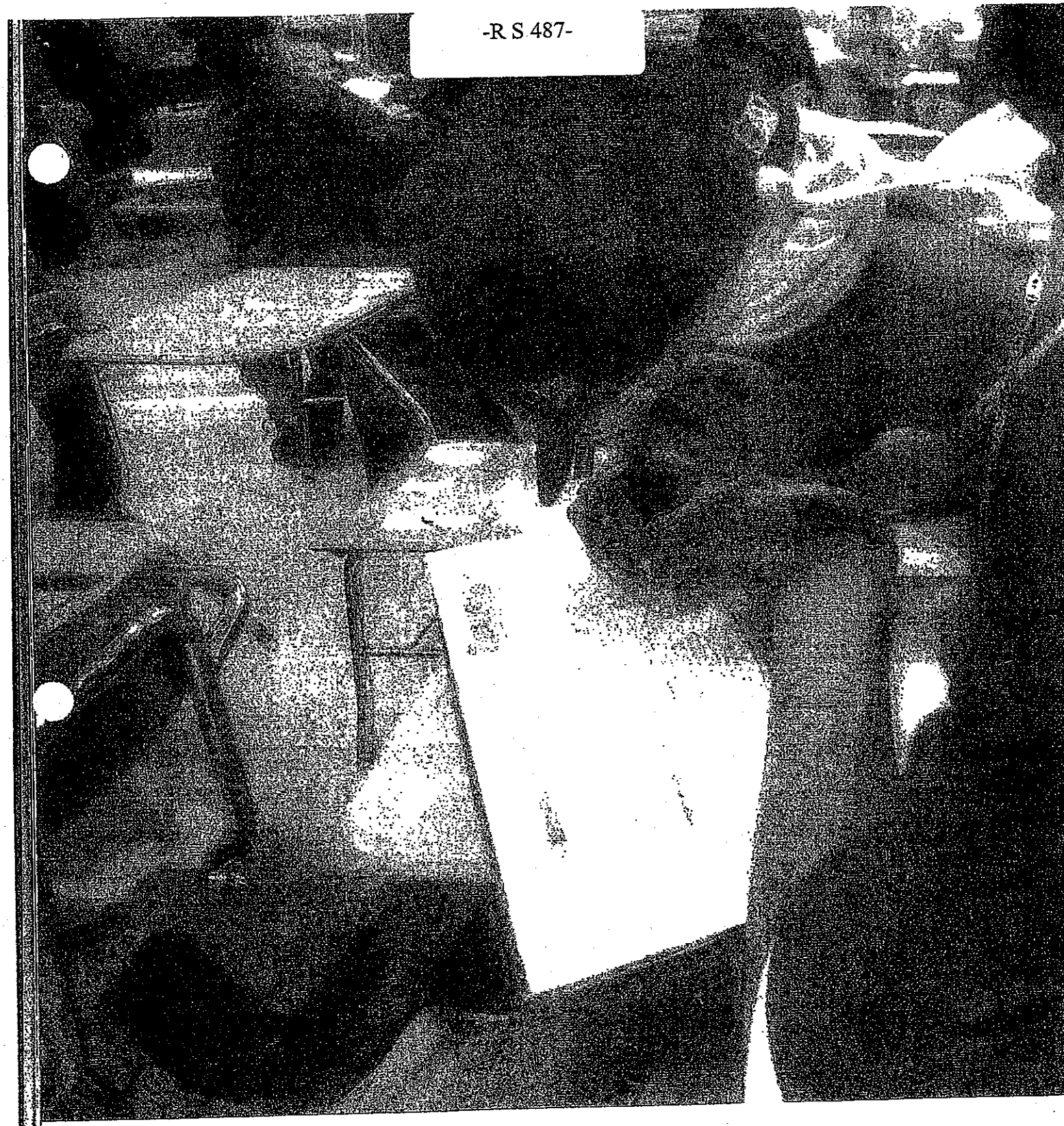
North Carolina had the largest gain – 40 points – of any state that tests more than 12% of its students for the period of 1991-2001. The nation gained only 21 points during this same time period.

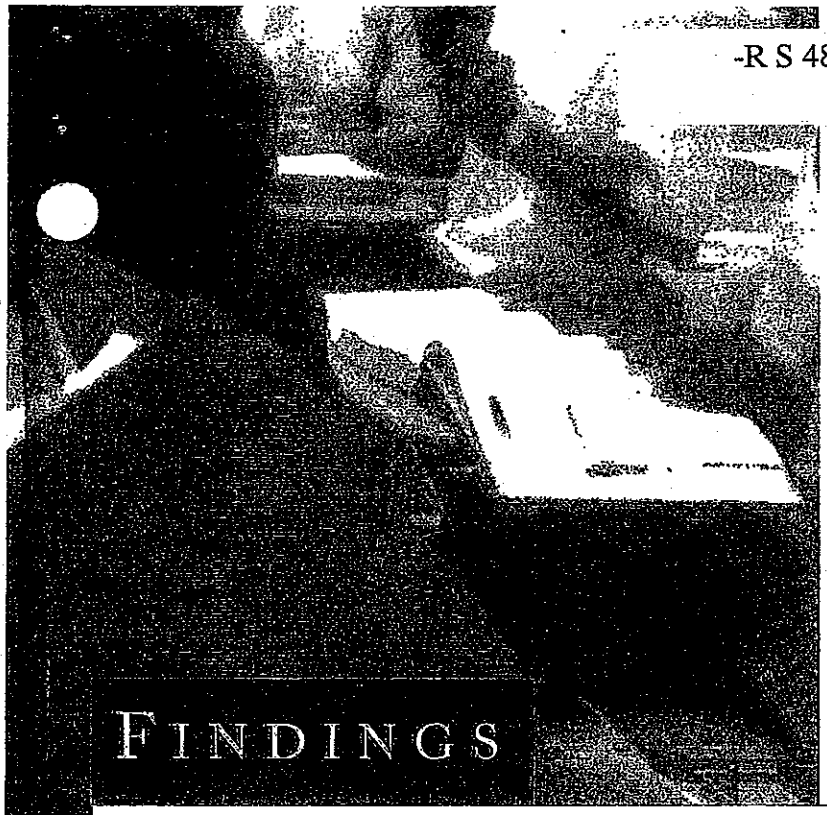
NAEP Grade 4 Reading Scale Scores



North Carolina's 4th grade NAEP reading performance has risen from below the national average in 1992 to above the national average in 1994 and the state maintained its progress on the 1998 results.

* test not given





FINDINGS

Working in three committees for the better part of eight months, the Task Force studied a host of issues related to school improvement. Task Force members met as a full group or in committees 20 times. They conducted site visits at 12 Hallmarks of Excellence Schools, so named because they have consistently registered high levels of student performance, even while serving diverse, and in many cases, at-risk student populations. They heard from a total of 44 educators, researchers, business leaders, college officials, and others from North Carolina, from neighboring states, and from regional and national organizations, ranging from the RAND Corporation to the Education Commission of the States. They pored over educational research and recommendations from recent studies, especially those of the Progress Board, the State Board of Education's Commission on Raising Achievement and Closing Gaps, the General Assembly's Commission on Improving the Academic Achievement of Minority and At-Risk Students, and the Standards and Accountability Commission.

The findings that evolved out of that process contributed greatly to the final Task Force recommendations. Key findings of the Task Force were:

Finding 1: Strong state leadership and a focus on results has led the way.

In assessing factors that contributed to the state's educational progress, it quickly became apparent that the gains were not the result of happenstance. Through the eighties and nineties, the state put in place major building blocks that laid the foundation for improvements now being registered. Among the more significant were the following:

Basic Education Plan
In 1985, the Basic Education Plan (BEP) set out to guarantee a minimum level of educational program support for all schools.

School Excellence and Accountability Act
In 1989, the School Improvement and Accountability Act (SB2) introduced statewide testing and system-level accountability for results.

ABCs Program
In 1995, the School-Based Management and Accountability Act directed the State Board to create a program of standards and accountability and led to the current ABCs for Public Education program.

Excellent Schools Act
The 1997 Excellent Schools Act initiative dramatically boosted teacher pay, raised standards for entering and remaining in the teaching profession, established incentives for National Board certification, created a formalized mentor teacher program, and instituted an accountability plan for schools of education.

Smart Start and More at Four
From 1993 to 2001, Smart Start and *More at Four* brought early educational opportunities to thousands of at-risk young people across the state.

Class Size Reduction and the High Priority Schools Act
In 2001, in addition to beginning the effort to reduce class size in K-3 to 18 or below, Governor Easley and the Legislature enacted the High Priority Schools Act, which focused state resources on the state's highest-poverty and lowest-performing elementary schools and continually low-performing middle and high schools.

More than any of the new initiatives, however, the state's decision to relentlessly focus on increased student performance appears to be the factor that has contributed most to the gains of the nineties.

Finding 2: Progress is good but insufficient.

While the educational gains of the nineties have been impressive, they are not sufficient. In the last ten years, North Carolina has moved up from the bottom of the educational ladder to average or slightly above average

on most national indicators but remains below average on others. For a state that aspires to be a national educational leader, there is much left to be done. Consider the following:

Persistent performance gap between students
NC is recognized as a national leader in closing performance gaps. A recent National Education Goals Panel report shows North Carolina as one of only two states to have closed gaps in NAEP math at the 4th grade level and one of only a handful in the 8th grade. That said, the gap on state testing between black and white students is 30 points. While minority students have registered solid learning gains, barely one-half of them are performing at or above grade level in basic areas like reading and math.

Despite the increase across the board for numbers of students testing at or above grade level, the 30-point gap remains steady between black and white students.

An unacceptable high school completion rate
National studies looking at the graduation rates of cohorts of 9th graders find that over 40% of North Carolina's 9th graders do not complete high school four years later. In absolute terms, the state's figures show that one quarter of students drop out and never return. Last year, the number of dropouts recorded was over 21,000.

College-going rate increasing, but still low
Just as North Carolina's student achievement rate has exceeded national averages for the first time, so has its percentage of young people going on to college. North Carolina has historically lagged behind other states on the percentage of its population with college degrees. The upswing in college enrollment is encouraging, but not enough.

NC must do more to serve high achieving students
Even for the highest performing 10% of students in North Carolina, there is a performance gap with their peers across the country. Using SAT score data, one of the few sources of national comparisons for high school students, the performance gap is stark. While the advent of student testing and accountability predictably turned the spotlight on at-risk young people, North Carolina will become a national educational leader only if it focuses on the needs of all of its young people – at-risk, average, and high performing.

Finding 3: Teachers are the linchpin to student success.

A growing body of research confirms the correlation between student performance and the quality of teaching to which young people are exposed. Two or three years of excellent teachers, especially in the critical elementary years, can give a child a sound foundation for success in school; conversely, two or three years of mediocre or poor teaching can scar a child for a lifetime.

Those findings are troubling for two reasons. First, North Carolina, like other rapidly growing states, is facing a teacher shortage that is reaching critical proportions. While the state has long suffered from teacher shortages in hard-to-fill areas like science or special education, as well as geographic shortages in rural and low-wealth counties, today's shortage is much more widespread. Second, it is increasingly difficult to attract and retain high-quality educators in what are termed "hard-to-staff" schools (i.e., schools serving high numbers of at-risk young people and/or located in areas with few social amenities). At the same time research is confirming the importance of teacher quality, it is apparent that the students who need the state's very best teachers are least likely to have them.

The number of dropouts remains high though it has declined from 24,452 in 1998-99 to 21,368 in 2000-01. The fact remains that close to 70,000 students have dropped out since 1998-99.

Finding 4: NC must focus as much on teacher retention as on recruitment.

For the foreseeable future, North Carolina will need to hire 9,000-12,000 teachers each year. Driving the demand for new teachers is a population growth rate that results in 15,000-20,000 new students being added to school rosters each year coupled with a teacher turnover rate of nearly 14% per year. A disturbingly large number of teachers who leave the profession are unlikely to return, especially those who leave in their early years of teaching. The state has launched many new initiatives to recruit teachers into the field. It must, however, place an equal focus on retaining teachers already on the job.

Finding 5: Leadership is an indispensable factor in superior schools.

School leadership matters a great deal. Research finds that strong, effective, results-oriented and caring school principals can transform mediocre schools into high performing schools. Predictably, in many of the "Hallmarks of Excellence" schools, principals set the tone. They were student-oriented and results-driven; they had the capacity to motivate their faculty members; they created a team or family environment. In other buildings, leadership appeared to emanate largely from groups of committed teachers or from district leadership, especially superintendents. Whatever the source of leadership, it is an essential part of the school improvement equation.

Finding 6: Successful schools reflect some enduring principles.

The educators, business leaders, elected officials, and parents who participated in visitations to the "Hallmarks of Excellence" schools found that these schools did a small number of things very well – and those things were different in different schools. They found most of all that those things were not as much unique innovations as they were based upon enduring educational principles. The schools typically were focused on shared goals, were results-driven, were well led; they were schools in which teachers and administrators believed that all children could learn. Task Force members also found that these schools did not make excuses for their students. Because a student was labeled "at-risk" did not give Hallmarks schools an excuse for low performance.

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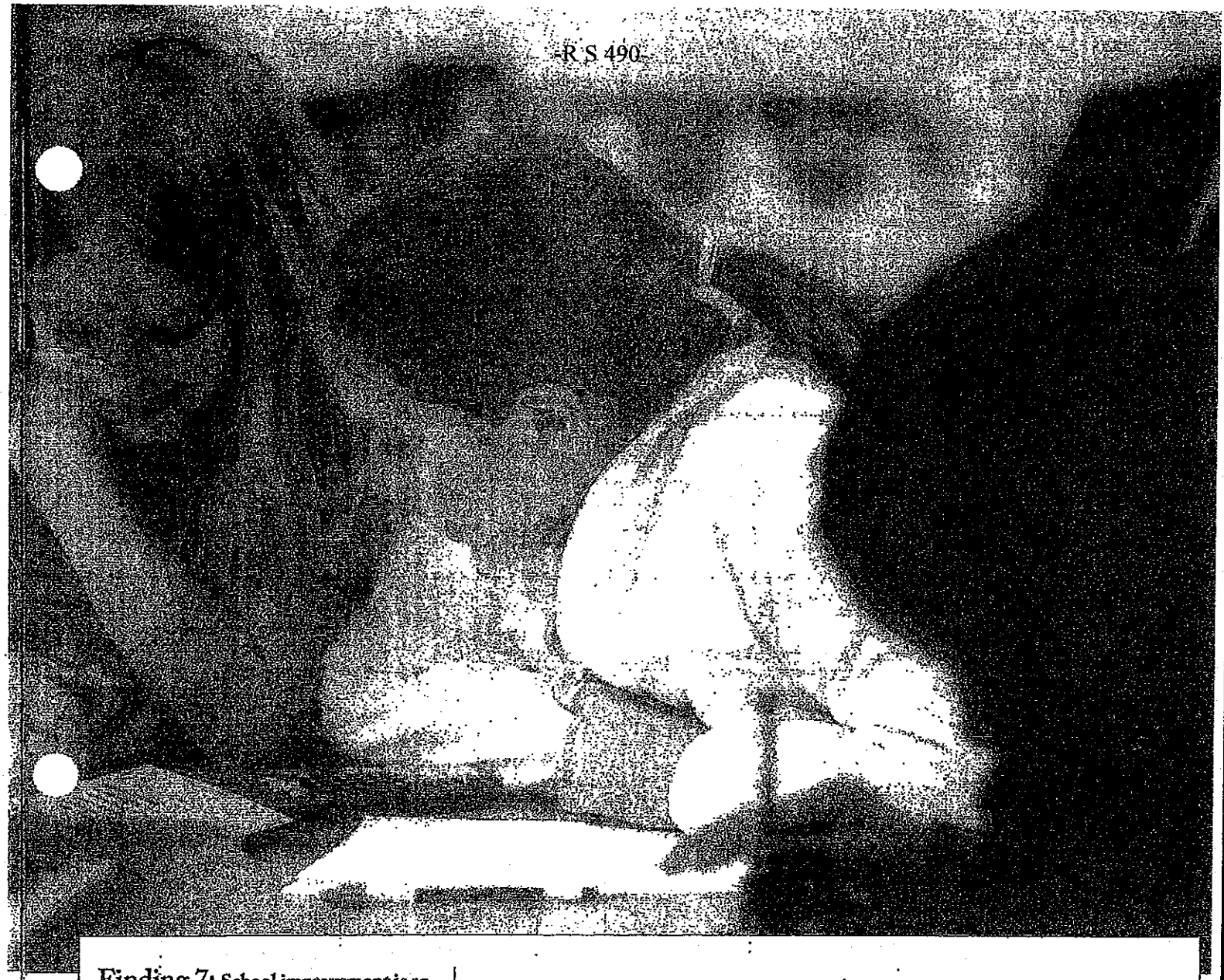


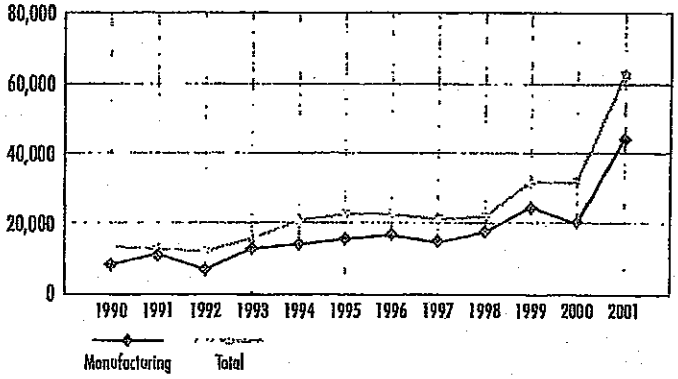
Finding 7: School improvement is an economic imperative.

Looking to the future, groups like North Carolina's Progress Board and former Governor Hunt's Rural Prosperity Task Force have demonstrated that for the state to thrive and survive in the future, it must strengthen its educational system at all levels. Low-skill manufacturing jobs are leaving the state.

It is increasingly apparent that jobs and job creation in the future will go to states that have a large pool of educated workers who are capable of learning and relearning through a lifetime of work. North Carolina must focus on becoming a "knowledge state" where citizens are prepared to think for a living in a more demanding, complex economy.

The Task Force took to heart this data and the grave warnings that North Carolina

Manufacturing layoffs in North Carolina



North Carolina ranks in the top three on dependence on manufacturing jobs, and was second to Michigan in the number of manufacturing jobs lost.

Though NC shows improvement in its average SAT scores, it still lags 28 points behind the national average of 1020.

could lose its competitive edge if its educational system is not strengthened. While the recommendations that follow are ultimately about young people and their well-being, they are also about the long-term competitiveness of North Carolina and its economy.

Finding 8: NC must break with tradition in its drive for superior schools.
The weight of tradition hangs heavily upon the schools of North Carolina and, indeed, the nation. Social commentators frequently point to schools as one of the most change-resistant institutions in America.

For North Carolina schools to move from merely average to superior, it is going to require taking risks and breaking with long-held traditions. In an era where change occurs more rapidly than ever before, schools remain on a 180-day calendar created in an age when young people were needed to help out on farms. All teachers are paid on the same salary schedule, based on years of experience.

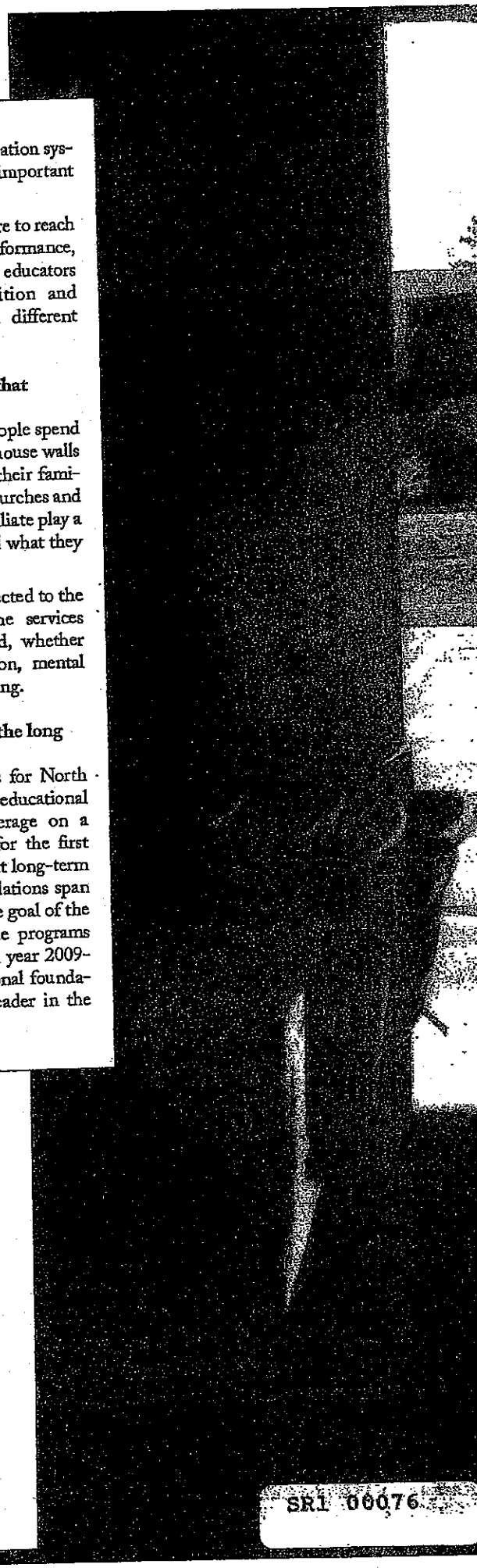
In this age of change, new options and approaches are needed. Learning opportunities before- and after-school, coursework that can be delivered on-line, new financial incentives for teachers, and new relationships among NC's K-12 and higher education systems are emerging efforts that are important and should expand.

If North Carolina's young people are to reach a new and higher level of performance, North Carolina's policymakers and educators must dare to break with tradition and approach schooling in new and different ways.

Finding 9: NC must realize that schools can't do it all alone.
From birth until age 19, young people spend more of their lives outside schoolhouse walls than inside them. Their friends, their families, their communities, and the churches and organizations with which they affiliate play a profound role in shaping who and what they ultimately become.

Schools must become more connected to the communities they serve and the services their students and families need, whether they are in the area of nutrition, mental health, adult literacy, or job training.

Finding 10: NC must take the long view on school improvement.
It has taken nearly two decades for North Carolina to move out of the educational basement and climb above average on a growing number of indicators for the first time in its history. Reflecting that long-term view, the Task Force recommendations span the remainder of the decade. The goal of the recommendations is to have the programs and resources in place by school year 2009-10 to give the state the educational foundation needed to be a national leader in the decades ahead.



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The Easley Agenda

The Task Force endorses Governor Easley's initiatives for dramatic improvement of our schools through his focus on early education, class size reduction, teacher quality, and accountability to the public on issues of student achievement and other key indicators of school success. The Task Force recommends that the state:

Expand "*More at Four*"

Research demonstrates that one-third of entering kindergarten children come to school without important literacy skills, such as letter recognition. Governor Easley has begun a statewide pre-kindergarten program, *More at Four*, serving 1,600 four-year-olds across the state. The state should phase-in the *More at Four* Program until all 40,000+ at-risk four-year-olds have access to high quality pre-kindergarten programs that prepare them for kindergarten and for further success in school.

Reduce K-3 Class Size

Research finds that smaller class size is a key indicator of success in school. Governor Easley is proposing significant class size reduction in all kindergarten through 3rd grade classes.

The state should continue to reduce class size at the kindergarten through 3rd grade levels. Class size reductions should be gradual to minimize facility-need problems and teacher recruitment needs. In High Priority schools serving large numbers of at-risk young people, class sizes should be reduced to 15 or below.

Strive to Exceed National Teacher Salary Averages

Governor Easley has made national average salaries for North Carolina's teachers a goal and worked with the General Assembly to secure modest raises in the 2001-03 biennium budget to continue the state's record of progress since 1997. The state should continue its commitment to exceed national average salaries, while providing a range of additional strategic incentives to attract and retain teachers.

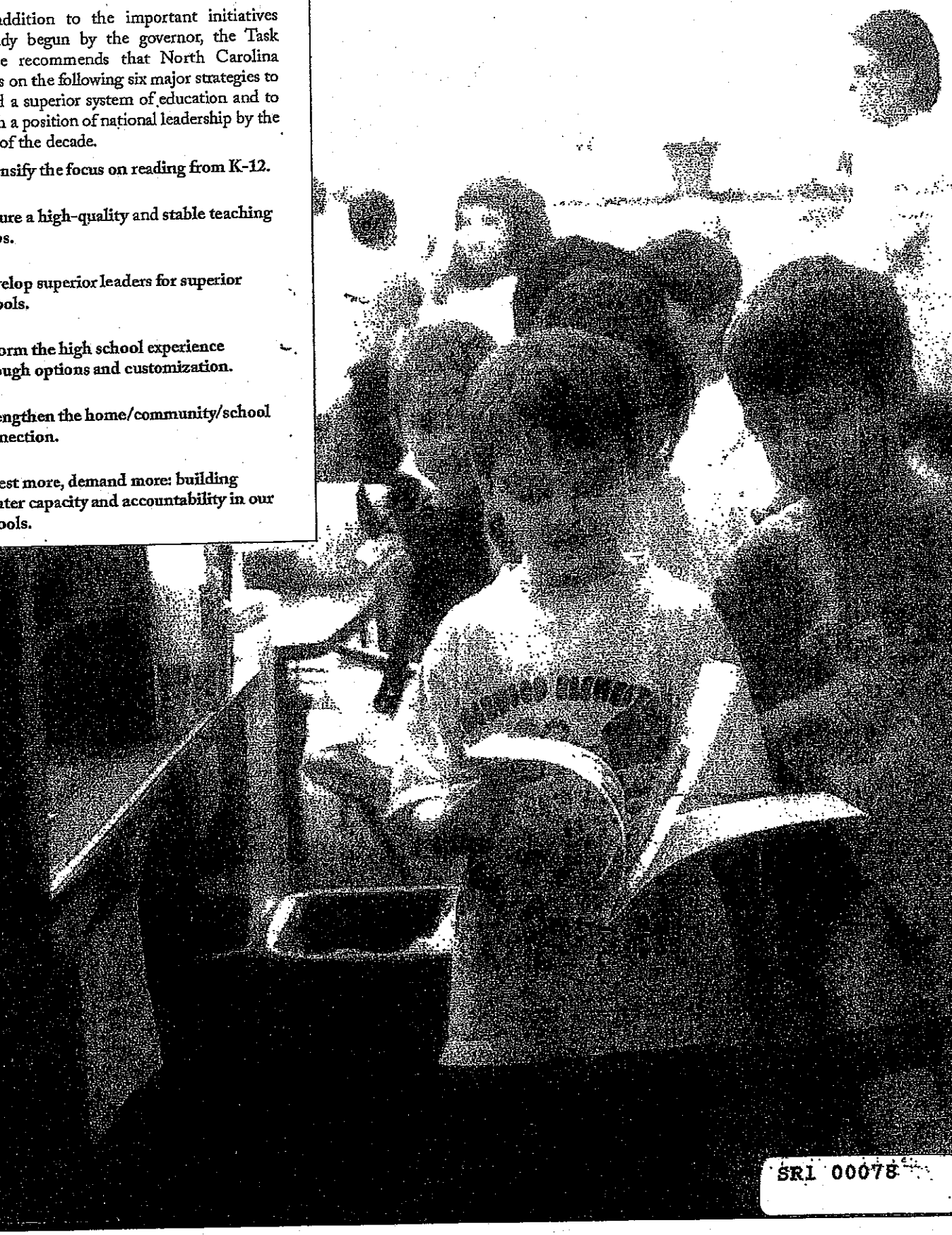
Publicize School Quality Information

Parents deserve to have key information about their child's school. Governor Easley secured funding for the development of school accountability report cards, the first of which was made available this spring. This effort must be continued to hold schools accountable for school improvement and to assist parents and communities as they work to support improvement efforts.

STRATEGIES AND RECOMMENDATIONS

In addition to the important initiatives already begun by the governor, the Task Force recommends that North Carolina focus on the following six major strategies to build a superior system of education and to reach a position of national leadership by the end of the decade.

1. **Intensify the focus on reading from K-12.**
2. **Ensure a high-quality and stable teaching corps.**
3. **Develop superior leaders for superior schools.**
4. **Reform the high school experience through options and customization.**
5. **Strengthen the home/community/school connection.**
6. **Invest more, demand more: building greater capacity and accountability in our schools.**



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STRATEGY ONE

Intensify the focus on reading throughout K-12.

Researchers agree that reading and reading comprehension are essential to eliminating performance gaps between students. If young people are reading at or above grade level by the 3rd grade, the prospects of their successfully finishing high school increase dramatically. Conversely, if they are below reading levels upon entering middle or high school, the chance that they will fall by the wayside soars. Reading and reading comprehension are "gatekeepers" – critical factors in determining who will succeed and who will fail in education.

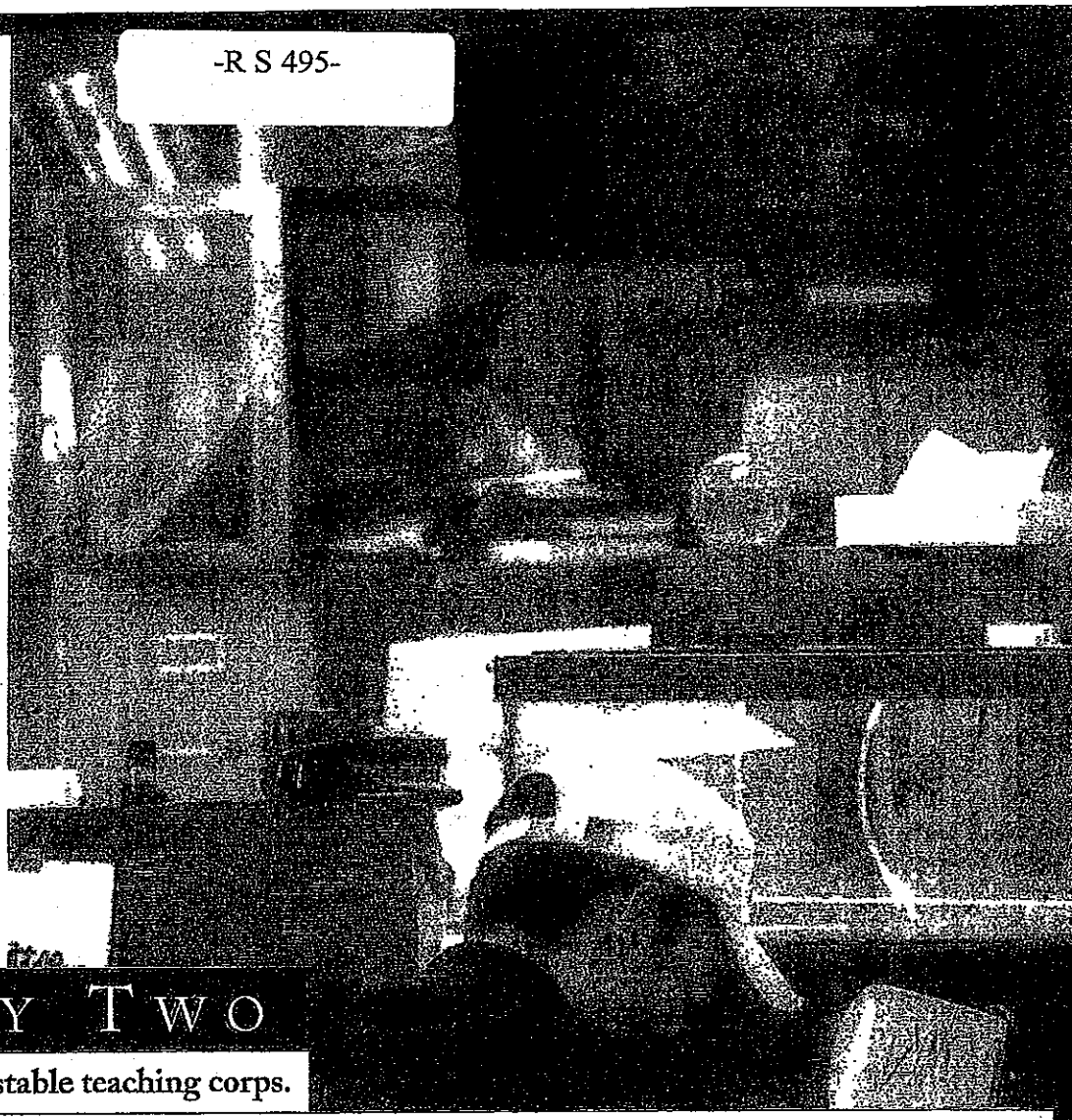
Build a training and support program to help all teachers better teach reading.
The Task Force recommends that the state Board of Education marshal the resources of existing groups including, but not limited to, the Teacher Academy, Learn NC, SERVE, in-place distance learning centers, like Cumberland County's Web Academy or the long-established community college distance-learning program, to launch a high-quality, easily accessible statewide training program focused on reading strategies at all levels of schooling.

The Task Force envisions a six-year training initiative that, in future years, would be available to new teachers on an ongoing basis. Year One would focus on the development and identification of training materials and training delivery systems. Training would begin in Year Two at the elementary level and begin with faculties working in the state's lowest performing schools. The ultimate goal of the initiative would be to provide advanced research-based strategies for more effectively teaching reading to all of the state's elementary teachers.

Teacher training would begin in middle and high schools in the third year of the initiative. As with the elementary teacher reading training program, staff development would first be offered to faculties in low-performing middle and high schools.

Span of the initiative:
- *2002-03 to 2008-09*

Projected cost:
- *New federal dollars available*



STRATEGY TWO

Ensure a high-quality and stable teaching corps.

A growing body of research finds that the quality of teachers a young person has over his or her learning lifetime is the most important educational variable in determining whether he or she will succeed or fail in school.

At the moment, that research underscores what may be the Achilles Heel of school improvement in North Carolina. The young people who need the state's very best teachers are least likely to have them. The communities and schools most in educational need are the least likely to attract and retain highly qualified teachers.

And the problem is worsening. Each year North Carolina is in search of 9,000-12,000 new teachers. Nearly 14% of the teaching workforce turns over annually. In some systems that number is as high as 27%. Over half the men and women who enter teaching will have left the field within five to seven years, many within the first three years of their abbreviated teaching careers.

While the state has created programs that are national teacher recruiting models – the North Carolina Teaching Fellows Program, NC TEACH, and the Teacher Cadet Program – it has done little to "stop the bleeding" that comes from high teacher turnover rates.

This has led the Task Force to conclude that the state must place teacher retention on a par with teacher recruitment. If today's turnover rate could be reduced from 14% to merely 10%, today's demand for new teachers would be reduced by 3,500 annually. Thus, the Task Force calls for making teacher retention efforts a priority while increasing recruiting efforts.

Create quality standards and guidelines for teacher mentoring.

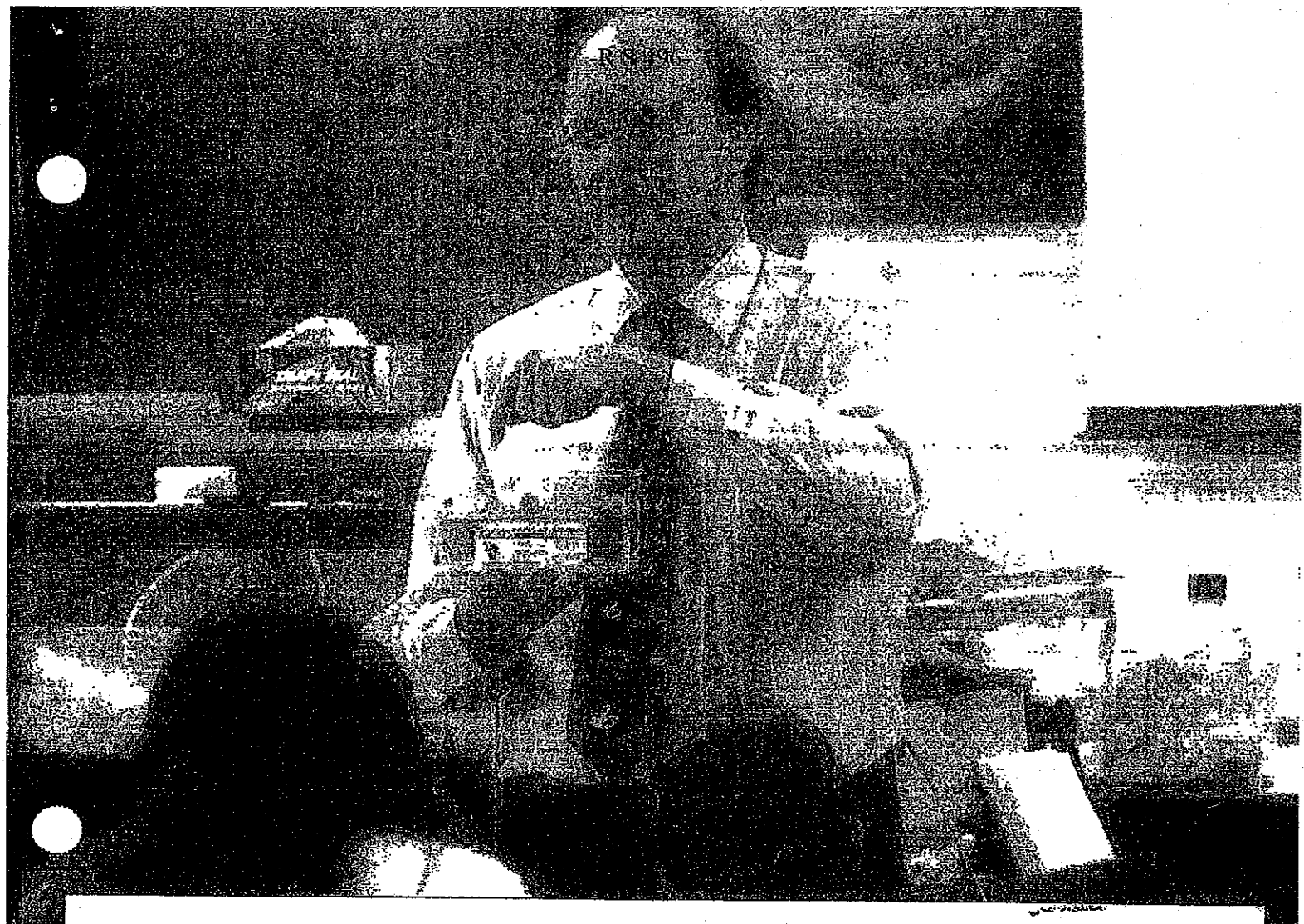
Upon passage of the Excellent Schools Act, North Carolina became a national leader in providing support programs for new teachers. Each new teacher in the state is provided a mentor teacher who is reimbursed $1,000-$1,100 per year for assuming that responsibility. The state provides additional days of employment for new teachers and their mentors to begin working together before the school year begins.

However, the otherwise ground-breaking legislation lacked standards for teacher mentors and requirements that mentor teachers undergo training to prepare them for their new roles.

The Task Force recommends that the State Board and the General Assembly establish minimum requirements for teacher mentors and require state-designed training programs for all mentors. Schools would be required to comply with these requirements by 2004-05.

The State Board of Education should also grant school systems the flexibility to fully reimburse mentors responsible for more than one new teacher and to employ part-time, retired educators to assume mentoring roles.

The General Assembly should not authorize state funding for any teacher mentor who



does not meet its minimal requirements and who has not completed state-designed training by 2004-05.

Projected cost:

- *$150,000 per year starting in 2003-04*

Develop a one-stop shop for teacher recruitment.

To meet the statewide demand for new teachers, the Task Force believes the state must strengthen existing teacher recruiting programs. Toward that end, the Task Force recommends expansion of three recruiting initiatives. First, the newly created Center on Recruitment and Retention housed in the Department of Public Instruction (DPI) needs resources to match those that will be generated by the NC Business Committee on Education to create a new "one-stop" internet-based clearinghouse center for individuals wishing to teach in North Carolina.

As envisioned, the clearinghouse would not only provide a one-stop center for any teacher candidate, whether they are straight out of college, relocating from another state or entering teaching through lateral entry routes. It also would work to streamline existing rules and regulations, create "user-friendly" application procedures, and aggressively market teaching as a career.

Projected cost:

- *$300,000 per year*

Expand the Teaching Fellows Program.

Second, North Carolina needs to expand the number of scholarships awarded through the nationally-recognized North Carolina Teaching Fellows Program by 100 per year, as recommended by Governor Easley in his proposed 2001-02 and 2002-03 budgets, and, at the same time, charge the Teaching Fellows Commission to continue its efforts to attract minority and male candidates. The program has already generated over 2,000 teachers who are working from one end of the state to the other. Moreover, it is generating high quality teachers. For example, in the 2000-01 school year, both the North Carolina Teacher of the Year and the national Walt Disney Teacher of the Year were graduates of the Teaching Fellows Program.

Projected cost:

- *$205,000 per year in 2002-03 through 2005-06 to add program support and 25 additional Teaching Fellows scholarships, increasing the total number of awards to 100 per year in 2005-06*

Ensure continuation of NC TEACH program for mid-career professionals.

Third, North Carolina needs to replace federal dollars that have supported NC TEACH, a recruitment program targeting individuals in the private sector who might be attracted to the teaching profession. Federal support is ending and, without state support, this promising initiative could come to an end.

Projected cost:

- *$850,000 per year beginning in 2002-03 and thereafter to sustain NC TEACH when federal funding ends this year*

Make it easier for retired teachers to return to the classroom without penalty.
Recent legislation has made it possible for retired teachers to return to the classroom six months after retirement and resume full-time teaching while drawing their retirement benefits. The six-month gap in service requirement means that many cannot return to teaching or school building leadership at the beginning of the school year.

The Task Force recommends that the required time between retirement and resuming service be reduced to two months to enable a teacher or principal to retire at the end of a school year and resume teaching, while receiving retirement benefits, at the beginning of the next school year.

Projected cost:
- *No cost to the state*

Create incentives to attract educator teams to hard-to-staff schools.
Of the state's 2,300 schools, roughly 200 have high percentages of young people unable to perform at or above grade level; of those, approximately 100 could be considered critically low-performing. Based on five years of experience with state-provided Assistance Teams, it is clearly possible to turn low-performing schools around and show immediate, and in some cases, significant improvements. However, when Assistance Teams are reassigned to other buildings, many of these schools quickly slide back into low-performing status.

The state should experiment with a package of incentives to teams of educators willing to make a four-year commitment to work in low-performing, hard-to-staff schools. The state would make available, to certain school districts, ten teams of five educators each to assume the leadership in ten buildings with a long-term pattern of low-performance and/or high faculty turnover. Each team would consist of a qualified principal, no fewer than one National Board certified teacher and three other teachers with appropriate certification. School systems opting to participate in the program would turn over the leadership of the school to the teams. The goal of the teams would be to change the school culture and develop leadership to sustain improvements over time.

The state will provide moving expenses for the teams, pay them at a level equal to the highest paying system in the state, and provide a deferred compensation package equivalent to $10,000 per year for principals and $8,000 for teachers on the teams. The deferred compensation would count toward their final average retirement pay; however, no portion of the deferred compensation would be paid to any team member not serving the entire length of the four-year contract. The DPI would be responsible for screening and identifying team members and for tracking student performance in the ten buildings and evaluating the pilot project.

Projected cost:
- *$343,000 for relocation, salary, and deferred compensation in 2003-04*
- *$271,000 salary and deferred compensation in school years 2004-05 through 2007-08*

Pay bonuses to qualified math, science and special education teachers.
The 2001 General Assembly, for the first time, created salary incentives for qualified special education, science, and math teachers working in hard-to-staff, low-performing middle and high schools. Certified math, science, and special education teachers remaining or entering one of these schools qualify for a $1,800 bonus. This is an important step in a state where special education, math, and science areas experience annual shortages. The governor and the General Assembly should maintain this commitment and expand its scope as the fiscal climate allows.

Projected cost:
- *Pilot funding is currently included in the state budget; if incentives prove effective retention tools, they should be expanded.*

Create a salary schedule that reflects the state's teaching needs.
North Carolina has two challenges when it comes to pay and to teaching. First, it must compensate all teachers in such a way that teaching is viewed as a valuable and respected profession. Second, it must throw off the yoke of tradition and factor in supply and demand equations that will, of necessity, lead to paying some teachers more based on what subjects and the kinds of schools in which they teach. In today's economy, for example, the state must pay advanced math and science teachers more to prevent them from leaving for greener pastures. In today's education environment, there must be incentives to attract and keep teachers in low-performing and hard-to-staff schools.

The 2001 General Assembly established a study commission that is charged with examining wage comparability of teachers compared to other occupations. That study could give the state direction for reforming today's salary schedule.

Projected cost:
- *Unknown at this time*

Develop a two-year certification program leading to master's for lateral entry teachers.
Retention rates for lateral entry teachers (i.e., college graduates who enter teaching without formalized training in education) are encouraging, especially in an era where the economy and business mergers are increasing the pool of well-educated professionals willing to consider teaching as a career. To make career switches to teaching even more attractive, the Task Force recommends that the state should work with a statewide consortium of public and private schools of education to design and offer streamlined two-year programs of certification leading to a master's degree. Not only would such programs allow more lateral entry teachers to earn certification more quickly, it would also arm them with a master's degree. This program would have to ensure that master's level work was done in a content area relevant to their area of certification. Teach for America participants are an excellent example of high-quality teachers who would benefit from such an opportunity.

Projected cost:
- *No cost to the state*

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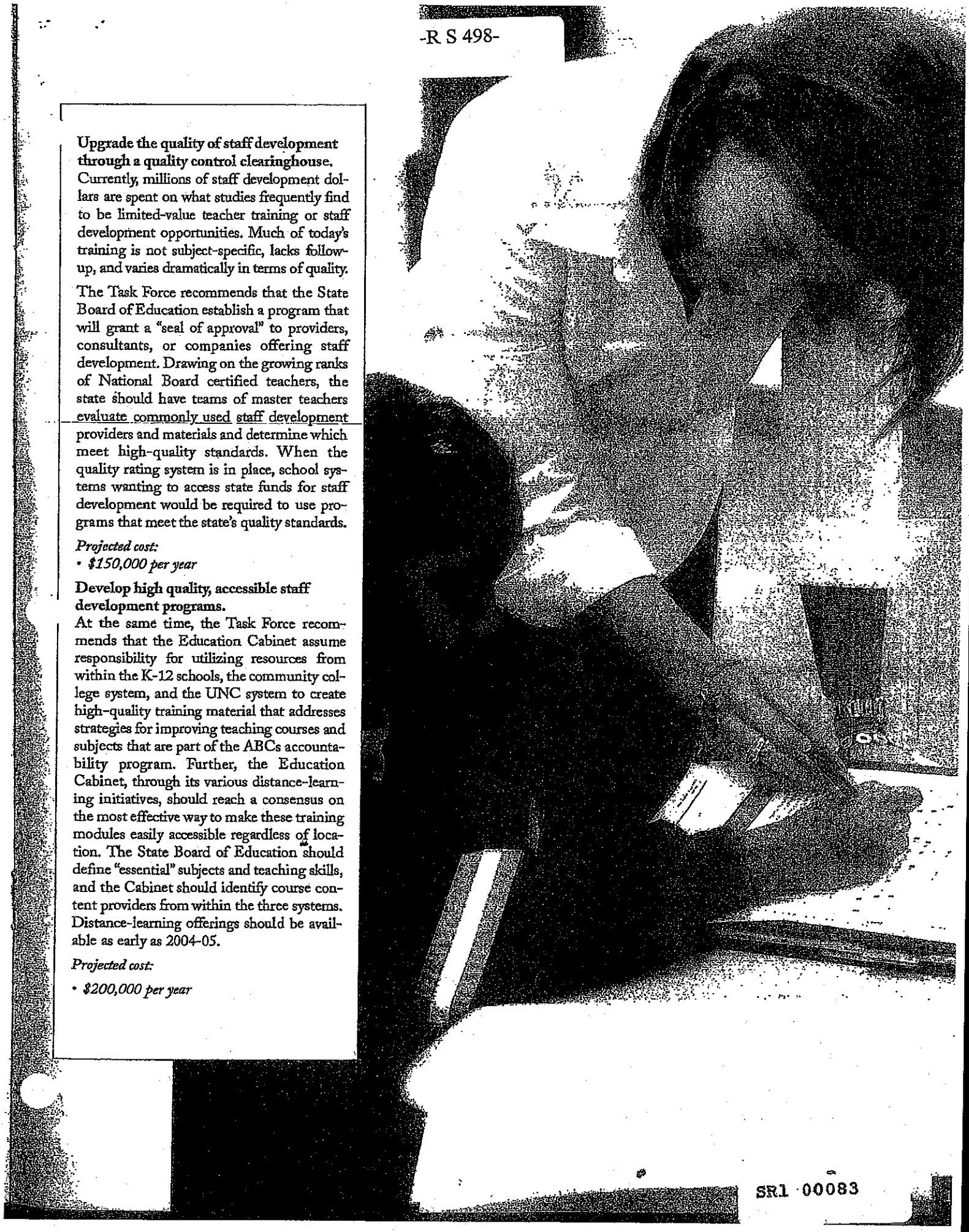
Upgrade the quality of staff development through a quality control clearinghouse.
Currently, millions of staff development dollars are spent on what studies frequently find to be limited-value teacher training or staff development opportunities. Much of today's training is not subject-specific, lacks follow-up, and varies dramatically in terms of quality.

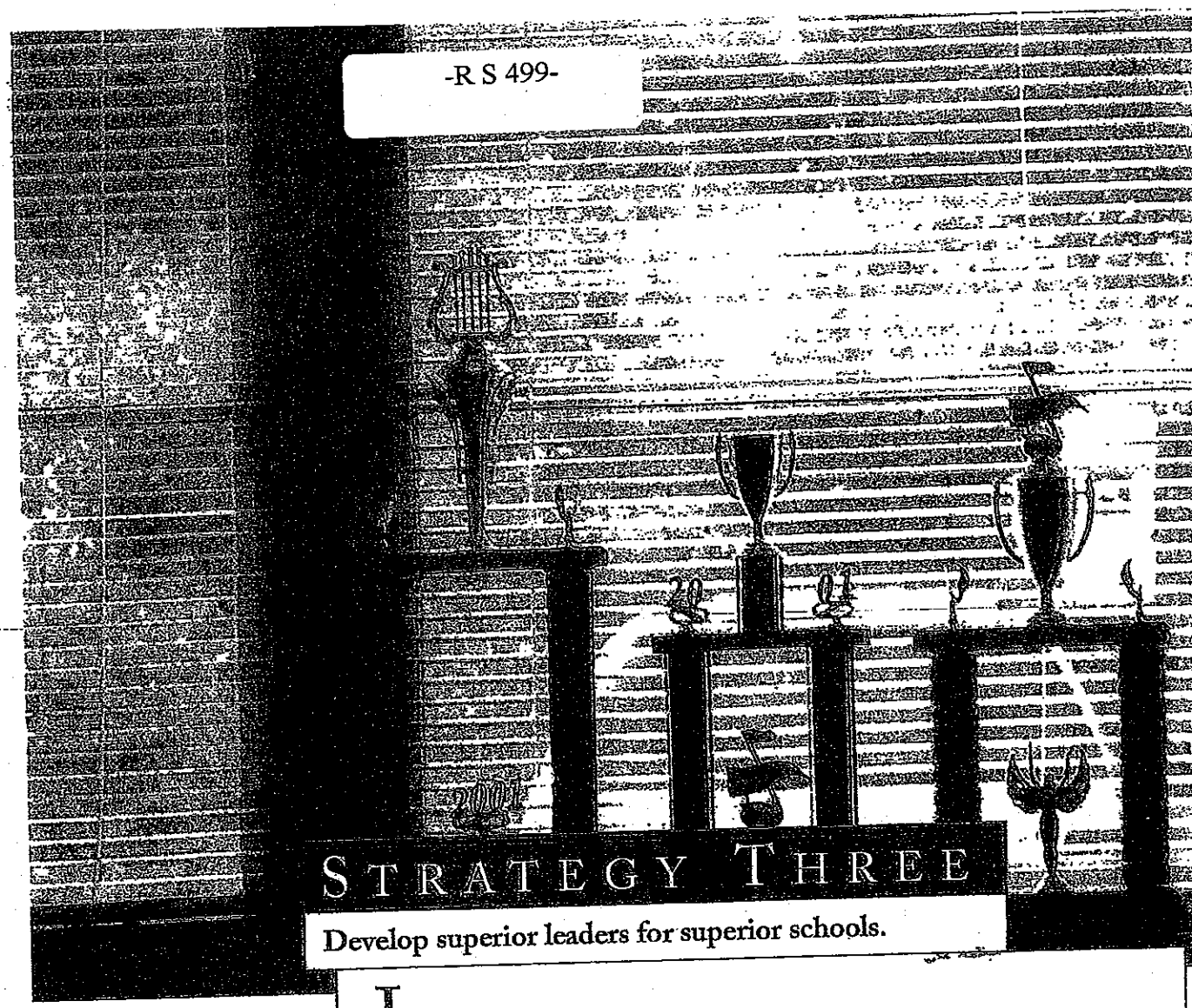
The Task Force recommends that the State Board of Education establish a program that will grant a "seal of approval" to providers, consultants, or companies offering staff development. Drawing on the growing ranks of National Board certified teachers, the state should have teams of master teachers evaluate commonly used staff development providers and materials and determine which meet high-quality standards. When the quality rating system is in place, school systems wanting to access state funds for staff development would be required to use programs that meet the state's quality standards.

Projected cost:
- *$150,000 per year*

Develop high quality, accessible staff development programs.
At the same time, the Task Force recommends that the Education Cabinet assume responsibility for utilizing resources from within the K-12 schools, the community college system, and the UNC system to create high-quality training material that addresses strategies for improving teaching courses and subjects that are part of the ABCs accountability program. Further, the Education Cabinet, through its various distance-learning initiatives, should reach a consensus on the most effective way to make these training modules easily accessible regardless of location. The State Board of Education should define "essential" subjects and teaching skills, and the Cabinet should identify course content providers from within the three systems. Distance-learning offerings should be available as early as 2004-05.

Projected cost:
- *$200,000 per year*





STRATEGY THREE

Develop superior leaders for superior schools.

Job demands that are heavier than ever before are contributing to a growing concern about how large a pool of qualified principals is available to staff the schools of North Carolina. Currently, over 76% of North Carolina school principals have 20 or more years of experience, and retirement rates are expected to climb dramatically. As a result of those projections, the Task Force focused heavily on recommendations that will both expand the pool of prospective principals and groom and develop those principals currently on the job.

Develop internal training programs in school systems to groom future principals. There is a fierce competition across the state in the principal recruitment arena. Unfortunately, the competition is one that only a few systems can win. Counties that offer higher pay, more social amenities, advantaged students, good facilities, and ample resources have, and will continue to have, a recruiting edge.

One solution to the question of finding and keeping high-quality school leaders is for school systems to groom the very best from within their schools, to develop an internal pool of high-potential leadership candidates likely to remain within their communities.

The Task Force recommends that the State Board of Education broadly publicize strategies to identify and develop leadership from within the ranks of educators. Such strategies would include adding leadership potential to the annual evaluation of all professional staff, creation of staff development programs for staff with high leadership potential, and inclusion of potential leadership candidates on committees and task forces. The recommended strategies should also include ways to increase the pool of minority candidates for administrative posts.

Projected cost:

- *No cost to the state*

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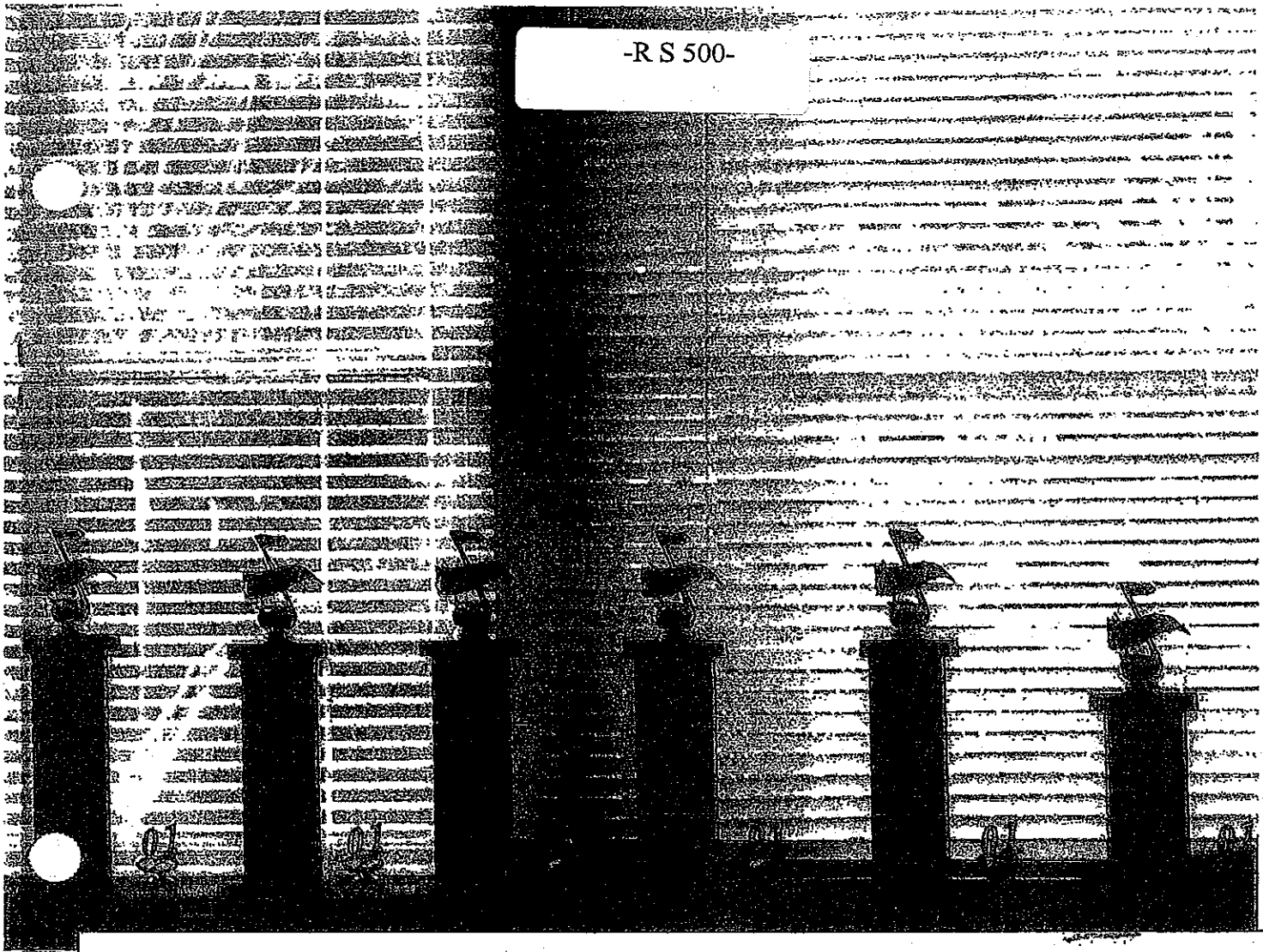


Increase number of Principal Fellows scholarships.

As an incentive for school systems to create programs to identify and build potential leadership, the Task Force recommends an expansion of the number of scholarships awarded through the North Carolina Principal Fellows Program, a program which makes financial awards to prospective principals in exchange for a fixed number of years of educational service.

The Task Force recommends expanding the number of scholarships from 180 to 300 over a period of four years. It further recommends that the program be required to give additional consideration to candidates who have successfully come through local leadership training programs.

The following cost projections envision funding an additional 30 scholarships per year with a modest increase reflecting the additional programming support that will be required as the program grows to a total of 300 recipients per year.

Projected cost:

- *$625,000 in 2002-03*
- *$625,000 in 2003-04*
- *$625,000 in 2004-05*
- *$625,000 in 2005-06*

Make high-quality training more accessible to school administrators.

The Task Force recommends that the state's administrative training institution, the Principals' Executive Program, expand its capacity and offer training for principals in the best management practices from both the private and the public sectors. The state needs to offer local and regional one-day or two-day training programs on a much larger scale than is currently possible, especially for principals who are new to the job.

Projected cost:

- *$250,000 in 2003-04 and thereafter*

Provide research tools and support to school leaders.

More and more data on student performance is available. Yet, many schools and many school systems do not have the means to provide and interpret the data for those who most need research-based solutions – teachers and principals at the school building level.

The Task Force recommends that the State Board of Education create a research task force that would draw together existing educational researchers from within DPI, from the North Carolina Education Research Council, and from public and private schools of education to focus on designing easily used material and software that would make it possible for teachers and school administrators to maximize the potential usefulness of available student performance data.

Projected cost:

- *$150,000 in 2002-03*
- *$75,000 in 2003-04 and thereafter*

Require principal training in teacher retention strategies.
North Carolina needs to send a signal that it values new teachers who could devote their entire careers to working with young people, as well as seasoned teachers who have gained experience and expertise. There is no better way to send this signal than to require that school principals undergo intensive training on ways to retain teachers through creating more supportive school climates. The Task Force recommends that the Principals Executive Program assemble a design team composed of exemplary school principals, respected human resource coordinators, and private sector human resources professionals from companies recognized for "employee friendly" practices to design three-to-five day training sessions for school principals.

Beginning with principals of schools with high teacher turnover rates, the training should be offered at college campuses across the state, with the goal of training all of the state's 2,292 plus school principals at summer sessions held over four years.

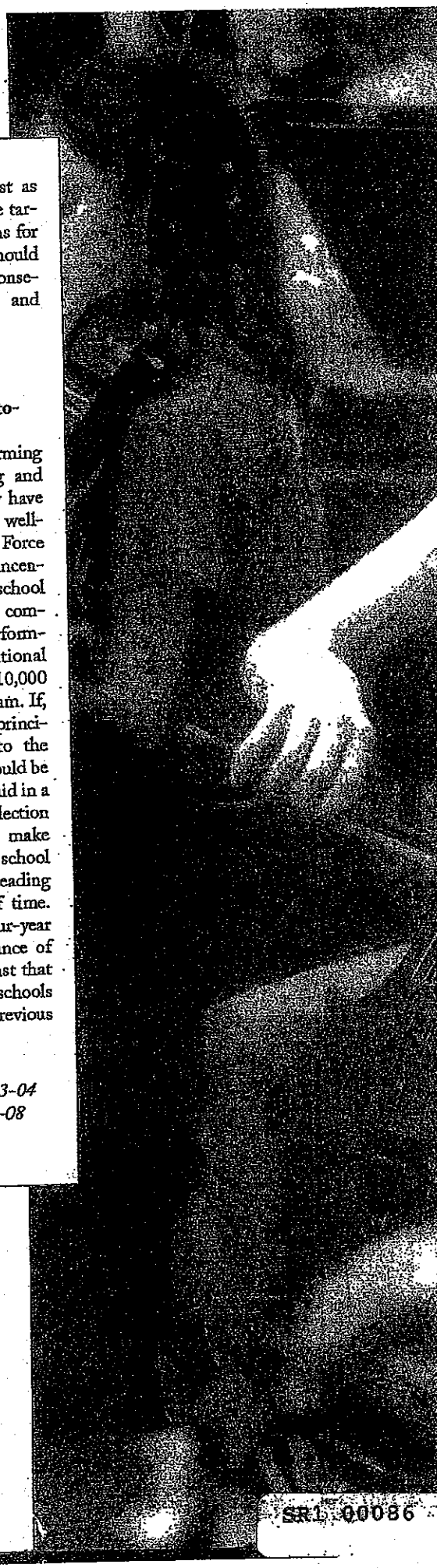
Projected cost:
- *$125,000 in 2002-03 for program design*
- *$114,800 in 2003-04 for training*
- *$114,800 in 2004-05 for training*
- *$114,800 in 2005-06 for training*
- *$114,800 in 2006-07 for training*
- *$50,000 in 2007-08 and thereafter for training new principals and retraining of principals in high turnover buildings*

Establish retention goals and factor retention into principal evaluations.
For improved teacher retention to become a priority across North Carolina, local school systems must join the effort. The most direct way to do that is for local systems to incorporate retention as part of their school system and school building strategies and establish retention improvement targets just as they now establish student performance targets. Where possible, evaluation systems for school principals and superintendents should incorporate a system of rewards and consequences based on teacher retention and development.

Projected cost:
- *No cost to the state*

Attract top-notch principals to hard-to-staff schools with an incentive plan.
Just as hard-to-staff and low-performing schools have difficulties in recruiting and retaining capable teachers, so do they have difficulties in attracting and keeping well-qualified school principals. The Task Force recommends that the state develop an incentive plan that would give up to ten school principals willing to make a four-year commitment to move to and lead low-performing, hard-to-staff schools an additional $10,000 salary supplement and a $10,000 per year deferred compensation program. If, at the completion of four years, the principals had fulfilled their obligation to the schools, the deferred compensation would be added to their retirement credit and paid in a lump sum. The DPI would devise a selection process, identify the principals, and make them available on a voluntary basis to school systems willing to entrust them with leading a building for a four-year period of time. DPI would also, at the end of the four-year period, evaluate the school performance of the buildings in the experiment against that of other similar schools as well as schools receiving teams of educators (see previous item).

Projected cost:
- *$250,000 per year beginning in 2003-04 and continuing each year until 2007-08*



Strategy Four

Reform high schools through options and customization.

When one quarter of North Carolina's students drop out altogether from high school and over 40% fail to successfully complete high school in the traditional four-year time span, it is clear that the state's high schools are not meeting the needs of all of their young people. When those who remain under-perform their peers across the country, there is even more cause for alarm.

To the Task Force, the challenge for North Carolina is much larger than the challenge of constructing more effective drop-out prevention programs. It is the challenge of rethinking the high school experience as it is currently conceived.

As the Task Force committee charged with examining high schools delved into the subject, two things became apparent. First, thousands of the young people who fail to complete traditional high school programs enroll immediately, and often successfully, in community college programs leading to a diploma or a GED certificate. It is not that they do not want to complete their education; rather, they do not want to complete it in the confines of traditional high schools.

Second, unlike high schools in most developed nations, American high schools, for the most part, do not distinguish between academic and occupational high schools. Large, comprehensive high schools attempt to be all things to all students.

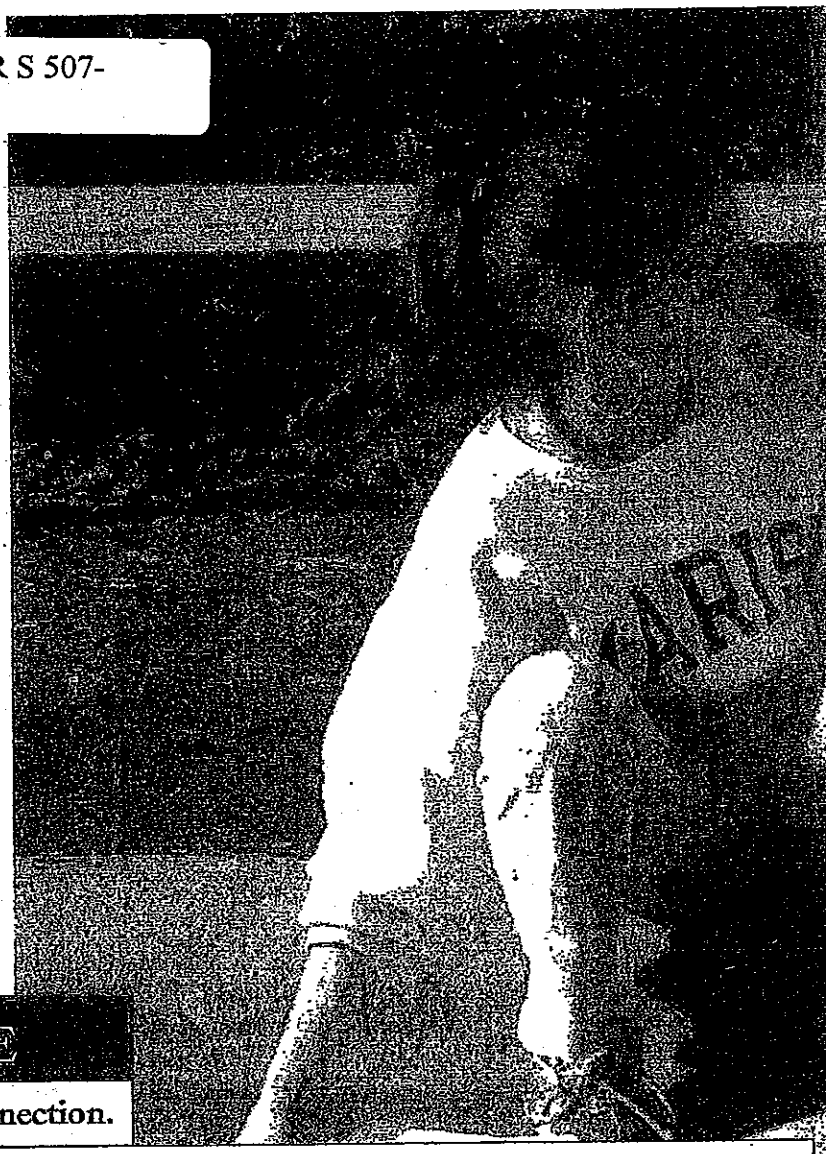
The increasing popularity of "theme" schools (i.e., high schools with a unique focus like technology or banking), other nations' records of successfully keeping students enrolled in occupational high schools and the marketplace's increasing demands for more highly skilled workers gave the Task Force the reason to study new schools and look at options better tailored to the diverse needs of high school students.

Over a four-year period, 103,578 high school aged students enrolled in community colleges to take basic skills classes.

Tailor programs to offer students more options.

The state has a handful of high schools that are creating unique programs designed to both engage and motivate students. In Charlotte, the banking community is supporting a finance academy housed within a high school. Several large and small school systems, in counties as diverse as Wake and Granville, house Cisco Networking Academies that give high school students immediate employability on graduation. Pitt County is planning to establish the state's first Health Career academy.

Additionally, several pioneering community colleges, most notably, Guilford Technical Community College, have created innovative programs that enable students to take



STRATEGY FIVE

Strengthen the home-community-school connection.

The needs of children in vulnerable families call out for a comprehensive, coordinated, integrated human and educational service system that can address the wide range of issues for children and their families. Fortunately, a number of state and local agencies and community-based organizations focus solely on families in need. A growing number of communities also have the benefit of involved business leaders who partner with schools and community organizations. Unfortunately, in most communities these organizations work in isolation and are not linked together with schools and social service agencies.

Working together, business leaders, schools, community organizations and city and state agencies have the potential to make a huge impact on the lives of North Carolina's young people. To foster more collaboration:

Create a Cabinet for Children and Youth. The Task Force recommends that the state create a Cabinet for Children and Youth to better integrate services for children. The Cabinet, like the Education Cabinet, should be convened by the Governor's Office, meet on a regular basis and work to align the work of the major state agencies charged with serving families and young people - DPI, the Division of Human and Health Services, the Juvenile Justice Department. It should also include the leaders of state-funded initiatives touching young people - SOS, Smart Start, *More at Four*. Finally it should include representatives from the Business Committee for Education and community-based organizations with statewide reach focused on children and youth.

The Cabinet should build on the work of the State Advisory Cabinet on Juvenile Justice and Delinquency Prevention to develop a coordinated system of care to all in need. The Cabinet should attempt, at the state level, to model collaborative programs aimed at focusing state resources on young people and families in need. It should also seek to strengthen and leverage the work of local Juvenile Crime Prevention Cabinets that exist in each of the state's 100 counties.

Projected cost:
- *$175,000 in 2002–03 and thereafter*

Promote stronger parent involvement. The State Board, in partnership with the PTA, the NC Business Committee on Education, Parents for Public Schools, local education foundations and other groups, should provide a resource base of high-quality materials and programs that could easily be adapted and used in schools, in businesses and in communities. Widespread use of these materials should be promoted for on-site parent training at businesses and for teacher

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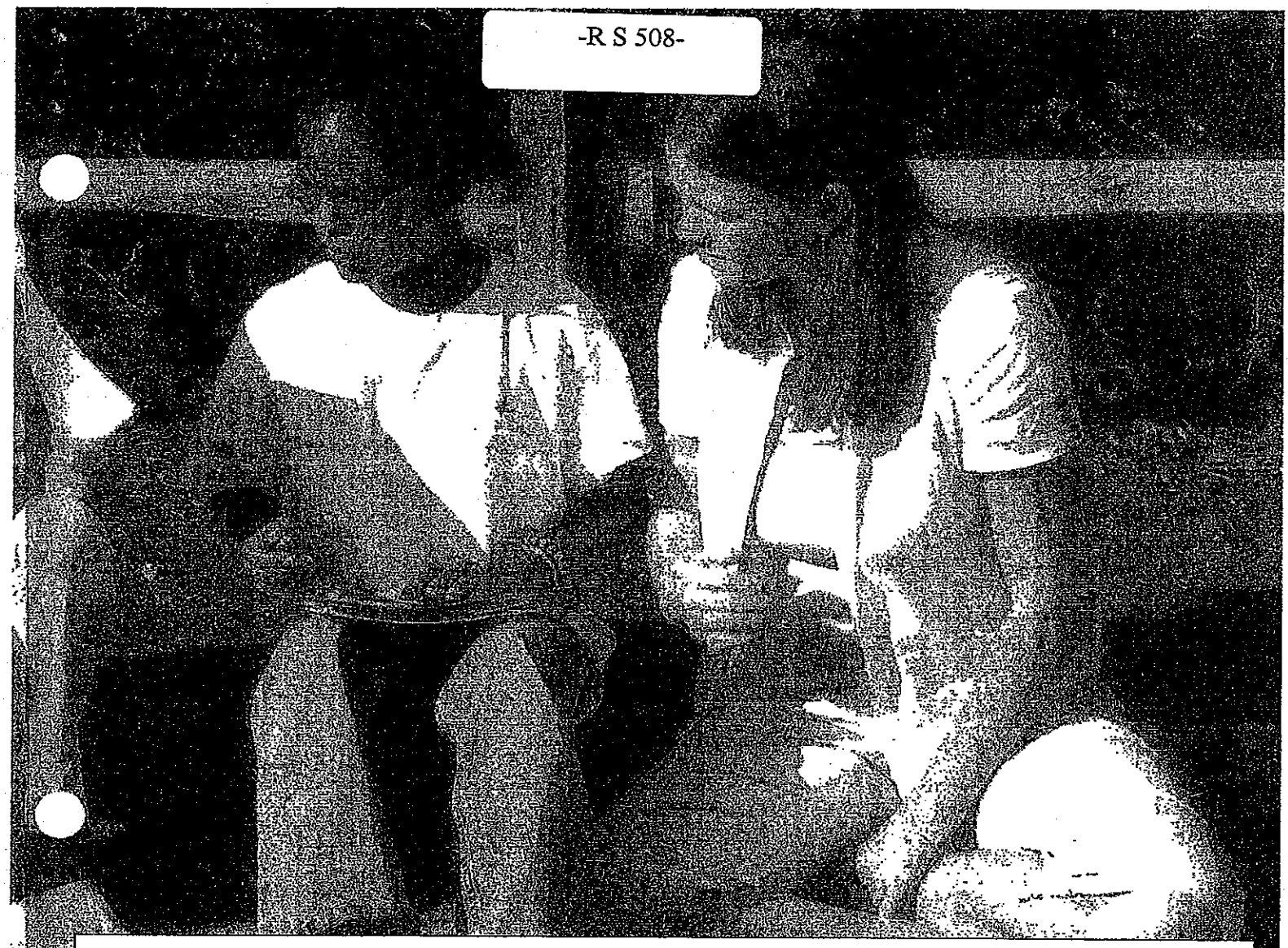


training programs in schools of education. Further, local PTA's should establish parental mentoring programs through which first-time parents could be teamed with more experienced parents and receive support on how to be a learning partner.

Projected cost:
- *$175,000 in 2003-04 and thereafter*

Develop a data system to support agency collaboration.
North Carolina's children, educators in public schools, and human service providers would benefit from a comprehensive, integrated data system with proper safeguards for confidentiality to inform decisionmaking. Currently, each state agency keeps separate, and often multiple, databases with important, but disconnected, data on children and families. A more coordinated system would enable agencies to better collaborate to devise and monitor comprehensive solutions for the needs of children and their families. This will also help policymakers determine where services need to be placed and where additional resources are needed.

Projected cost:
- *Existing state funds should be adequate to fund this initiative.*

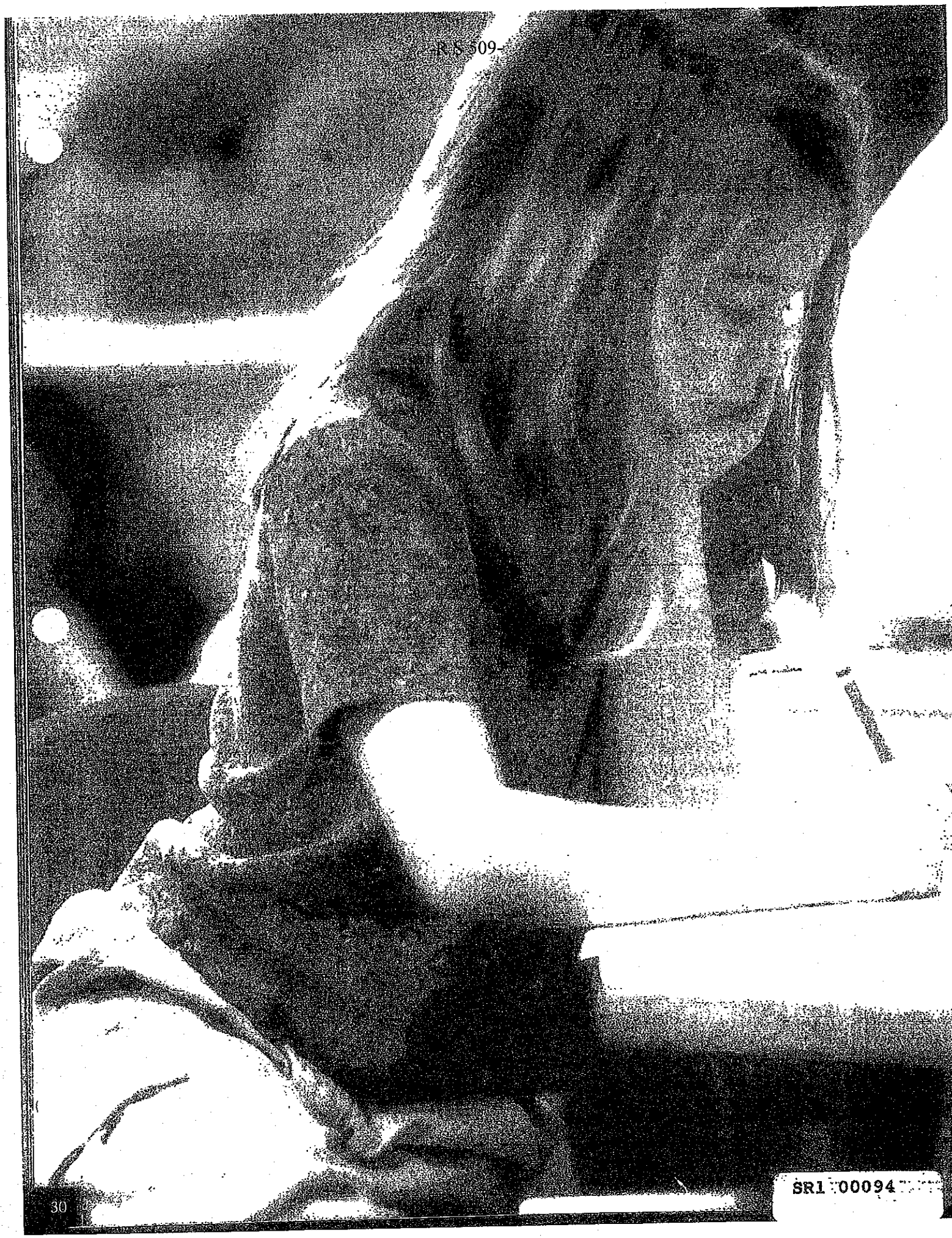
Strengthen linkages between education, business partners and foundations.
North Carolina schools are the beneficiaries of school/business partnerships in large and small communities across the state. They are also the beneficiaries of private foundations that have made education a funding priority.

The Task Force recommends that the State Board of Education more formally develop linkages between business and foundation partners. The Task Force recommends that the State Board sponsor annual briefings of business and foundation partners and that it maintain a regular flow of information to its external partners.

Projected cost:
- *No cost to the state*

Create a Family/Community Outreach Coordinator
To better connect schools to families and community resources needed to support the needs of at-risk students, the Task Force recommends placing a Family/Community Outreach Coordinator in the schools with the highest number of at-risk students. The coordinators would strengthen parent and community engagement with the schools and help connect children and families to needed human services. The Task Force suggests beginning this effort with schools that have 85% or higher of their children on free and reduced-price lunch.

Project cost:
- *$4.4 million*



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STRATEGY SIX

Invest more, demand more: building greater capacity and accountability.

In North Carolina, and in over half of the states across the country, battles continue over what a "sound and basic" education is or what an "equal educational opportunity" should be. Whatever the outcome of these cases, the Task Force believes that several school funding issues are key to guaranteeing the creation of a superior and a globally competitive education system.

Implement a system of "earned flexibility" based on student performance.
The Task Force believes that the state should apply greater restrictions to schools and districts not meeting standards and greater flexibility to those schools and districts performing well above standards. It also believes that with additional resources, schools should have to assume greater accountability for how funds are spent.

The Task Force proposes that the state move to a system of "earned flexibility" that would require low-performing schools to conform to stricter accountability guidelines governing their expenditures. With discretionary dollars, schools would have a "menu" of options from which to choose – options backed by research to contribute to school improvement. Likewise, the state would award greater flexibility with state dollars to districts making consistently high gains in student performance.

Generally, the Task Force's concept for "earned flexibility" is to divide all of the state's schools into one of three categories – those not making marked improvement, those showing average gains, and those showing marked improvement.

Schools that are in the low or no improvement category would be required to spend new state dollars on items specified by the state – extended day programs, summer schools, or lower class size, for example. Schools making average or expected gains would be given a larger menu of expenditure choices from which they could choose. High performing schools could spend new dollars as they saw fit.

For policymakers and for the public, this system of "earned flexibility" would provide a guarantee that new monies would be well spent in ways likely to improve schools and that taxpayers would be assured greater accountability for greater investments in school improvement.

Projected cost:
- *No additional costs*

Make eliminating gaps a priority by revising the ABCs performance bonus structure.
The Task Force recommends that the State Board of Education expand the current five system-pilot program and revise the current ABCs method of rating schools based on student performance to include a component that provides rewards and consequences to schools based on their ability to narrow achievement gaps between low and high income students and between minority and non-minority students. Eliminating the gap targets or disaggregated student performance measures should become a formal part of the formula through which ABCs performance bonuses are awarded to teachers.

Proposed implementation:
- *School year 2003-04*

Projected Cost:
- *No state funding required*

Make more instructional time available to meet remediation and enrichment needs.
Far too often, at-risk youngsters enter school with far fewer resources than other children – less language skill, less exposure to the world, less reading material at home and parents with less educational background to help them at home. Research finds, not surprisingly, that these students can significantly benefit from additional educational time.

Time, or the lack of it, is a problem for more advantaged young people as well. Those students also suffer from the shortness of the American school calendar. Unlike their counterparts in Germany or Japan or a plethora of other developed countries, they do not have the luxury of a long school year, time to work in groups, or days spent on hands-on experimentation.

The Task Force recommends that the state phase-in additional instructional time to meet a variety of needs. The state should establish flexible funding to allow schools the latitude to meet the unique needs of their students. For example, in some schools that will mean adding before- and after-school programs for remediation. In other schools it will mean expanded summer or Saturday programs for enrichment. In still others it might mean a blend of both approaches. In some schools the flexible funds could be focused on elementary years to give students

a stronger grounding in basics; in others the funds could be used to accelerate learning in the middle and high school years.

The state should phase in the equivalent of an additional month of employment for 5% of the teachers in the state over a four-year period of time, or until 20% of the teachers are being paid for extra hours of teaching, regardless of whether those hours are before- or after-school, on Saturday, or in the summer.

Projected cost::
- *$9 million in 2003-04*
- *$18 million in 2004-05*
- *$27 million in 2005-06*
- *$36 million in 2006-07*

Augment support of special education.
Federal mandates on providing full educational opportunities for all children, including those with special educational needs, has been one of the largest points of contention in school funding for decades. The federal government took a gigantic step in mandating special services for all children, including those with handicaps and disabilities. The federal government, however, has not provided the necessary dollars to meet those mandates.

North Carolina has a large population of children with special needs – ranging from those who are mildly attention deficit to those requiring full-time nursing care. Neither federal funding nor state aid adequately addresses the needs of those children.

The Task Force recommends that the state establish as a goal increasing today's formula for funding special education to 2.3 times the funding level.

Congress is about to take up what may be the most significant debate about special education funding since it was enacted in 1975. It is highly probable that federal support will increase dramatically. The Task Force recommends that state action be deferred until the federal government acts, but in the meantime, the Task Force feels that it is imperative that state policymakers realize that the gap between current funding levels and needs is a large one and, if the federal government response is insufficient, the state will need to take action.

Projected cost:
- *No costs at this time*

Create a new, single funding stream targeted to at-risk students.
The educational needs of children differ dramatically and it takes far more resources to educate at-risk children than it does to educate other children. Today's school funding largely ignores that point.

The Task Force recommends revising school funding policies in North Carolina to provide the state's most vulnerable young people additional resources – whether those young people live in the center of Charlotte or in Halifax County.

The Task Force suggests creating a single, new funding stream focused on the needs of at-risk students. The new stream would be created by collapsing the current "At-Risk Students Services" and "Improving Student Accountability" funding streams into a single funding stream and doubling the current amount of funding. Dollars would be sent to school districts based on their share of students in poverty and students performing below grade level.

Two-thirds of the money would be allotted based upon the count of students in poverty and one-third based upon students performing below grade level. The Task Force recommends maintaining the current base funding for school resource officers out of this new fund. Simply put, a weighted formula provides additional funds to students who most need additional resources.

This funding proposal would be an integral part of the "earned flexibility" recommendation. Schools could use the additional resources to provide additional time, whether after school or in the summer; or to hire additional teachers to lower class size or provide specialized instruction.

Projected costs:
- *$62.4 million in 2003-04*
- *$62.4 million in 2004-05*
- *$62.4 million in 2005-06*
- *$62.4 million in 2006-07*

Prepare to put another school facility bond on the ballot.
A funding gap of major proportions is developing due to school construction demands. Recent projections estimate that schools face an unfunded backlog of nearly $6 billion worth of renovation and new construction needs.

Even with the boost provided by the $1.8 billion school facilities bond in 1996, local communities are faced with staggering construction costs, largely due to the swelling student population in North Carolina – 15,000-20,000 new students per year. More pressure on building needs will be felt due to new programs such as *More at Four* and class size reduction initiatives that will exacerbate the facilities question, especially in fast-growing counties.

The Task Force recommends that planning begin for passage of a new school construction bond initiative, to be on the ballot in either 2004 or 2006. Armed with the knowledge that a bond would be on the ballot at a certain date, school officials could better plan for long-term construction needs.

In the meantime, the facility backlog is growing. The Task Force calls for an infusion of $100 million dollars into the ADM Construction Fund which currently provides funding for K-12 school construction and renovation needs.

Projected cost:
- *$15 million annually 2003-04 through 2008-09*
- *$10 million in 2009-10*

Provide greater flexibility with existing personnel dollars.
In the short term, especially given the current recession economy, schools are under great stress to do more with existing dollars. Recognizing that over 90% of school funding is dedicated to personnel costs, the Task Force recommends that the state grant school systems more flexibility in redirecting those dollars to priority needs.

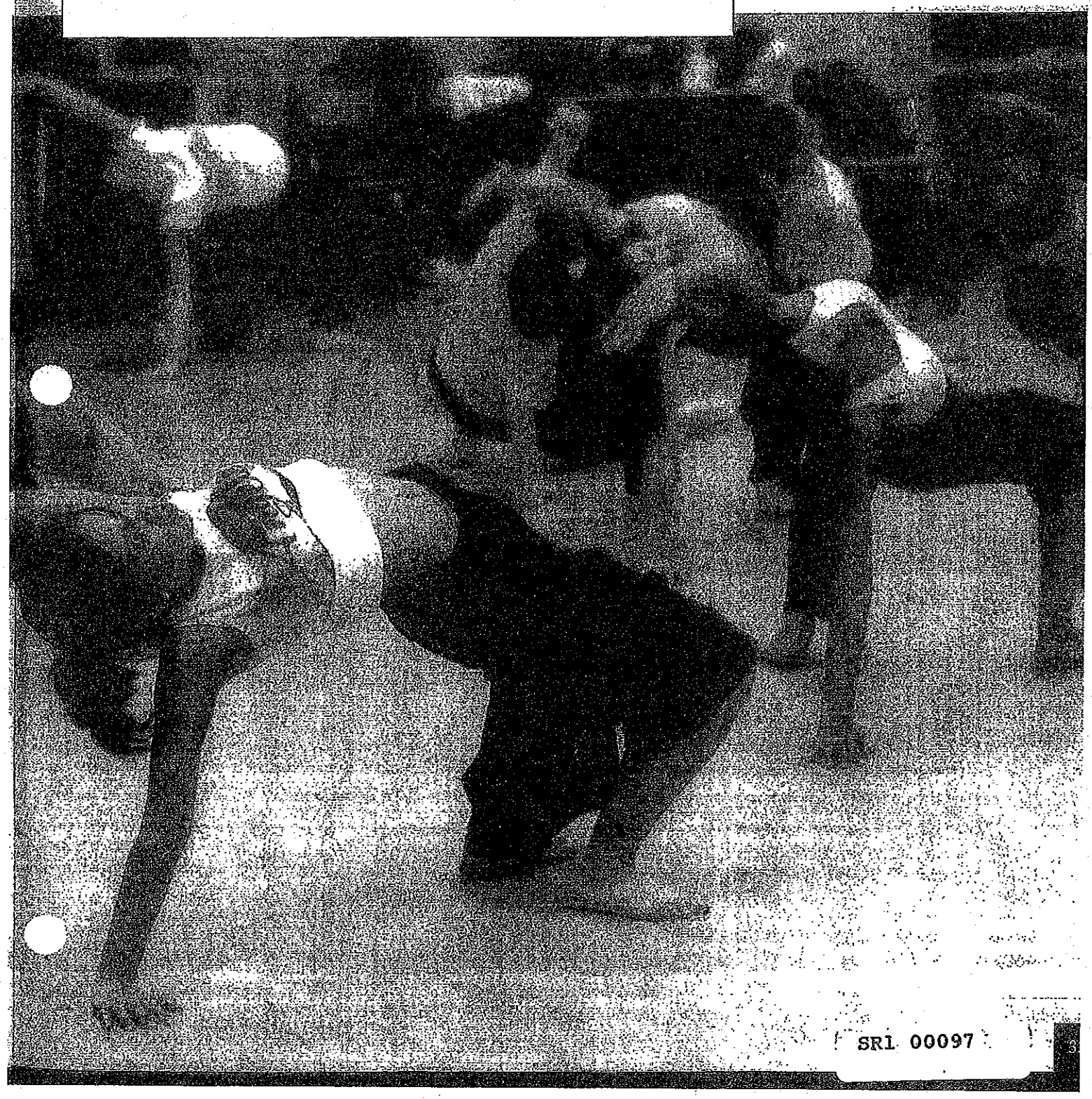
For example, the current funding formula provides approximately one full time teacher assistant for each K-3 classroom. School officials can only re-direct those teaching

assistant dollars when assistants opt to retire or leave. Some school districts, Burke County being a notable example, have received waivers allowing them to convert teaching assistant position dollars into dramatic class size reductions and have shown significant learning gains.

The Task Force recommends the state allow greater flexibility with these funds. It suggests funding a teacher assistant position for every three K-3 teachers and allowing the balance of funding to be used for other school improvement priorities.

Projected cost:

- *No new costs*



Initiatives Time Table

It is one thing to frame ambitious recommendations. It is all together another thing to translate recommendations into reality.

The recommendations in this report cannot be implemented in one or even two years. They can be, however, systematically phased-in over a multi-year period of time – between 2002 and 2010.

The impact of spreading the recommendations over that period of time is to dramatically lessen the annual impact from new expenditures. It also enables schools more time to prepare for, and absorb, the impact of changes.

It should be noted that 16 recommendations in this report do not call for new expenditures of funds. The Task Force believes that those recommendations should be acted on immediately.

Ten of the new recommendations call for expenditures of $400,000 or less. The Task Force believes that those recommendations should also be addressed as quickly as possible.

The recommendations for *More at Four*, class size reductions, extended employment for some teachers, additional school construction funds, and weighted funding for at-risk young people, represent major investments. The Task Force has designed a phase-in plan that would spread those investments between now and 2010.

What follows is a timeline that the Task Force offers to the governor, to the members of the General Assembly, and to the State Board of Education - the policymakers who can transform North Carolina schools for the future.

No or low-cost initiatives

2002: Establish a Cabinet for Children and Youth and seek modest funding to support the work of the Council. see p. 28

2002: Provide school systems greater flexibility in the area of teacher assistant positions by allowing full flexibility with teacher assistant positions. see p. 32-33

2002: Enable retired teachers to resume full-time teaching with no loss of retirement benefits beginning 60 days after their retirement date. see p. 18

2003: Approve placing a school construction bond issue on the 2004 ballot. see p. 32

2002: Direct the Education Cabinet to initiate a campaign to disseminate models of effective collaborative programs through which public schools and community colleges are providing early entry and access to community colleges and encourage replication of similar programs across the state. see p. 25

2002: Direct the Education Cabinet to establish a distance-learning task force and use the resources of all three systems to dramatically increase distance course offerings to high schools across the state. The task force should determine what start-up financial support, if any, is required and work together in the 2003 Session of the General Assembly to gain support for the initiative. see p. 25-26

2002: Revise and strengthen the ABCs accountability plan by making two changes:

- Include an "eliminate the gap" measure in the portion of the ABCs program that establishes goals determining cash awards for high performance. see p. 31
- Reassess the high school testing program and ensure that the high school exit exam provides diagnostic information for teachers and usable entrance information for colleges and employers. see p. 27

2002: Establish quality standards for mentor teachers by establishing the following policies:

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- Re-establish a required training program for teacher mentors. see p. 16-17
- Set minimum standards for teachers receiving state-paid compensation for teacher mentoring. see p. 16-17
- Give school systems the flexibility to hire retired educators who meet new state standards as teacher mentors. see p. 16-17
- Reimburse mentor teachers $1,000 per teacher mentored. see p. 16-17
- Beginning in school year 2004-05, withhold teacher mentor compensation to school systems employing mentors who do not meet minimal standards and/or who have not undergone state-required training. see p. 16-17

2002: Establish a system of "earned flexibility" that will grant greater or lesser financial flexibility to school systems, based on their ability to show measurable student performance gains over time. This policy should go into effect in the 2003-04 school year. see p. 31

2002: Launch an initiative aimed at training and retraining teachers at all grade levels on more effective strategies for teaching reading. This initiative will require modest financial support in 2002-03 for developing training packages and it will require additional General Assembly support in the following years for delivery of the training. see p. 15

2002: Initiate regional briefings of potential partners, especially those from corporations and private foundations, in an effort to keep them abreast of state priorities and in an effort to align partnerships to the goals of higher student performance. see p. 29

2002: Direct the State Board to actively promote or, where appropriate, require local school systems to take the following actions:

- Create "grow your own" programs aimed at identifying teachers with leadership potential to undergo formal developmental programs created within school systems. see p. 20
- Include teacher retention data as a formal part of the evaluation process for assistant principals, principals, personnel directors, and school superintendents. see p. 22
- Offer locally provided training to all middle school counselors on working with all students to raise their aspiration levels and to register for courses that will give them the widest range of educational options upon completion of high school. see p. 26
- Include a broad range of quality indicators in the building-level report cards that state law now requires to be given to the public on an annual basis; such indicators should include, but not be limited to, data on performance gaps, qualifications of teachers, teacher and administrator turnover data, suspension rates, incidents of student violence, and the clearest possible explanation of student performance overall. see p. 13

Initiatives requiring legislative action/funding

The recommendations listed in the chart on the following page require both the approval of the General Assembly and either a new appropriation or a reallocation of money. The chart is offered as an example of how the initiatives could be phased in enabling the state to spread the cost of new initiatives over the years between now and 2010. Such a phase-in approach will enable the state to have an educational infrastructure in place by 2010 – the year in which the state aspires to be a national educational leader.

It should be noted that a phase-in plan reflects, at most, an average of 1.52% per year over today's level of educational spending. Because of the budget shortfall confronting the state, the first year of the sample phase-in schedule is the smallest.

INITIATIVES PHASE-IN PLAN

Making North Carolina The Nation's Education Leader by 2010

The proposals in this report amount to a total of $720,792,738. These programs would either be offset by budget reductions or call for an average increase in spending of no more than 1.52% per year.

	Year 1 2002-03	Year 2 2003-04	Year 3 2004-05	Year 4 2005-06	Year 5 2006-07	Year 6 2007-08	Year 7 2008-09	Year 8 2009-10
The Easley Agenda								
Expand *"More at Four"*	$28,100,000 R	$62,146,811 R	$50,696,975 R	$56,157,552 R				
Reduce class size gr.1-3 (1:15 in needy schools)	$26,200,000 R	$25,400,000 R	$49,100,000 R					
Strategy 1: Intensify reading focus								
Strategy 2: Ensure High Quality Teacher Corps								
Require and provide teacher mentor training		$150,000 R						
Create a "one-stop" teacher recruitment center	$300,000 R							
Expand number of Teaching Fellows awards	$205,000 R	$205,000 R	$205,000 R	$205,000 R				
Fund NC TEACH when federal funds end	$850,000 R							
Attract educator teams to low-performing schools		$343,000 NR	$271,200 NR	$271,200 NR	$271,200 NR			
Quality clearinghouse for staff development	$350,000 R							
Strategy 3: Develop Superior Leaders								
Increase number of Principal Fellows scholarships	$625,000 R	$625,000 R	$625,000 R	$625,000 R				
Increase principals training programs		$250,000 R						
Research tools and support	$150,000 NR	$75,000 R						
Principals' training in retention	$125,000 NR	$114,800 R				($64,800)*		
Attract principals to low-performing schools		$250,000 R						
Strategy 4: Reform High School Experience								
Spur creation of smaller and more focused high schools		$4,200,000 NR	$8,400,000 NR	$12,600,000 NR		($4,200,000)**	($4,200,000)	
Expand high school offerings through distance learning	$350,000 R							
Strategy 5: Strengthen School/Community Ties								
Create a State Cabinet for Children and Youth	$175,000 R							
Promote stronger parental involvement		$4,575,000 R						
Strategy 6: Invest More, Demand More								
Create more time for instruction		$9,000,000 R	$9,000,000 R	$9,000,000 R	$9,000,000 R			
Create a weighted funding formula for at-risk youth		$62,400,000 R	$62,400,000 R	$62,400,000 R	$62,400,000 R			
Increase school construction fund		$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$10,000,000 R
ANNUAL TOTAL	$57,430,000	$184,734,611	$195,698,175	$156,258,752	$86,671,200	$15,000,000	$15,000,000	$10,000,000

* represents a reduction in funding to reflect the completion of the initial training. The $50,000 remaining in recurring funds is for principals in low-performing schools and others who were not part of the initial training.

** represents a decrease of $4.2 million in funding in years 2007-08 and 2008-09.

NR = Nonrecurring (one-time cost)
R = Recurring

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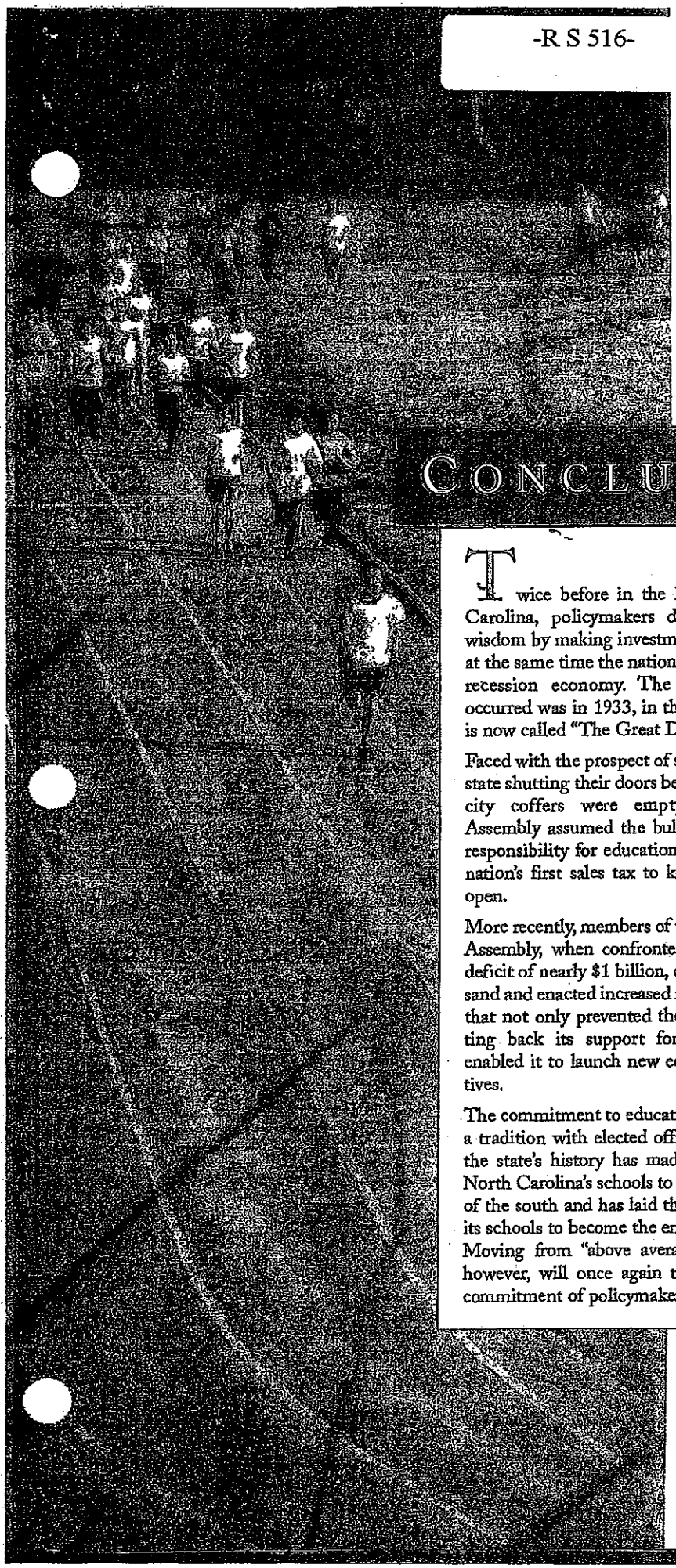


Conclusion

Twice before in the history of North Carolina, policymakers defied traditional wisdom by making investments in education at the same time the nation was gripped by a recession economy. The first time that occurred was in 1933, in the depths of what is now called "The Great Depression."

Faced with the prospect of schools across the state shutting their doors because county and city coffers were empty, the General Assembly assumed the bulk of the funding responsibility for education and enacted the nation's first sales tax to keep school doors open.

More recently, members of the 2001 General Assembly, when confronted with a budget deficit of nearly $1 billion, drew a line in the sand and enacted increased revenue measures that not only prevented the state from cutting back its support for education, but enabled it to launch new educational initiatives.

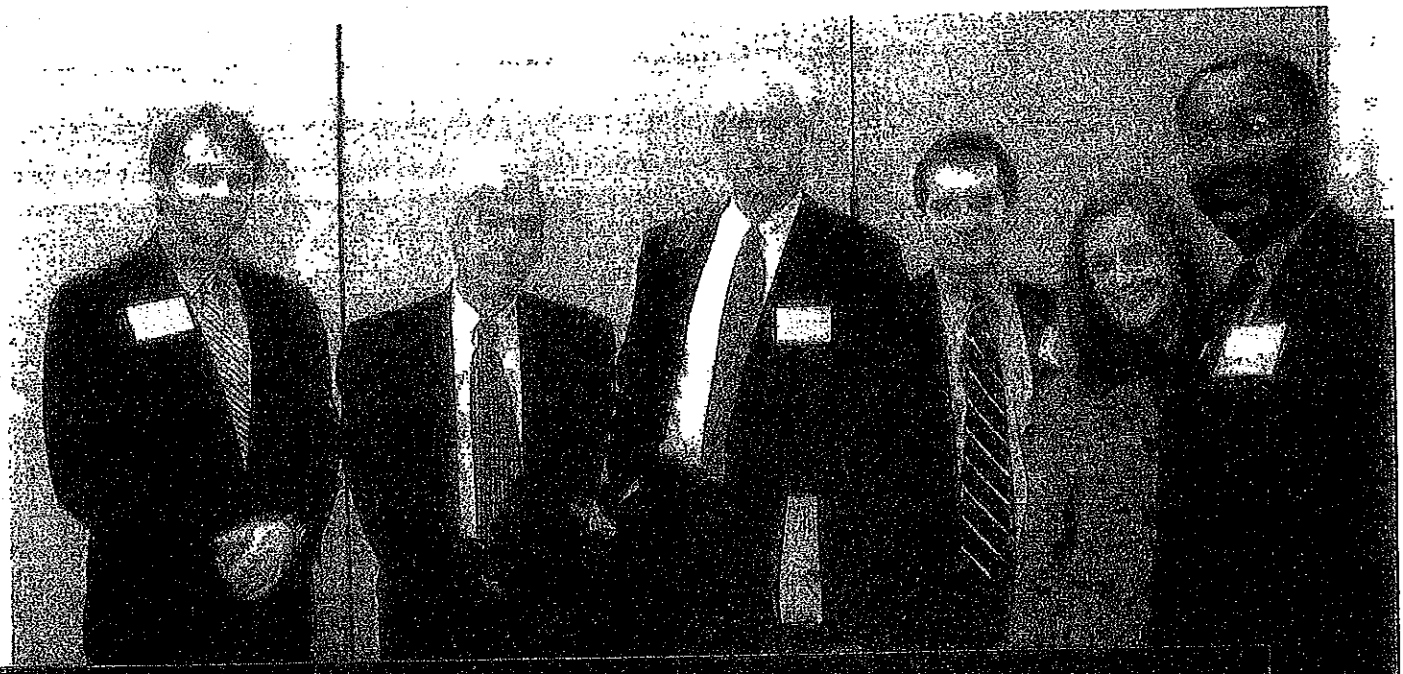
The commitment to education that has been a tradition with elected officials throughout the state's history has made it possible for North Carolina's schools to become the envy of the south and has laid the foundation for its schools to become the envy of the nation. Moving from "above average" to superior, however, will once again test the will and commitment of policymakers.

The report of the Education First Task Force is not the first report that views education as the key to North Carolina's future. It echoes the findings of a flurry of recent studies conducted by North Carolinians – the Progress Board, the Rural Prosperity Task Force, the Commission on Raising Achievement and Closing Gaps, to name but a few.

In issuing these recommendations, the Task Force is mindful of the short- and long-term economic challenges facing lawmakers. It is equally mindful, however, that recessions end and North Carolina has the opportunity to position itself to compete with states across the country for high quality industry and jobs by creating a highly skilled workforce.

In closing, the Task Force would remind policymakers that the drive to make North Carolina a national leader is not a drive to improve the image of the state. It is not a contest. It is about North Carolina's children. It is about the future of the state.

Leadership has made North Carolina schools stronger than they have been at any time in its history. North Carolina's young people, however, are merely performing above average for the first time in the state's history. It is up to this generation of policymakers to take the final steps to create an educational legacy that will live on for generations. It is time to finish the job.



Special Thanks

The scope of the work of the Governor's Education Task Force was enormous. Task Force members came together on 20 occasions; they visited schools from one end of North Carolina to the other; they heard from educational experts from Washington, Denver, and Georgia. Our work would not have been possible without the generous support of three businesses and one foundation who share the Task Force's commitment to education. The Task Force gratefully acknowledges these organizations for their support of education in North Carolina.

- GlaxoSmithKline
- IBM
- Progress Energy (CP&L)
- The Z. Smith Reynolds Foundation

The work of the Governor's Education First Task Force was also made possible through the support of a number of organizations that donated their time and energies to supporting the work of the Task Force. Providing the primary staff support to the effort were:

- The Public School Forum of North Carolina
- The North Carolina Education Research Council
- The Department of Public Instruction
- The Regional Education Lab at SERVE

Other associations, state agencies, and regional and national organizations played an invaluable role in providing data to the Task Force, meeting with committees of the Task Force, and serving on visitation teams as part of the examination of Hallmarks of Excellence schools. Lending additional support to the Task Force were:

The North Carolina Community College System

The University of North Carolina

The North Carolina Association of School Administrators

The North Carolina School Boards Association

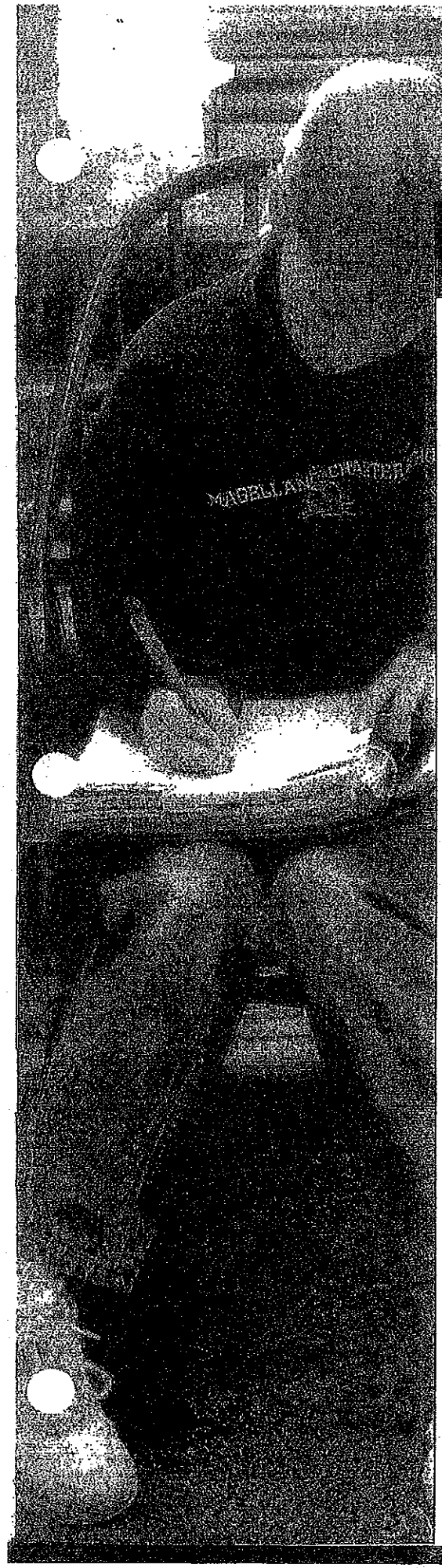
The Principals' Executive Program

The Southeast Center for Teaching Quality

The Education Commission of the States

The Georgia Partnership for Educational Excellence

The RAND Corporation



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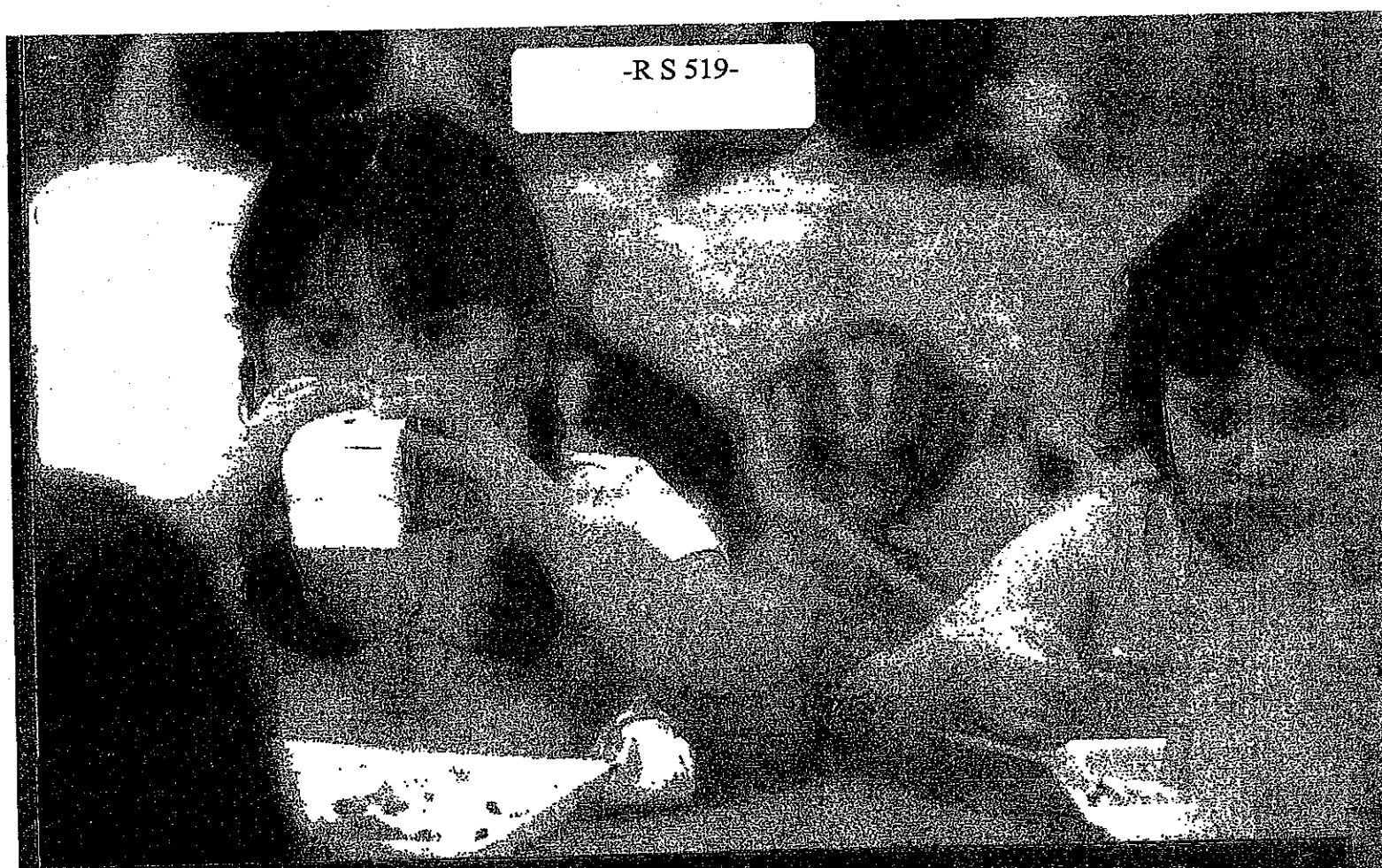


HALLMARKS OF EXCELLENCE SCHOOLS

Elementary Schools

Amay James Montessori School, *Mecklenburg County*

Baskerville Elementary School, *Nash County*

Kingswood Elementary School, *Wake County*

Pollocksville Elementary School, *Jones County*

Rock Ridge Elementary School, *Wilson County*

South Hoke Elementary School, *Hoke County*

Middle Schools

Brawley Middle School, *Halifax County*

Brevard Middle School, *Transylvania County*

Magellan Charter School, *Wake County*

High Schools

William G. Enloe High School, *Wake County*

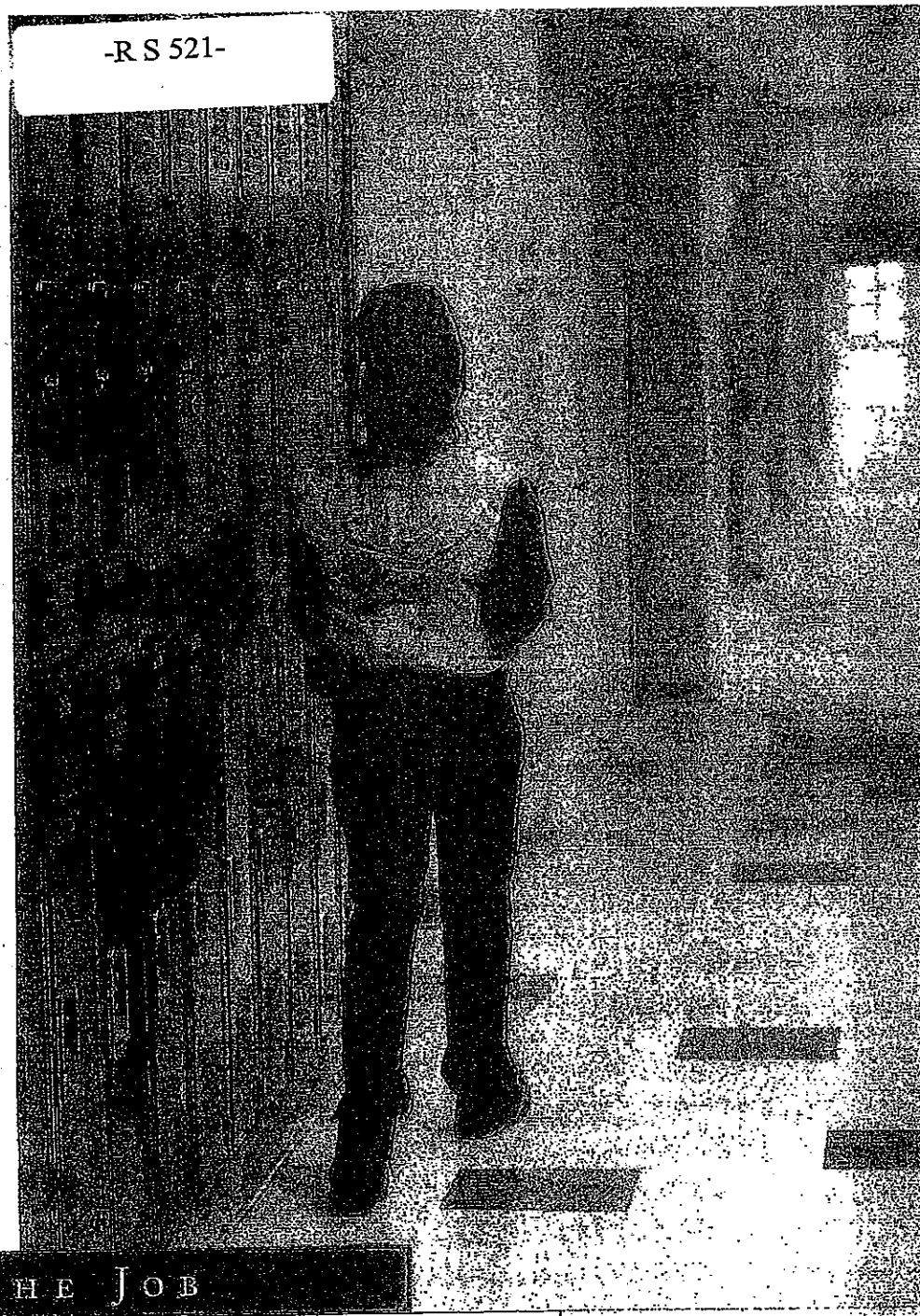
Emsley A. Laney High School, *New Hanover County*

Murphy High School, *Cherokee County*

SR1 00104

SR1 00105

-R S 521-



Let's Finish the Job

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002

SR1 00106

General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
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RALEIGH, NC 27602

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July 19, 2002

Via Fax & Regular Mail

Thomas J. Ziko
Special Deputy Attorney General
Education Section
Department of Justice
State of North Carolina 27602-0629

Re: Hoke County Board of Education, et al. vs. State of North Carolina, et al. 95 CVS 1158, Wake County

Dear Mr. Ziko:

I am in receipt your letter of July 5, 2002, with enclosed assorted documents purporting to fulfill the State of North Carolina's obligation to "keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court" Section Four, p. 111, para. 8.

In your letter, you stated, in pertinent part:

The State has also focused on your determination that at a minimum the constitutional requires the State to guarantee that every child has the opportunity to attend a public school which has the following resources:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in the classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective

instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education can be met. Section Four, pp. 109-110.

Aside from these concerns, the State was mindful that the Court had previously found that pre-kindergarten educatipnal programs must be expanded at a reasoned and deliberate pace to serve all of the at-risk children in North Carolina that qualify for such programs. Section Two, p. 43.

In fulfillment of its reporting obligations, the State is submitting the attached materials. These materials document some of the actions that the State has taken since the last hearing to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools.

Last, but not least, you stated:

Of course, all of the State's present efforts to improve educational opportunities in the public schools must be examined and evaluated in the context of the present budget crisis. At this point in time, the General Assembly has not passed and the Governor has not signed a revised budget for the 2003-03 fiscal year.

I have now had the opportunity to read the materials that the State submitted on July 5. I read with some interest the Reports from the Governor's *Education First Task Force*, especially *Lets Finish the Job, Building a System of Superior School, Spring 2002*. In that report, the Task Force recommended that the state expand the *More at Four* Pre-Kindergarten Program to serve the state's 40,000 at-risk four year olds with high quality educational opportunities: *Research demonstrates that one-third of entering kindergarten children come to school without important literacy skills, such as letter recognition. Governor Easley has begun a statewide pre-kindergarten program, More at Four, serving 1,600 four-year olds across the state. The state should phase in the More at Four Program until all 40,000+*

at-risk four year olds have access to high quality pre-kindergarten programs that prepare them for kindergarten and further success in school. (p. 13)

In addition, the Task Force came up with a number of Findings and Recommendations with respect to education in North Carolina, some of which are set out below:

FINDINGS:

Finding 2: Progress is good but insufficient.
Finding 3: Teachers are the linchpin to student success.
Finding 4:NC must focus as much on teacher retention as on recruitment.
Finding 5:Leadership is an indispensable factor in superior schools.
Finding 6:Successful schools reflect some enduring principles. The educators, business leaders, elected officials, and parents who participated in visitations to the "Hallmarks of Excellence" schools found that these schools did a small number of things very well - and those things were different in different schools..... The schools typically focused on shared goals, were results driven, were well led; they were schools in which teachers and administrators believed that all children could learn. Task Force members also found that these schools did not make excuses for their students. Because a student was labeled "at-risk" did not give Hallmark schools an excuse for low performance.
Finding 7: School improvement is an economic imperative.
Finding 8: NC must break with tradition in its drive for superior schools.
Finding 9: NC must realize that schools can't do it alone.
(pp 9-12)

STRATEGIES AND RECOMMENDATIOS:

Strategy One: Intensify focus on reading throughout K-12.
Strategy Two: Ensure a high-quality and stable teaching force.
Strategy Three: Develop superior leaders for superior schools.
Strategy Four: Reform the high school experience through options and customization.
Strategy Five: Strengthen the home/community/school connection.
Strategy Six: Invest more, demand more; building greater capacity and accountability in our schools. (pp 14-35)

With respect to *More at Four*, the pre-kindergarten program for at-risk children, the Task Force *recommended funding* the

expansion of the program to the tune of some $28,000,000 dollars for the 2002-2003 fiscal year. The ***More at Four*** pre-kindergarten program materials submitted with the State's report shows that the ***More at Four*** program is appropriate State action to assist the State's four year old at-risk children in obtaining a sound basic education. Such a program has been determined by the Court to be necessary to help those children have the opportunity to obtain a sound basic education as required by the Constitution.

Reduced to essentials, the *More at Four* pre-kindergarten program complies with this Court's Order requiring the State of North Carolina to provide the at-risk children of the State with the opportunity to obtain a sound basic education and the continued expansion of the program would show compliance with this Court's previous Order and the Final Judgment.

With all due respect to the *Education First Task Force* and its reports, this case is about the constitutionally required opportunity to obtain a sound basic education. While the Task Force certainly addresses many of the same issues addressed by the Court in its decisions and comes to many similar findings and conclusions as found by the Court in this case, the Task Force **is merely advisory.** In stark contrast, however, the Court's **Orders in this case are not advisory and require action on the part of the State of North Carolina.** Based on the materials submitted in your letter of July 5, it appears clear to the Court that the State, including the lawyers in the Attorney General's office, has failed to appreciate this distinction and elected to do little, if anything, in order to comply.

Rather than re-invent the wheel, part of the Court's Memorandum of Decision and Order of April 4, 2002 is reprinted below. The State of North Carolina, and more specifically, the lawyers in Attorney General's office, the Superintendent of Public Instruction and the State Board of Education, including its Chairman, should pay particular attention to the following:

DISCUSSION

The State of North Carolina admits that the evidence presented during the September and Ootober hearings "clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the current resources available to North Carolina public schools."

The State of North Carolina admits that "all the evidence shows that the keys to improving student performance are: Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to students; Continual assessment of the students' understanding of the lesson; and Individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means." (Br. 1/31/02, pp 54-56)

The clear, convincing and credible evidence presented in this case, for the reasons set forth in this Memorandum of Decision and in Sections One, Two and Three (as amended) of the prior Memoranda of Decision, demonstrates that the State of North Carolina knows full well what needs to be done to effectively provide each child with an equal opportunity to obtain a sound basic education.

The clear, convincing and credible evidence presented in this case also demonstrates that there are many children at-risk of academic failure who are not being provided with the equal opportunity to obtain a sound basic education as mandated by the Constitution of this State. These children are located in Hoke County, as well as throughout the State. The primary provider of their education, in each instance, is the LEA in whose district they reside.

Up until now (except for the most grievous schools) when the at-risk children in an LEA, such as HCSS, are not being provided with the equal opportunity to obtain a sound basic education, the State of North Carolina stands back and points the finger of blame at the LEA for the failure of the children to obtain a sound basic education.

In the case of HCSS, the State argued that due to the fact that there are successful educational programs and strategies that can be implemented with the resources the State provides, then and in that event, "if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can only be due to lack of leadership and sustained effort." (Br. 1/31/02)

The bottom line is that the State of North Carolina has consistently tried to avoid responsibility for the failures to provide at-risk students with the equal opportunity for a sound basic education in LEAs throughout the state by blaming the

failures on lack of leadership and effort by the individual LEAs.

The Supreme Court in Leandro clearly and unmistakably held to the contrary and found that the North Carolina Constitution provides every child with the right to receive an equal opportunity to a sound basic education and that it was the General Assembly, under Article IX, Section 2(1) that "has the duty of providing the children of every school district with access to a sound basic education." (Leandro p. 353)

This Court, following Leandro's mandate, has rejected the State of North Carolina's flawed argument that "it" is not responsible for educational failures in LEAs that are not providing their at-risk children with the equal opportunity to receive a sound basic education and has determined, just like the Supreme Court did on July 24, 1997, that the State is ultimately responsible and cannot abdicate its responsibility to the LEA.

That having been said, the State's denial of responsibility fails as a matter of law. It is now, and always has been, the ultimate responsibility of the State to provide the equal opportunity to a sound basic education to all children. (Article I, Section 15; Article IX, Section 2(1), North Carolina Constitution)

This Court has, in accordance with Leandro, Ordered the State, not the LEAs, to fix the deficiencies that exist with at-risk children. This is so because the LEAs, like the counties themselves, are mere subdivisions of the State. The LEAs were created by the State for its own convenience in order to assist the State in performing its constitutional duty to provide each and every child with the equal opportunity to obtain a sound basic education through its free public school system. It is up to the Executive and Legislative Branches to provide the solution to the constitutional deficits with at-risk children. These branches can no longer stand back and point their fingers at individual LEAs, such as HCSS, and escape responsibility for lack of leadership and effort, lack of effective implementation of educational strategies, the lack of competent, certified, well-trained teachers effectively teaching children, or the lack of effective management of the resources that the State is providing to each LEA.

The State of North Carolina must roll up its sleeves, step in, and utilizing its constitutional authority and power over

the LEAs, cause effective educational change when and where required. It does not matter whether the lack of an equal opportunity to obtain a sound basic education is caused by teachers, principals, lack of instructional materials or other resources, or a lack of leadership and effort.

The State must step in with an iron hand and get the mess straight. If it takes removing an ineffective Superintendent, Principal, teacher, or group of teachers and putting effective, competent ones in their place, so be it. If the deficiencies are due to a lack of effective management practices, then it is the State's responsibility to see that effective management practices are put in place.

The State of North Carolina cannot shirk or delegate its ultimate responsibility to provide each and every child in the State with the equal opportunity to obtain a sound basic education, even if it requires the State to spend additional monies to do so.

The State of North Carolina has steadfastly represented to this Court and to the citizens of North Carolina that the State is "continuing to appropriate additional funds and initiate new programs to assure that students enrolled in North Carolina public schools are receiving the opportunity to acquire a sound basic education."

In the final analysis, if the State is true to its word about providing sufficient appropriate funding for each child to have the equal opportunity to obtain a sound basic education, the State should be able to correct the educational deficiencies which are denying at-risk children the equal opportunity to obtain a sound basic education by requiring LEAs that are not getting the job done to implement and maintain cost-effective, successful educational programs in their schools as required by Leandro. If not, then the State will have to look for other resources to get the job done.

Make no mistake. While the State can require the LEAs to take corrective action, it remains the State's responsibility, through forceful leadership and effective management, to show an ineffective LEA, or an ineffective school within an LEA: (1) how to get the job done if the LEA's leadership and educational staff is ineffective and inept; (2) how to cost-effectively manage and allocate the resources which the State contends it so adequately provides to support each child's equal opportunity to receive a sound basic education; and (3) how to implement

effective educational programs, using competent, well-trained certified teachers and principals.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution, as interpreted by Leandro, guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum:

> First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.
>
> Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.
>
> Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

2. That there are children at-risk of educational failure who are not being provided the equal opportunity to obtain a sound basic education because their particular LEA, such as the Hoke County Public Schools, is not providing them with one or more of the basic educational services set out in paragraph 1, above.

3. That the State of North Carolina is ultimately responsible for providing each child with access to a sound basic education and that this ultimate responsibility cannot be abdicated by transferring responsibility to local boards of education. *Leandro pp. 347,351*

4. That the State of North Carolina is ORDERED to remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in paragraph 1, whether they are in Hoke County, or another county within the State.

5. The nuts and bolts of how this task should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government. By directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best to remedy the identified constitutional deficiencies.

6. This Court's prior Memoranda of Decisions entered on October 12, 2000 (Section One); October 26, 2000 (Section Two); March 26, 2001 (Section Three) as amended by Order entered May 29,2001, are incorporated as part and parcel of this Memorandum of Decision and Judgment. All Four Memoranda of Decision constitute the Decision and Judgment of this Court.

7. The State of North Carolina is directed to keep the plaintiff-parties fully informed of the progress of its efforts to remedy the constitutional deficiencies identified and the plaintiff-parties are directed to fully cooperate with the State of North Carolina in accomplishing its task.

8. The State of North Carolina is directed to keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court.

9. This Court retains jurisdiction over this matter for purposes of resolving any remaining issues, including, but not limited to, enforcement of this Judgment as provided by Leandro. (emphasis added)

The bottom line is that the materials submitted by the State of North Carolina to the Court, while commendable in their content and aspirations for the school children of North Carolina, *do not show any effort* by the State to take remedial

actions as Ordered and thus do not satisfy the reporting requirements set forth by the Court in its Memorandum and Order of April 4, 2002 and set out above.

In this regard, there is nothing indicating any contact or communications between the State and the plaintiff and plaintiff-intervenor LEAs with respect to taking any action to remedy the educational opportunity deficiencies in Hoke County, Halifax County or any other county. The State clearly knows what needs to be done and has represented to this Court in its briefs that it knows how to accomplish the task within the resources currently available, especially in Hoke County:

The evidence presented during this phase of the proceedings clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the resources currently available to North Carolina public schools. In light of that fact, Defendants submit that if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can be only due to lack of leadership and sustained effort.

All the evidence shows that the keys to improving student performance are: Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to students; Continual assessment of the students' understanding of the lesson; and individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means.

(Def. Br. 1/31/02 p. 55)

Defendants' contend that, as long as Plaintiffs' attitude is 'we can't afford to do better,' the Court is not likely to see the cost-effective allocation of available resources to innovative programs to improve opportunities for lower-performing students in HCSS. For example, HCSS could reduce class size in its elementary school having the lowest percentage of students at grade level (West Hoke) by relocating teachers from the elementary school with the highest percentage of students at grade level (Rockfish), but HCSS did not do that because it would not be 'fair' to Rockfish..... HCSS could distribute its teacher salary supplements so as to provide a greater supplement to teachers willing to teach a greater percentage of at-risk students, but it does not. HCSS could distribute its instructional supply funds to schools on the

basis of relative student need instead of ADM, but it does not. (Defs' Reply Brief, p 12, 2/18/02)

Despite these representations to the Court, on the record, and the State's obvious knowledge of how to educate at-risk children within the "resources currently available to North Carolina public schools" there has been no evidence of any efforts by the State, at least in the materials submitted, to directly assist HCSS, or for that matter any other plaintiff or plaintiff-intervenor LEA, with any assessment, analysis or the reallocation of available resources to help them better meet their constitutional obligations, as agents of the State.

Again, let there be no mistake. The North Carolina Constitution, as interpreted by the Supreme Court, holds the State of North Carolina responsible for providing all children with the equal opportunity for a sound basic education.

Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. Leandro, p 350.

To accomplish this mandate and provide the equal educational opportunities required, there has to be remedial action, communication, and cooperation between the State and the LEAs, its statutory agents, to carry out the constitutional mandate and the Orders of the Court. The State of North Carolina, through its educational agencies, the DPI and Board of Education know full well how to provide assistance.

The Final Judgment was filed on April 4, 2002. School starts on August 7, 2002, and from the State's report it appears that nothing concrete has been done whatsoever to assist HCSS or any other school system in need of assistance from the State, with implementing a plan for the cost-effective allocation of available resources to innovative programs to improve the educational opportunities for at-risk children.

Before finally deciding what action to take, and to make sure that there has been no "miscommunication" or "omission" of relevant facts in the State's Report, I am going to deal with the July 5 Report by letter at this point and make the following requests:

(1) In the event that the State of North Carolina has in fact been in contact and assisting HCSS and other plaintiff counties as directed, but ***failed, by oversight or misunderstanding the Court's Order, to put this information in the materials which were provided to the Court on July 5***, then the State of North Carolina has ten (10) days from today in which to amend/modify its report to the Court so as to comply with the Court's Order. This amendment/modification is to be signed off on by the Superintendent of Public Instruction and the Chairman of the State Board of Education.

(2) In the event that the State of North Carolina, through its Department of Public Instruction and the State Board of Education has in fact taken no remedial action as directed, the Court will expect a separate Report, in writing within ten (10) days from today as to exactly when and in what manner, the State of North Carolina intends to begin complying with the Court's Order. This Report is to be signed off on by the Superintendent of the Public Instruction and the Chairman of the State Board of Education.

Based on the State of North Carolina's response, the Court will determine whether or not a formal hearing, or other proceedings will be necessary to enforce the Constitutional rights of the children of North Carolina to have the opportunity to receive a sound basic education as so clearly written by the Supreme Court of this State.

We conclude that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. Leandro, p. 347.

Sincerely,

Howard E. Manning, Jr.

Cc: The Honorable Michael F. Easley
Robert W. Spearman, Esq.
Ann Majestic, Esq.

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	95-CVS-1158
HOKE COUNTY BOARD OF EDUCATION, *et al.*, Plaintiff-Appellants, and ASHEVILLE CITY BOARD OF EDUCATION, *et al.*, Plaintiff-Intervenors, v. STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION; Defendant-Appellees.	**NOTICE OF FILING**

NOW COME plaintiffs and give notice of filing of the following materials, true and correct copies of which are attached hereto:

1. Executive Order No. 24 (July 24, 2002)

2. Press Release from the Office of the Governor, "Easley Moves Ahead with More at Four and Class Size Reduction" (July 24, 2002)

3. Letter from Governor Easley to Attorney General Roy A. Cooper, III (May 2, 2002)

4. Press Release from the Office of the Governor, "Easley Urges 'Fast Track' for Leandro" (May 2, 2002)

5. Press Release from the Office of the Attorney General, "Statement from Attorney General Roy Cooper regarding the Leandro case" (May 2, 2002)

Respectfully submitted this the 26th day of July, 2002.

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Attachment 1

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 24
ACCELERATING TEACHER RECRUITMENT AND HIRING FOR *MORE AT FOUR* AND CLASS SIZE REDUCTION IN LIGHT OF JUDICIAL REQUIREMENTS, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

In September 2001, the General Assembly ratified and I, as Governor, signed a budget for the State of North Carolina that allocated funds to establish a pre-kindergarten program for at-risk children, known as *More at Four*, and to reduce class sizes.

Pre-kindergarten programs for at-risk children and class size reduction are necessary for improving educational opportunity and outcomes for children across North Carolina. In addition, these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the State's persistently high dropout rate, increasing college enrollments, and meeting other education challenges.

Moreover, improving public education is the key to a better-prepared workforce that is able to attract quality jobs, strengthen our economy, and improve the quality of life for all citizens.

The current proposed House Budget includes expanded funding for *More at Four* and class size reduction. While the General Assembly continues working to ratify a final budget I can sign, the school year for the majority of North Carolina's children will start imminently.

In addition, the school funding lawsuit, known as *Leandro*, has now reached a crisis point.

Nearly two years ago, in October 2000, the Superior Court Judge assigned by the Supreme Court of North Carolina to oversee *Leandro* ordered that pre-kindergarten educational programs for at-risk children must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs.

Three months ago, in April 2002, the Court explicitly re-affirmed the October 2000 judgment with regards to pre-kindergarten programs. In addition, the April ruling found that at-risk children need smaller classes in early grades and that every classroom

provide differentiated, individualized instruction. Such individual attention, of course, requires smaller class sizes.

On July 19, 2002, the Court made clear that the prior judgments, including the mandates of *More at Four* and individualized instruction in early grades, remained in effect and were not being complied with.

NOW THEREFORE, in light of the factual circumstances set forth above, and under the legal authority vested in me as Governor by Article III of the Constitution of North Carolina, N.C.G.S. § 143-23, and decisions by the Supreme Court of North Carolina interpreting N.C.G.S. § 143-23, I hereby AUTHORIZE and INSTRUCT:

(1) The Director of the *More at Four* Pre-Kindergarten Program, in conjunction with the Co-Chairs of the *More at Four* Task Force (the Superintendent of Public Instruction and the Secretary of the Department of Health and Human Services), to recruit the teachers necessary to expand the program; and,

(2) The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the additional teachers necessary to reduce class sizes in kindergarten and first grade beginning with the 2002-03 school year.

This Executive Order is effective July 24, 2002.

Done in the Capital City of Raleigh, North Carolina, this 24th day of July 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

Attachment 2

Michael F. Easley
Governor

State of North Carolina
Office of the Governor

For Release: **Immediate**
Date: July 24, 2002

Contact: Cari Boyce/Fred Hartman
Phone: (919) 733-5612

EASLEY MOVES AHEAD WITH *MORE AT FOUR* AND CLASS SIZE REDUCTION

Begins Recruitment Efforts for New Teachers

Raleigh –Gov. Mike Easley today announced that he is moving ahead with expansion of *More at Four*, the state's pre-kindergarten program for at-risk four-year olds, and with class size reduction in kindergarten and first grade classrooms throughout the state. He has instructed the State Department of Public Instruction to hire the necessary teachers to continue the class size reduction programs begun last year and he has ordered the *More at Four* office to begin expansion of the program to an additional 6,000 at-risk four-year olds.

"Our school children can not wait on the legislative process," said Easley. "Schools across the state are beginning their new year. They need to have the teachers to reduce class size now, not a month from now. I am directing superintendents to begin hiring the teachers we need. I am also instructing the *More at Four* office to get the programs in place to serve our at-risk four-year olds.

"Only in Raleigh would someone make the argument that we cannot educate our children because it is not convenient with the legislative leadership."

Easley signed Executive Order 24 directing DPI to expand class size reduction to first grade. Under his directive, kindergarten and first grade classrooms will be reduced to a ratio of 1:18 and approximately 900 new teachers will have to be hired for the 2002-03 school year. *More at Four* will be expanded to an additional 6,000 children and will require as many as 333 new teachers. The *More at Four* program may also use existing classrooms, which may require fewer new teachers.

"The early years are tough and test resilience of children," said Easley. "I do not want us to find ourselves in the position we were in last year when late funding caused children to be moved into smaller classes with different friends and different teachers after they had already bonded."

The *More at Four* expansion is estimated at $28 million and expansion of the class size reduction efforts will total approximately $26.2 million.

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Governor's Press Office
State Capitol, Raleigh, NC 27603-8001
(919) 733-5612 - Toll Free 1-800-662-7005
FAX (919) 733-5166

Attachment 3

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

May 2, 2002

The Honorable Roy A. Cooper, III
Department of Justice
Attorney General's Office

VIA HAND DELIVERY

Dear Attorney General Cooper:

As your office contemplates appeal in the *Leandro* litigation, I encourage you to consider a "fast track" appeal directly to the State Supreme Court. A "fast track" appeal will allow the state to get a definitive decision quickly and avoid continued protracted litigation.

I do want to make clear again that there should be no doubt that North Carolina has made, and will continue to make, substantial educational progress irrespective of the litigation. In just the past year, we have instituted a statewide pre-kindergarten program for at-risk four-year olds (known as *More At Four*), begun reducing class size in grades K-3, taken actions to improve low-performing schools and erase achievement gaps, and expanded initiatives to attract and retain talented teachers.

Prior efforts are also yielding demonstrable results. For example, according to the National Assessment of Educational Progress (NAEP), North Carolina led the nation in gains in math at the 4th and 8th grades during the 1990's and was tied for second in reading gains. We are one of only two states to close the achievement gap between whites and minorities in 4th grade math and reading. And we have been recognized for the past two years as a national leader in standards, accountability, and improving teacher quality.

During the severe budget shortfall of the past two years, I have been unyielding in my commitment to protect the classroom. Now, I will fight to continue and expand educational initiatives including obtaining an increase in funding for at-risk student programs and class size reduction. The upcoming "short" session gives the General Assembly an opportunity to show its good faith in acting aggressively on these issues.

NCHILTGEN ELDUCHILDN FAX:919-716-6764 May 6 '02 16:06 P.02

Turning again to the *Leandro* litigation, I am pleased that a trial court has now embraced education policy goals consistent with our agenda of early childhood initiatives for at-risk kids and smaller classes. However, I am concerned that the State Supreme Court has never addressed whether they are constitutionally guaranteed. In addition, the trial court's pronouncements on teacher certification and local control may not have been anticipated by the Supreme Court's original ruling in this case. Thus, without a definitive Supreme Court ruling now, future *Leandro*-based lawsuits before other trial judges (or juries) may be decided differently.

We simply cannot afford a return to the "start-stop" education reform that understandably frustrated educators for many years during the 1980's and early 90's. Conversely, a definitive Supreme Court ruling could greatly assist the General Assembly, the Department of Public Instruction, the State Board of Education and this Office. Such a ruling should make clear that specific education goals we deem critical as a matter of good policy, can also garner the approval of the State's highest court as a matter of law.

In order to expedite a definitive decision, any appeal should be "fast tracked" past the Court of Appeals and considered immediately by the Supreme Court. Bypassing the Court of Appeals should hasten significantly the judiciary's final resolution of this legal matter. Put simply, I do not want to see this litigation dragged out for several more years. That would create much uncertainty and hamper our efforts for greater educational progress. And rather than seeking a "stay" now, your office can keep the trial judge informed, per his request, of the many education initiatives being pursued at the state level. I can assure you that my office and the "Education First" task force will cooperate completely.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

Attachment 4

State of North Carolina
Office of the Governor

Michael F. Easley
Governor

Release: **IMMEDIATE**
Date: May 2, 2002

Contact: Cari Boyce
Phone: (919) 733-5612

EASLEY URGES "FAST TRACK" FOR LEANDRO

School Lawsuit Would Go Straight to NC's Highest Court While State Continues Education Progress

Raleigh - Gov. Mike Easley today proposed that the long-running school funding lawsuit known as Leandro be "fast tracked" straight to the Supreme Court and that state officials cooperate with the trial judge awaiting final ruling.

In a letter to the Attorney General, the Governor urged that the case be presented directly to North arolina's Supreme Court so that the justices can quickly and conclusively bring finality to the case.

In addition, Easley asked the Attorney General's office not to seek a "stay" of the trial judge's order now and, instead, keep the judge updated on the State's education policy initiatives as his recent ruling requested. The Governor also vowed to continue pursuing aggressively his education agenda in the upcoming "short" session, particularly the More At Four statewide pre-kindergarten program for at-risk four-year-olds and reducing class size. Both programs are consistent with the trial court's order.

"A fast track appeal with no immediate 'stay' will allow the parties to the lawsuit to get a quick, definitive ruling and put an end to this protracted litigation. At the same time, I will continue working to protect classrooms from budget cuts, expand programs for at-risk children, reduce class size and cooperate with the trial judge. The 'short' session will give the legislature an opportunity to show its good faith in acting aggressively on these issues," Easley said.

A copy of Governor Easley's letter to the Attorney General is attached.

-30-

Office of the Governor
116 W. Jones Street, Raleigh, NC 27603-8001
Phone: (919) 733-5612
Fax: (919) 733-5166
An Equal Opportunity/Affirmative Action Employer

Attachment 3

Roy Cooper
North Carolina Attorney General

For immediate release
Date: May 2, 2002

Contact: John Bason
Phone: 919/716-6413

Statement from Attorney General Roy Cooper regarding the Leandro case:

"Our state must take decisive action now to address the needs of at-risk youth in our public schools. Judge Manning's order contains positive requirements which should be our goals regardless of the court case. Therefore, we will not ask the Court to stay the order so that Judge Manning will continue to be informed of the education initiatives to help at-risk children.

At the same time, we will ask the North Carolina Supreme Court to quickly decide this matter so that education leaders will know definitely and finally from the state's highest court what they must do. Without a definite ruling from the Supreme Court, other education lawsuits could be decided differently which would leave us in a state of confusion.

Our office has conferred with state education leaders, the governor's office and legislative leaders, and we have agreed to ask the state Supreme Court to consider this matter as quickly as possible. We hope for a decision from the Supreme Court before the end of the year so that we can move forward together to help our children.

###

NCATTYGEN EDUCATION Fax:919-716-6764 May 6 '02 16:06 P.04

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

29 July 2002

The Honorable Howard E. Manning, Jr.
Superior Court Judge
Wake County Courthouse
Raleigh, N.C. 27602

Dear Judge Manning:

On behalf of Gov. Mike Easley, I want to thank you for providing our office a copy of your July 19, 2002 letter to Tom Ziko, and for your discussion therein of *More at Four*.

I understand that the Department of Public Instruction and the State Board of Education, with the assistance of the Attorney General's office, are submitting a response to your letter. In addition, I am enclosing a copy of, *inter alia*, Executive Order No. 24, which is intended to ensure the expansion of *More at Four* to serve an additional 6,000 at-risk four-year olds this school year and allocate nearly nine hundred new teachers to reduce class sizes in kindergarten and first grade to a 1:18 ratio across the state this school year.

While the absence of a final budget coupled with imminent school openings necessitated immediate executive action, the General Assembly has supported *More at Four* and class size reduction previously and the Governor is confident the legislature's amended 2002-03 budget will ultimately do so again. Indeed, the current proposed House budget supports expanded funding for *More at Four* and continued implementation of the class size reduction plan approved last year.

The Governor knows the General Assembly is committed to seeing that every at-risk child has every opportunity not just to learn but to excel and that legislators fully appreciate and understand that *More at Four* and reducing class sizes are critical components of any such effort. As work towards a final amended budget progresses, Gov. Easley will continue to emphasize the critical point that in order to best serve at-risk students in particular and students generally, pre-kindergarten services and smaller K-3 class sizes must be provided in tandem.

Research indicates that academically-oriented pre-kindergarten programs prepare at-risk children to learn in kindergarten and reduce, if not eliminate, the gap with their more advantaged peers. Reduced class sizes in the early years allow these students to maintain the gains they achieved in pre-kindergarten programs, and support the learning needs of all children. Pre-kindergarten and class size reduction efforts in isolation of one another may show gains, but the sustained benefits of each program diminish in the absence of the other. (See generally, Rand Foundation, Improving Student Achievement: What State NAEP Test Scores Tell Us (2000)).

In addition to *More at Four* and class size reduction, Gov. Easley is requesting the State Board, in conjunction with DPI, to develop an implementation plan for certain proposals made by the Education First Task Force. The Governor is particularly interested in the Task Force's recommendations for promoting "earned flexibility" to strengthen school accountability, a statewide initiative to improve reading instruction, improved professional development for teachers and principals, increased workforce preparation for high school juniors and seniors, and stronger parental involvement (see, for example, the North Carolina School Report Cards available for viewing at **www.ncreportcards.org**).

Gov. Easley believes strongly that while we are investing heavily in our youngest students, we must also improve efforts on behalf of middle and senior high school students while maintaining our premier public university and community college systems. Above all, the Governor feels that progress delayed is progress denied, and that words of promise are no match for acts that immediately benefit North Carolina's schoolchildren. Materials reflecting Gov. Easley's recent acts to secure significant and immediate educational progress are attached.

Please feel free to contact me if you have any questions regarding this response on behalf of Gov. Easley, and thank you again for the courtesy of directing a copy of your July 19th letter to his attention.

Sincerely,

Hampton Y. Dellinger
Legal Counsel, Office of Gov. Mike Easley

cc: Robert W. Spearman, Jr.
Tom Ziko
Ann Majestic

Attachments

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 24
ACCELERATING TEACHER RECRUITMENT AND HIRING FOR *MORE AT FOUR* AND CLASS SIZE REDUCTION IN LIGHT OF JUDICIAL REQUIREMENTS, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

In September 2001, the General Assembly ratified and I, as Governor, signed a budget for the State of North Carolina that allocated funds to establish a pre-kindergarten program for at-risk children, known as *More at Four*, and to reduce class sizes.

Pre-kindergarten programs for at-risk children and class size reduction are necessary for improving educational opportunity and outcomes for children across North Carolina. In addition, these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the State's persistently high dropout rate, increasing college enrollments, and meeting other education challenges.

Moreover, improving public education is the key to a better-prepared workforce that is able to attract quality jobs, strengthen our economy, and improve the quality of life for all citizens.

The current proposed House Budget includes expanded funding for *More at Four* and class size reduction. While the General Assembly continues working to ratify a final budget I can sign, the school year for the majority of North Carolina's children will start imminently.

In addition, the school funding lawsuit, known as *Leandro*, has now reached a crisis point.

Nearly two years ago, in October 2000, the Superior Court Judge assigned by the Supreme Court of North Carolina to oversee *Leandro* ordered that pre-kindergarten educational programs for at-risk children must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs.

Three months ago, in April 2002, the Court explicitly re-affirmed the October 2000 judgment with regards to pre-kindergarten programs. In addition, the April ruling found that at-risk children need smaller classes in early grades and that every classroom

provide differentiated, individualized instruction. Such individual attention, of course, requires smaller class sizes.

On July 19, 2002, the Court made clear that the prior judgments, including the mandates of *More at Four* and individualized instruction in early grades, remained in effect and were not being complied with.

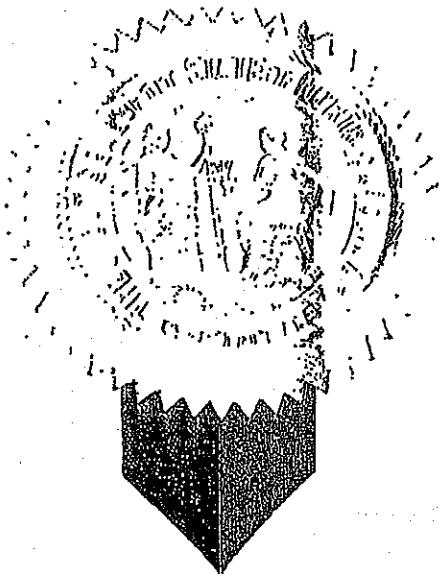
NOW THEREFORE, in light of the factual circumstances set forth above, and under the legal authority vested in me as Governor by Article III of the Constitution of North Carolina, N.C.G.S. § 143-23, and decisions by the Supreme Court of North Carolina interpreting N.C.G.S. § 143-23, I hereby AUTHORIZE and INSTRUCT:

(1) The Director of the *More at Four* Pre-Kindergarten Program, in conjunction with the Co-Chairs of the *More at Four* Task Force (the Superintendent of Public Instruction and the Secretary of the Department of Health and Human Services), to recruit the teachers necessary to expand the program; and,

(2) The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the additional teachers necessary to reduce class sizes in kindergarten and first grade beginning with the 2002-03 school year.

This Executive Order is effective July 24, 2002.

Done in the Capital City of Raleigh, North Carolina, this 24th day of July 2002.



MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

Michael F. Easley
Governor

State of North Carolina
Office of the Governor

For Release: **IMMEDIATE**
Date: July 22, 2002

Contact: Cari Boyce/Fred Hartman
Phone: (919) 733-5612

EASLEY SEEKS COMPLIANCE WITH COURT ORDER IN *LEANDRO*

Calls for Legislators to Implement 'More at Four' and Class Size Reduction

Raleigh – In a letter sent to lawmakers today, Gov. Mike Easley urges state legislators to comply with the *Leandro* court order and move forward with plans to expand *More at Four*, the state's pre-kindergarten program for at-risk four-year olds, and class size reduction. Easley's letter comes after the judge in the case gave the state a 10-day deadline to take action.

"The court order is not going away," said Easley. "We need immediate revenue to implement *More at Four* and address class size, but more importantly, beyond the court order and the case, we must make dramatic progress in education and we must begin immediately.

"The only two items that the judge specifically required are those not being provided by current legislative budgets or otherwise. Both *More at Four* and class size reduction are included in my budget and these are the exact things that we need an education lottery to pay for. "

"The state must act quickly to comply with the court's deadline and avoid further judicial intervention by the courts. I am encouraging legislators to vote in favor of full funding for pre-k and class size reduction programs that are so critical to our children's success in school."

A copy of Easley's letter is attached.

###

Governor's Press Office
State Capitol, Raleigh, NC 27603-8001
(919) 733-5612 - Toll Free 1-800-662-7005
FAX (919) 733-5166

MICHAEL F. EASLEY
GOVERNOR

July 22, 2002

Dear Legislator:

The *Leandro* school funding lawsuit has now reached a crisis point. This past Friday, the judge assigned by the Supreme Court to oversee the case gave the State ten (10) days to "begin complying with the Court's Order" to provide pre-kindergarten services, as *More at Four* does, to at-risk four year olds. According to the court:

> ***Reduced to its essentials, the More at Four pre-kindergarten program complies with this Court's Order requiring the State of North Carolina to provide the at-risk children of the State with the opportunity to obtain a sound basic education and the continued expansion of the program would show compliance with this Court's previous Order and Final Judgment.*** *(emphasis in the original)*

The court has also ordered that schoolchildren be provided "differentiated, individualized instruction," which, of course, requires smaller class sizes.

In order to meet next week's court-ordered deadline, I strongly urge you to support full funding for the pre-kindergarten and class size reduction initiatives set forth in my budget. These programs can be funded by an education lottery, something that every survey shows North Carolinians overwhelmingly support. If the General Assembly fails to act, and act now, the risk of further judicial intervention in the management of our public schools increases dramatically.

Now is the time for all legislators to focus on leadership and to put our children's future ahead of old partisan rivalries. I trust you will provide such leadership and, on behalf of North Carolina's 1.3 million schoolchildren, I thank you for doing so.

With kindest regards, I remain

Very truly yours,

Mike Easley

Michael F. Easley

MFE/hyd

Michael F. Easley
Governor

State of North Carolina
Office of the Governor

For Release: **Immediate**
Date: July 24, 2002

Contact: Cari Boyce/Fred Hartman
Phone: (919) 733-5612

EASLEY MOVES AHEAD WITH *MORE AT FOUR* AND CLASS SIZE REDUCTION

Begins Recruitment Efforts for New Teachers

Raleigh –Gov. Mike Easley today announced that he is moving ahead with expansion of *More at Four*, the state's pre-kindergarten program for at-risk four-year olds, and with class size reduction in kindergarten and first grade classrooms throughout the state. He has instructed the State Department of Public Instruction to hire the necessary teachers to continue the class size reduction programs begun last year and he has ordered the *More at Four* office to begin expansion of the program to an additional 6,000 at-risk four-year olds.

"Our school children can not wait on the legislative process," said Easley. "Schools across the state are beginning their new year. They need to have the teachers to reduce class size now, not a month from now. I am directing superintendents to begin hiring the teachers we need. I am also instructing the *More at Four* office to get the programs in place to serve our at-risk four-year olds.

"Only in Raleigh would someone make the argument that we cannot educate our children because it is not convenient with the legislative leadership."

Easley signed Executive Order 24 directing DPI to expand class size reduction to first grade. Under his directive, kindergarten and first grade classrooms will be reduced to a ratio of 1:18 and approximately 900 new teachers will have to be hired for the 2002-03 school year. *More at Four* will be expanded to an additional 6,000 children and will require as many as 333 new teachers. The *More at Four* program may also use existing classrooms, which may require fewer new teachers.

"The early years are tough and test resilience of children," said Easley. "I do not want us to find ourselves in the position we were in last year when late funding caused children to be moved into smaller classes with different friends and different teachers after they had already bonded."

The *More at Four* expansion is estimated at $28 million and expansion of the class size reduction efforts will total approximately $26.2 million.

###

Governor's Press Office
State Capitol, Raleigh, NC 27603-8001
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FAX (919) 733-5166

ROY COOPER
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. Box 629
RALEIGH
27602-0629

REPLY TO: Thomas J. Ziko
Education Division
(919) 716-6920
FAX: (919) 716-6764

July 29, 2002

VIA HAND DELIVERY
The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Raleigh, North Carolina 27602-0351

Re: *Hoke County Bd. of Educ. v. State*

Dear Judge Manning:

Pursuant to the offer in your July 19, 2002, letter to me, the Chairman of the State Board of Education and the Superintendent of Public Instruction have enclosed the attached letter and materials amending the defendants' ninety-day report filed on July 5, 2002.

In addition, in order to keep you fully informed of events pertinent to your rulings, I have also enclosed a copy of the Governor's Executive Order No. 24, "Accelerating Teacher Recruitment and Hiring for *More at Four* and Class Size Reduction in Light of Judicial Requirements, Budget Developments, and Impending School Openings."

Very truly yours,

Thomas J. Ziko

Thomas J. Ziko
Special Deputy Attorney General

TJZ/af
Enclosures
cc: Bob Spearman (via hand delivery)
Ann Majestic (via hand delivery)
Audrey Anderson (via U.S. Mail)

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 24
ACCELERATING TEACHER RECRUITMENT AND HIRING FOR *MORE AT FOUR* AND CLASS SIZE REDUCTION IN LIGHT OF JUDICIAL REQUIREMENTS, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

In September 2001, the General Assembly ratified and I, as Governor, signed a budget for the State of North Carolina that allocated funds to establish a pre-kindergarten program for at-risk children, known as *More at Four*, and to reduce class sizes.

Pre-kindergarten programs for at-risk children and class size reduction are necessary for improving educational opportunity and outcomes for children across North Carolina. In addition, these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the State's persistently high dropout rate, increasing college enrollments, and meeting other education challenges.

Moreover, improving public education is the key to a better-prepared workforce that is able to attract quality jobs, strengthen our economy, and improve the quality of life for all citizens.

The current proposed House Budget includes expanded funding for *More at Four* and class size reduction. While the General Assembly continues working to ratify a final budget I can sign, the school year for the majority of North Carolina's children will start imminently.

In addition, the school funding lawsuit, known as *Leandro*, has now reached a crisis point.

Nearly two years ago, in October 2000, the Superior Court Judge assigned by the Supreme Court of North Carolina to oversee *Leandro* ordered that pre-kindergarten educational programs for at-risk children must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs.

Three months ago, in April 2002, the Court explicitly re-affirmed the October 2000 judgment with regards to pre-kindergarten programs. In addition, the April ruling found that at-risk children need smaller classes in early grades and that every classroom

provide differentiated, individualized instruction. Such individual attention, of course, requires smaller class sizes.

On July 19, 2002, the Court made clear that the prior judgments, including the mandates of *More at Four* and individualized instruction in early grades, remained in effect and were not being complied with.

NOW THEREFORE, in light of the factual circumstances set forth above, and under the legal authority vested in me as Governor by Article III of the Constitution of North Carolina, N.C.G.S. § 143-23, and decisions by the Supreme Court of North Carolina interpreting N.C.G.S. § 143-23, I hereby AUTHORIZE and INSTRUCT:

(1) The Director of the *More at Four* Pre-Kindergarten Program, in conjunction with the Co-Chairs of the *More at Four* Task Force (the Superintendent of Public Instruction and the Secretary of the Department of Health and Human Services), to recruit the teachers necessary to expand the program; and,

(2) The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the additional teachers necessary to reduce class sizes in kindergarten and first grade beginning with the 2002-03 school year.

This Executive Order is effective July 24, 2002.

Done in the Capital City of Raleigh, North Carolina, this 24th day of July 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

Public Schools of North Carolina

State Board of Education
Phillip J. Kirk, Jr., Chairman

http://www.ncpublicschools.org

Department of Public Instruction
Michael E. Ward, State Superintendent

October 3, 2002

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Fax (919) 715-4046

Re: *Hoke County Board of Education v. State*
Second 90-Day Report

Dear Judge Manning:

Since April 4, 2002, the State has filed three reports or supplemental reports with the Court. In its last report dated August 26, 2002, we described the "district assistance team" model that it was planning to implement to assist and guide the Hoke County School System (HCSS) to reallocate and focus its resources to improve educational opportunities for students in Hoke County schools. The following is a summary of the steps that we have taken thus far to implement the "district assistance team" model in Hoke County schools.

On August 21, 2002, the State Board of Education endorsed State Superintendent Michael Ward's district assistance team model and authorized the Superintendent to pilot the model by appointing and directing a "district assistance team" for HCSS. The Superintendent thereafter appointed a district assistance team comprised of Department of Public Instruction (DPI) officials to conduct assessments and provide advice on the following areas:

ADMINISTRATIVE STRUCTURES
Brad Sneeden, Deputy State Superintendent. Dr. Sneeden is responsible for overall coordination of district team activities and evaluation of administrative structures.

EDUCATIONAL PROGRAMS
Elsie Leak, Associate Superintendent for Curriculum and School Reform Services. Dr. Leak is the team member responsible for assessment and advice on educational programs.

TEACHER QUALITY AND EXCEPTIONAL CHILDREN'S PROGRAMS
Zoe Locklear, Associate Superintendent for Leadership Development and Special Services. Dr. Locklear is the team member responsible for assessment and advice on teacher quality and exceptional children's programs.

RESOURCE MANAGEMENT
Hank Hurd, Associate Superintendent for Financial and Business Services. Mr. Hurd is the team member responsible for assessment and advice on resource management.

ACCOUNTABILITY AND TECHNOLOGY RESOURCES
Bob Bellamy, Associate Superintendent for Accountability and Technology Services. Dr. Bellamy is the team member responsible for assessment and advice on school and student accountability and technology resources.

On September 5, 2002, the district assistance team met with the following HCSS representatives:

Russell Smith, Chairman of the Hoke County Board of Education;
Allen Strickland, Superintendent;
George McFarley, Associate Superintendent for Business and Finance;
Tim Farley, Assistant Superintendent for Instruction and Curriculum;
Sharmaine Butler, Director of Human Resources;
Kristy Posey, Director of Title I and Community School Service; and
Parnell Miles, Principal, Scurlock Elementary School.

One purpose of the initial meeting was to establish a cooperative relationship and apprise the HCSS officials of the team's plan to develop and implement an administrative model for assisting HCSS with meeting the needs of its at-risk students. The team emphasized that it was the intent of the State Board of Education and State Superintendent that the team's work would not only benefit HCSS but would also provide the basis for a district assistance model that will be useful in improving educational opportunities in other school systems that may need this assistance. The first step will be the assessment stage followed by appropriate assistance.

In addition to describing its objectives, the team informed the HCSS officials that the team would be developing data profiles, *i.e.*, descriptions of information the team desires for the assessment phase of the team's work. It is the team's intent to have data profiles available for review and discussion at the next scheduled meeting on October 15, 2002. An example of the draft data profile for the "resource management assessment" component of the team's work is attached.

DPI employees and administrators, in consultation with HCSS administrators, will analyze the information in the data profiles to determine where improvement in administration and instruction can be made. Once those areas have been identified, we will send an assistance team to HCSS to help HCSS make the recommended changes. In the meantime, continued communication will be encouraged through email and conference calls.

Based upon currently available information, the district assistance team has already identified at least one area in which HCSS can improve its efficiency and effectiveness. HCSS has historically had more difficulty retaining teachers than comparable LEAs have had. The team discovered that HCSS has not been utilizing the State's web-based Human Resource Management System (HRMS). The team is working with HCSS to integrate HCSS's personnel management system with the HRMS. One advantage of the HRMS is the capacity to post teacher vacancies on the worldwide web. It will also permit people interested in employment with HCSS to submit electronic applications. When implemented, the HRMS should increase the pool of applicants for teaching vacancies in HCSS. Other components of the HRMS will permit HCSS to process teacher employment, benefits, and evaluations electronically. It is anticipated that improved efficiency in HCSS's personnel management system may help increase employee satisfaction and reduce HCSS's high turnover rate.

In addition to the work of the district assistance team, at the request of the Governor, the State Board of Education and Department of Public Instruction are working on implementation plans for several key components of the Education First Task Force report.

Finally, we have enclosed a copy of the approved budget bill. You will note that among other appropriations for education, the budget bill includes $28 million in additional funding for More-At-Four, along with funding for more class-size reduction, improved teacher quality and ABCs incentive awards.

Sincerely,

Michael E. Ward
State Superintendent

Phillip J. Kirk, Chairman
State Board of Education

MEW/PJK/llm

cc: Robert Spearman
Ann Majestic

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.*,

Plaintiff-Appellants,

and

ASHEVILLE CITY BOARD OF EDUCATION, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendant-Appellees.

FILED
2002 OCT 14 P 1:55
WAKE COUNT C.S.C.
BY

PLAINTIFFS' MEMORANDUM IN RESPONSE TO STATE'S REPORT OF OCTOBER 3, 2002

On October 3, 2002, the State submitted a report in letter form signed by Superintendent Michael E. Ward and Chairman Phillip J. Kirk regarding steps taken by the State in response to this Court's orders ("October 3d Report"). The October 3d Report, like the State's prior reports, shows that the State is not on course to comply with this Court's prior orders. This Court has repeatedly made clear that genuine action is needed to address the serious needs of students who are not receiving the opportunity for a sound basic education in Hoke and elsewhere. The latest report shows that the State continues to resist such action.

BACKGROUND

I. ORDERS OF THIS COURT AND RESPONSES OF THE PARTIES

On April 4, 2002, the Court wrote, "[T]he State of North Carolina is ORDERED to remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in paragraph 1, whether they are in Hoke County, or another county within the State." Mem. Dec. IV, p. 111. The Court also held that the North Carolina Constitution guaranteed each child

> the opportunity to attend a public school which has the following educational resources, at a minimum:
>
> First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.
>
> Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.
>
> Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

Mem. Dec. IV, pp. 109-110.

In the same Memorandum, the Court directed that the State "keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court." Mem. Dec. IV, p. 111. The Court also directed the State "to keep the plaintiff-parties fully informed of the progress of its efforts . . . ." Id.

The State responded to the Court's order on July 5 and July 29, 2002, but failed to describe concrete actions as contemplated by the Court's order. Instead, the State described existing programs and plans for future studies. See Exhibit 1 (letter of August 7, 2002 from Robert W. Spearman to the Honorable Howard E. Manning Jr.). On August 15, 2002, the Court informed the parties by letter that the State's response was unacceptable. Exhibit 2 (letter of August 15, 2002).

The Court criticized the State's efforts "to avoid responsibility" for its failures and to blame individual LEAs. Id. p. 5. As the Court pointed out, "the State of North Carolina, through its lawyers, have constantly beat HCSS over the head and constantly criticized HCSS for failing to implement cost-effective methods and available resources in defense of its claim that the State was not responsible and that it was HCSS's fault – a defense that has been clearly found without merit by this Court." Id. p. 8.

The Court also noted that the State had represented that it had identified the shortcomings of the Hoke County schools and had offered twenty-eight suggestions to address those supposed shortcomings. Id., pp. 12-14. In spite of the State's prior representations that "it knows very well the keys to improving student performance in HCSS," the Court found that "[t]he State of North Carolina has taken no 'remedial action' in HCSS." Id. at 16-17.

The State responded by letter on August 26, 2002. Exhibit 3. In that letter, the State said, "We will immediately appoint a district assistance team comprised of experts in school administration, teacher quality, curriculum, testing, accounting and other appropriate areas" to investigate Hoke's practices. Id. The August 26th letter said, "The team will conduct an on-site investigation and assessment . . . with respect to . . . each of the twenty-eight areas identified in the

court's August 15th letter" and other areas. Id. According to this letter, "the team's initial on-site investigation and assessment will be completed within a few weeks." Id.

Counsel for plaintiffs responded to the State's representations and pointed out that even if the State undertook the steps described in the August 26th letter, those steps "will hardly begin to address the needs of the children whose rights are at issue in this case." Ex. 4 (letter of August 30, 2002, from Robert W. Spearman to the Honorable Howard E. Manning, Jr.). Plaintiffs "requested that defendants be directed to prepare and file a substantive plan setting forth the specific steps the State will take to remedy the constitutional deficiencies identified by the Court." Id. The plaintiffs asked for an end to "the State's delays, excuses, and foot dragging" and a beginning of "concrete remedial measures." Id.

Since the State's last letter, six more weeks have passed. The State has now submitted its October 3d Report. This report shows that the State's assurances that an assistance team would complete its assessment "within a few weeks" were unfounded. According to this report, the State's actions so far amount to appointing a five-member assistance team, holding one get-acquainted meeting with Hoke school officials, and developing a "data profile." The October 3d Report indicates that the assistance team will be "developing data profiles" and "will analyze the information in the data profiles to determine where improvement in administration and instruction can be made." The report says that following this analysis, at an unspecified future time, "we will send an assistance team to HCSS to help HCSS make the recommended changes."

The October 3d Report does not mention any of the twenty-eight measures that the State has previously claimed are needed to improve student performance in Hoke. In the report, the State identifies only one proposed improvement: posting teacher vacancies in Hoke on the World Wide

Web. The State asserts that such posting will increase the pool of applicants. The State provides no studies or other evidence of the effectiveness of such posting.

II. HOKE COUNTY'S EFFORTS TO WORK WITH THE ASSISTANCE TEAM

The State's one meeting with the administrators of the Hoke schools on September 5, 2002, involved no detailed discussions of an assessment procedure or of the substance of what the State proposed to do in the Hoke schools. Other than this meeting, the State has pointedly declined to work with Hoke in arriving at a meaningful remedial process.

Following the September 5 meeting, Hoke Superintendent Allen Strickland expressed hope that DPI would provide assistance to Hoke with its resource needs and work with Hoke County in collaborative process. Exhibit 5 (letter of September 9, 2002 from Allen Strickland to Brad Sneeden). Soon thereafter, Superintendent Strickland proposed that the State include educators from outside DPI as part of the assessment effort. Exhibit 6 (letter of September 18, 2002 from Allen Strickland to Brad Sneeden). This proposal was firmly rejected by the State without explanation.

Superintendent Strickland also requested that information regarding the assessment process should be shared with administrators in Hoke. Exhibit 6. As Superintendent Strickland later learned, the State ignored this request. Exhibit 7 (letter of September 25, 2002 from Allen Strickland to Brad Sneeden). Although the State had prepared a data profile concerning Hoke prior to the meeting on September 5, it did not acknowledge or share this document at the meeting. Id. Later in the month, it handed out the data profile at a meeting of school administrators from all over the State, but still did not give a copy to Hoke administrators. Id.

On September 30, 2002, the State finally supplied Superintendent Strickland with a draft data profile, which was substantially the same document submitted by the State with the October 3d

Report. The State invited Superintendent Strickland to comment on the draft. Superintendent Strickland wrote that "most of the topics covered are the very same matters that were tried in the court case," and expressed concern that the State might be proposing a second trial on these matters. Exhibit 8 (letter of October 2, 2002, from Allen Strickland to Brad Sneeden). He also noted that the draft data profile was striking in that "little of it relates directly to the methods and programs that improve student performance." Id. He wrote, "An analysis using this model would not show what additional programs or approaches are needed to help students who are below grade level. An analysis using this model would also show nothing about the severe shortage of financial resources of the Hoke County Schools." The State did not respond to these criticisms with modifications of the draft data profile.

III. DISCUSSION

Since this Court's order of April 4, 2002, the State has declined to begin remedial measures in the Hoke County schools or anywhere else. In response to this Court's orders and directives, it has appointed a committee, held a single meeting, and distributed a data profile chart with no apparent relevance to the Court's order. The State has pointedly declined the suggestions of the Hoke administration with regard to the assessment process and kept them in the dark with regard to its plans. The State's October 3d Report promises additional data profiles prior to October 15, 2002, but as of this date no such documents have been provided to Hoke.

The eighteen-page data profile that was finally sent to Hoke and presented to the Court has very little relationship to the issues in this case. There is nothing about methods of improving student performance in the draft assessment, but there are long lists of items related to revenue components, purchasing procedures, UERS compliance, expenditure overdrafts and reversions,

personnel policies, facilities management, transportation services, and child nutrition. Some of the points are obscure, including such questions as "What is the inter-reliability of the school system?" In general, the topics covered appear to correspond to some of DPI's areas of supposed expertise. They do not, however, correspond to the areas of educational need in Hoke which were shown at trial. Analysis of the areas listed is unlikely to contribute in any way to solving Hoke's problems.

The State's only suggestion for improvement so far is to post teacher vacancies on the World Wide Web. There is no evidence that this will accomplish anything, although we do not rule out that possibility. The State's enthusiastic promotion of this idea, however, is sadly reminiscent of the exaggerated promises of dotcom business successes. Experience suggests that offering higher salaries would be more likely to attract qualified candidates.

The likely result of the assessment process described in the October 3d Report is to add to the insults and injuries the Hoke schools have sustained as a result of this case. The evidence presented at trial shows that the Hoke County school system has long been one of the most disadvantaged systems in the State. Prior to and during the trial, the State subjected the Hoke schools to microscopic scrutiny in an effort to shift the blame to it. This scrutiny imposed serious financial and human costs on a school system with severely limited resources. Now the State proposes to continue this scrutiny, for an undeclared additional period, at an cost that cannot be calculated.

It would be a sad irony if this Court's order for remedial measures should result in multiplying the injury caused by the State's failure to fulfill its constitutional duty. The lack of worthwhile action since this Court's decision confirms that further direction from this Court is

necessary.[1] In view of the Court's prior order and the State's demonstrated resistance to meaningful remedial action, plaintiffs respectfully request that the Court direct the State to prepare and submit a meaningful remedial plan. Such a plan should include a specific timetable and specific assignments. The plan should be prepared on an expedited basis to permit review by the Court and the other parties prior to the next session of the General Assembly.

This the 14th day of October 2002.

By: _____

Robert W. Spearman
N.C. State Bar No: 4108
Robert H. Tiller
N.C. State Bar No: 17219
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[1] Although the State alludes to a budget increase of $28 million for the More at Four program, it does not mention that the budget also contains on the first page a reduction for the Department of Public Instruction of $27,635,053.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PLAINTIFFS' MEMORANDUM IN RESPONSE TO STATE'S REPORT OF OCTOBER 3, 2002 was served on the defendants and plaintiff-intervenors by placing copies of same in the United States First Class Mail, postage prepaid and properly addressed as follows:

Thomas J. Ziko, Esquire
Special Deputy Attorney General
N.C. Department of Justice
Special Litigation-Education Section
P.O. Box 629
Raleigh, North Carolina 27602

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Ann Majestic, Esq.
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Post Office Box 1151
Raleigh, North Carolina 27602-1151

This the 4th day of October, 2002.

Robert H. Tiller

NORTH CAROLINA

WAKE COUNTY

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA,
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING

TO: COUNSEL FOR ALL PARTIES

Take notice that on Thursday, July 22, 2004 at 3:30 p.m. in Courtroom 10C of the Wake County Courthouse, the Court will hold a hearing to discuss the present status of the Defendant State of North Carolina's compliance, acting through its executive and its legislative branches, with the prior judgments of this Court. Counsel should be prepared to engage in a full and frank discussion of this matter.

This the 16th day of July, 2004.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARINGS AND ORDER RE: HEARINGS

TO: Counsel for All Parties

TAKE NOTICE that the Court, for the reasons that are set forth in this Notice and Order, will resume the hearing that was continued on July 23, 2004 on Thursday, October 7, 2004 in Courtroom 10-A, Wake County Courthouse at 3:30 p.m. and that a further hearing will be held at a Special Session of the Wake County Superior Court on Monday, October 25, 2004 in Courtroom 10-C, Wake County Courthouse at 10:00 am.

On Thursday, July 22, 2004, the Court began a hearing to discuss the "present status" of the Defendant, State of North Carolina's compliance, acting through its executive and legislative branches, with the prior judgments and orders of this Court and particularly, the failure of the legislative branch of government to fund the $22,000,000 requested by the Department of Public Instruction for Disadvantaged Student Supplemental Funding upon a finding of demonstrated need for competent, qualified teachers in every classroom and the demonstrated need to attract, train and retain qualified teachers in low wealth school districts.

At that hearing there was no response on behalf of the legislative branch of government. Instead, the Court was furnished with a copy of a letter from Governor Easley to the Superintendent of Public Instruction and the Chair of the State Board of Education advising the Governor would attempt to find the "funds" to support the Disadvantaged Student Supplemental Funding.

As a result, this Court continued the hearing in order to give the executive branch, acting through Governor Easley, the opportunity to find funding for Disadvantaged Student Supplemental Funding.

Also during the hearing, the Court heard from Robert Spearman on behalf of HCSS. Mr. Spearman advised the Court that HCSS still had substitute teachers in some of its classrooms instead of certified, qualified teachers as required by *Leandro*.

On July 23, 2004, in response to the information concerning the placement of substitute teachers in HCSS classrooms despite the *Leandro* compliance requirement that each classroom be staffed by a qualified teacher in order to provide the children with an opportunity to obtain a sound basic education, the Court wrote Mr. Spearman and requested information about the number of substitute teachers present in classrooms, not only in HCSS but also in the other plaintiff LEAs.

On July 30, 2004, an important event occurred in this litigation. The North Carolina Supreme Court issued its unanimous opinion regarding the State of North Carolina's appeal in this case ("*Leandro II*" - 530PA02).

The mandate was to issue on August 19, 2004.

Excerpts from *Leandro II* follow:

. However, the trial court also made clear that, in its view, the applicable holding in Leandro, when stripped to its essence, was limited to circumstances in which such unequal funding resulted from local contributions that increased funding beyond that required to provide a sound basic education. In other words, while some LEAs may enjoy elevated funding beyond that which provides a sound basic education, *no LEA may be funded in such a fashion that it fails to provide the resources required to provide the opportunity for a sound*

basic education. Thus, in the trial court's view, LEAs are entitled to funding by the State sufficient to provide all students, irrespective of their LEA, with at a minimum, the opportunity to obtain a sound basic education. We concur with the trial court's view.

As a consequence of the LEA's limited authority, the trial court concluded that the State bore ultimate responsibility for the actions and/or inactions of the local school board, and that it was the State that must act to correct those actions and/or inactions of the school board that fail to provide a Leandro-conforming educational opportunity to students.

In the State's view, any holding that renders the State, and by the State we mean the legislative and executive branches which are constitutionally responsible for public education, accountable for local school board decisions somehow serves to undermine the authority of such school boards. This Court, however, fails to see any such cause and effect. By holding the State accountable for the failings of local school boards, the trial court did not limit either: (1) the State's authority to create and empower local school boards through legislative or administrative enactments, or (2) the extent of any powers granted to such local school boards by the State. Thus, the power of the State to create local agencies to administer educational functions is unaffected by the trial court's ruling, and any powers bestowed on such agencies are similarly unaffected. In short, the trial court's ruling simply placed responsibility for the school board's actions on the entity--the State--that created the school board and that authorized the school board to act on the State's behalf. In our view, such a conclusion bears no effect whatsoever on the local school board's ability to continue in administering those functions it currently oversees or to be given broader and/or more independent authority. As a consequence, we hold that the State's argument concerning a diminished role for local school boards as a result of the trial court's ruling is without merit.

Although the trial court explained that it was leaving the "nuts and bolts" of the educational resources assessment in Hoke County to the other branches of government, it ultimately provided general guidelines for a Leandro-compliant resource allocation system, including the requirements: (1) that "every classroom be staffed with a competent, certified, well-trained teacher"; (2) "that every school be led by a well-trained competent principal"; and (3) "that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met."

In ordering the State to reassess its Hoke County educational obligations, the trial court struck a delicate balance between interests. On the one hand, it ordered the State to examine and find a

resolution to a problem of constitutional proportion and imposed some general guidelines for doing so- i.e., as the State reassesses its Hoke County educational obligations, it must structure its proposed solutions to ensure there are competent teachers in classrooms, competent principals in schoolhouses, and adequate resources to sustain instructional and support programs that will aid the county's school children to gain their opportunity to obtain a Leandro-comporting education. On the other hand, the trial court refused to step in and direct the "nuts and bolts" of the reassessment effort. Acknowledging that the state's courts are ill-equipped to conduct, or even to participate directly in, any reassessment effort, the trial court deferred to the expertise of the executive and legislative branches of government in matters concerning the mechanics of the public education process.

In short, the trial court: (1) informed the State what was wrong with Hoke County schools; (2) directed the State to reassess its educational priorities for Hoke County; and (3) ordered the State to correct any and all education-related deficiencies that contribute to a student's inability to take advantage of his right to the opportunity to obtain a sound basic education. However, we note that the trial court also demonstrated admirable restraint by refusing to dictate how existing problems should be approached and resolved. Recognizing that education concerns were the shared province of the legislative and executive branches, *the trial court instead afforded the two branches an unimpeded chance, "initially at least," see Leandro, 346 N.C. at 357, 488 S.E.2d at 262, to correct constitutional deficiencies revealed at trial. In our view, the trial court's approach to the issue was sound and its order reflects both findings of fact that were supported by the evidence and conclusions that were supported by ample and adequate findings of fact. As a consequence, we affirm those portions of the trial court's order that conclude that there has been a clear showing of a denial of the established right of Hoke County students to gain their opportunity for a sound basic education and those portions of the order that require the State to assess its education-related allocations to the county's schools so as to correct any deficiencies that presently prevent the county from offering its students the opportunity to obtain a Leandro-conforming education.*

This Court *now remands to the lower court and ultimately into the hands of the legislative and executive branches*, one more installment in the 200-plus year effort to provide an education to the children of North Carolina. Today's challenges are perhaps more difficult in many ways than when Adams articulated his vision for what was then a fledgling agrarian nation. *The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in Leandro, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount. Whether the State meets this challenge remains to be determined. Leandro II, 530PA02, July 30, 2004 (emphasis added).*

On August 5, 2004, Governor Easley wrote the Superintendent of Public Instruction and Chairman of the State Board of Education and advised that he had received the Disadvantaged Students Supplemental Funding plan as adopted by the State Board of Education. The letter stated in pertinent part:

> *This plan meets the goals that I laid out for the Board-to identify local needs, target resources and invest in professional educators and proven strategies, while demanding accountability.*
>
> *Pursuant to my executive order, I have identified $12 million for the plan and have notified the State Budget Office to make these resources available to the Department of Public Instruction for implementation.*
>
> *This is an important first step in improving the quality of education for communities that have struggled to find the resources to attract and retain the professional educators needed to meet the needs of our students.* (emphasis added)

On August 5, 2004, the Superintendent of Public Instruction and Chair of the State Board of Education reported this to the Court by letter which also included details about the formula for and administration of the Disadvantaged Student Supplemental Funding plan. Instead of the sixteen (16) LEAs that were included in the $22,000,000 request to the legislative branch there were only eleven (11) LEAs were identified as eligible for the funds. ***Robeson County and 4 other LEAs, which had been identified by DPI as LEAs in need of Disadvantaged Student Supplemental Funding in the $22,000,000 funding request to the General Assembly, were not included by DPI in the $12,000,000 allocation secured by Governor Easley through executive order.***

On August 10, 2004, the State Board of Education and Department of Public Instruction served its Ninth (9th) 90-Day Report to the Court. With respect to the Disadvantaged Students Supplemental Funding (DSSF) program, the 90-Day Report stated in pertinent part:

> *As you know, we have been working diligently to secure more than $22 million for a Disadvantaged Students Supplemental Funding (DSSF) program. When fully implemented, we belief the DSSF will begin to address the needs of disadvantaged students across the state. While the General Assembly did not provide funds for this expansion request, on July 29, 2004, Governor*

Easley informed us that we were authorized to expend $12 million to pilot the DSSF program.

With those funds, we intend to utilize the LEAAP teams to implement the DSSF program in eleven LEAs which we have identified as most needy based upon a formula that takes into account student proficiency on State tests, teacher turnover, teacher experience, and student family income.

Based upon our current formula, HCSS will receive an additional $1,648,250. Over the next weeks, our LEAAP team assigned to HCSS will work with HCSS administrators to implement a plan for targeting those funds to recruit and retain teachers, reduce class size, or develop and implement effective Personal Education Plans for students who have not demonstrated proficiency on the State tests. The State Board of Education will review HCSS's plan. The State Board of Education will not release any of the DSSF funds until it is satisfied that the HCSS is properly targeted to the needs of low performing students. (emphasis added)

In addition, the 90-Day Report included an executive summary of the 2003-04 ABC results statewide and a report on the HCSS 2003-04 results compared with the 1999-00 ABC composite scores. This report shows improvement in HCSS over time. Unfortunately, while there has been improvement, only four (4) of seven (7) elementary schools had a performance composite for 2003-04 of 80% at or above grade level (Level III).

The greatest improvement occurred at Upchurch Elementary where the performance composite for 2003-04 was 90.6% at or above Level III as compared to a performance composite in 1999-00 of 70.6% at or above Level III.

Overall examination of the ABC data for HCSS, shows that children in Hoke County (such as those in Upchurch, Rockfish Hoke and Sandy Grove elementary schools), when provided with an educational environment which provides a competent certified principal, competent certified teachers trained to teach their students appropriately and with sufficient resources to support the educational program in the school, can learn and are being provided with the opportunity to obtain a sound basic education.

The data also shows that there are still too many HCSS schools which are not providing all their children with the opportunity to obtain a sound basic education despite making improvement over time. Hoke County High School had a performance composite for 2003-04 of only 54.9% at or above

Level III. West Hoke Elementary had a performance composite for 2003-04 of only 66.3% at or above Level III.

On August 20, 2004, after the date of the *Leandro II* mandate had passed, Robert Spearman sent the Court a letter in response to the Court's July 23, 2004 request for information concerning substitute teachers. This letter also contained data concerning the lack of fully licensed teachers in the plaintiff low-wealth districts as well as the number of classrooms staffed by Long-term Substitutes.

Mr. Spearman reported that fully qualified teachers hold Continuing Licenses, which are valid for five years. He also advised that there is a growing number of teachers who do not hold a Continuing License. Spearman advised in pertinent part:

> *A growing number of teachers in the state do not hold Continuing Licenses and fall into one of the following categories: Emergency permits - issued to individuals who didn't major in the subject they teach or who didn't have the minimum 2.5 grade point average --- Temporary permits - issued to individuals who have not passed the Praxis (National Teachers') test for the subject they teach but have satisfied other license requirements --- Provisional permits - Issued to individuals who are licensed but are teaching a subject for which they are not licensed--- Lateral-entry licenses - issued to individuals with a college major in the subject they teach but without training in the field of education --- Substitute permit - Issued to individuals who have at least a high school education.*

Mr. Spearman reported the number and percentage of Teachers without a continuing license who are teaching in a Licensed Position (as identified above) in each plaintiff district from either 2003-04 or 2004-05.

Cumberland	-	670 (23% of licensed positions)
Halifax	-	93 (22% of licensed positions)
Hoke	-	133 (33% of licensed positions)
Robeson	-	316 (20% of licensed positions)
Vance	-	240 (41% of licensed positions)

Mr. Spearman reported that long-term substitutes usually have the least qualifications and may not possess a college degree. He reported that a substitute in the middle or high school level may teach at least 150 students each day. Obviously, in the elementary setting, a long-term substitute will only be involved with one class so the number of children affected is less.

Mr. Spearman reported on the number of classrooms staffed by Long-term Substitutes in each of the plaintiff school districts: Cumberland - 32; Halifax - 16; Hoke - 17; Robeson - 21; and Vance - 35.

There is no dispute that there exists a serious problem in hiring, training and retaining certified teachers in North Carolina, especially in the low wealth plaintiff LEAs, and other low wealth LEAs. The existence of this problem has been identified and acknowledged by the Department of Public Instruction, the State Board of Education, and the Governor of the State of North Carolina.

This problem is not just a "minor" problem that the State of North Carolina can ignore or take its own good time to remedy. ***This problem is a constitutional problem that is not going to disappear. This is because it is the constitutional right of each and every child in the public schools of North Carolina to be provided with the equal opportunity to obtain a sound basic education whether they are at-risk or not.***

That opportunity, as defined in this case by this Court and affirmed by the North Carolina Supreme Court requires that (1) "every classroom be staffed with a competent, certified, well-trained teacher;" (2) "that every school be led by a well-trained competent principal;" and (3)"that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." [Leandro II and previous Orders of this Court]

The existence of the problem with classrooms staffed by teachers that are not certified or well-trained, including Long-term substitutes without college degrees, has been made known to the General Assembly of North Carolina as well as the DPI and State Board of Education.

To its credit, the DPI and the State Board of Education acknowledged the constitutional deficiency and the lack of compliance under *Leandro* in the classroom teacher area and sought $22,000,000 from the General Assembly to fund the DSSF pilot program for sixteen (16) LEAs in which there was

demonstrated need to remedy the constitutional deficiency of the presence of a competent, certified and well trained teacher in individual classrooms.

Despite knowing of this deficiency and being repeatedly advised of demonstrated need for assistance in these low-wealth school districts and despite being advised of the constitutional requirements in *Leandro* concerning the requirement for competent certified, well trained teachers in each classroom, the General Assembly of North Carolina passed its budget and adjourned without funding the DSSF program for any LEA, including HCSS.

In the interim the Supreme Court of North Carolina has spoken and this case has been remanded to this Court for further proceedings, if necessary.

This Court has determined that further proceedings are necessary, initially at least, on two different subjects.

First, this Court, following the dictates of the Supreme Court, will provide the General Assembly of North Carolina with the opportunity, "*initially at least*" to take such action as it may deem appropriate to address its failure to fund the pilot $22,000,000 16 LEA DSSF program as requested by the State Board of Education and DPI.

On this subject, the Court gives NOTICE that it will resume the hearing begun on July 23, 2004, on Thursday, October 7, 2004, at 3:30 P.m. in Courtroom 10A, Wake County Courthouse. The Court directs counsel for the State of North Carolina to be prepared to report to the Court on behalf of the Legislative Branch of Government (the General Assembly) what action the General Assembly has taken, to address its failure to fund the pilot $22,000,000 DSSF program, including, but not limited to, acting in cooperation with Governor Easley to fund the balance of the $22,000,000 (the sum of $10,000,000) requested by the DPI and The State Board of Education for the DSSF program will be made available to the DPI for the benefit of the five school districts originally included in the DSSF for school year 2004-05.

Second, the State of North Carolina has been making commendable overall progress statewide as evidenced by the ABC data submitted for 2003-04 by the State Board of Education in terms of overall student performance in grades

3-8. However, the data reflecting high school academic performance shows that much improvement remain to be made once children leave the eighth grade and enter high school and that in many areas low wealth systems are still struggling to reach grade level for the majority of students.

Much progress notwithstanding, the State of North Carolina has the on-going task of assessing (1) its problem LEAs and schools therein, or elsewhere, that are not providing the children of North Carolina with the opportunity of a sound basic education; (2) examining the allocation of educational resources and (3) if necessary, reallocate resources in order to provide cost-effective, targeted solutions to constitutional educational deficiencies so that the children affected will be provided with their constitutional right to the opportunity to obtain a sound basic education.

It has been more than two and one-half years since this Court entered its Final Judgment on April 2, 2002. During that time, the DPI and State Board of Instruction have, as seen through the 90-Day Reports, made progress in identifying problems in HCSS and taking targeted steps to correct those problems utilizing accountability for resources spent in that endeavor. To its credit, DPI and the State Board of Public Instruction have expanded assistance teams to LEAs other than HCSS on their own initiative and because there is a demonstrated need for their help and assistance.

This Court believes that DPI and the State Board of Public Instruction are heading down the right track towards assessing problems, developing common sense solutions and providing LEAS with guidance and assistance in developing cost-effective, targeted solutions that can be measured for success and accountability.

Now that the appeal is over and *Leandro II* is in full force and effect, it is time for the DPI and State Board to outline and present its plans as to how it will continue to proceed to ensure that the children of North Carolina will be afforded the opportunity to a sound basic education.

On this subject, the Court gives NOTICE that it will hold a hearing at a Special Session of Superior Court to begin on

Monday, October 25 2004, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina the opportunity to present its plan and outline as to how the State of North Carolina, acting through the Executive and Legislative branches, will address the constitutional educational deficiencies and how it plans to remedy them under the guidelines set forth in this case.

To provide the plaintiff LEAs and the plaintiff-intervenor LEAs with an opportunity to be heard with regard to the State of North Carolina's plan and outline to address any constitutional educational deficiencies that are required to be remedied under the Leandro decision.

To address issues relating to future proceedings in this case or matters that may remain as a result of the October 7, 2004 hearing, or such other matters that may be necessary.

To address any motions or other formal requests which may be submitted to the Court in the interim. However, no such matters will be addressed if not filed prior to October 8, 2004 by 5:00 p.m.

The Court is prepared to take evidence during this term of Court, if it is required.

SO ORDERED this 9th day of September, 2004.

Howard E. Manning, Jr.
Superior Court Judge

PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, *State Superintendent*

October 25, 2004

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351

Dear Judge Manning:

The State of North Carolina is committed to ensuring that all children receive an education that prepares them for the future. Our priority is to make sure that every child, in every community, has access to a quality education with competent teachers, effective principals, and adequate resources.

To that end, it has been a priority of the state to ensure that children begin school ready to learn, that they enter a school that has class sizes low enough to provide individual attention, are taught by qualified teachers, and are expected to meet high standards of excellence. In the last few years, the state has made major gains in each of these areas. However, there is more that can be done to ensure that all students, and in particular, at-risk students, are afforded the educational resources and opportunities for a high quality education.

Over the last few weeks and months the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions with education leaders and interested parties about the development of a long-range plan based on the progress of the Disadvantaged Student Supplemental Fund pilots in sixteen counties. With the Governor's charge and collaboration, we have developed the attached action plan. The components of this plan are grounded in research and proven practices.

Sincerely,

Howard N. Lee

Patricia N. Willoughby

HNL/PNW/gnd

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EXECUTIVE SUMMARY

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

The State has demonstrated a commitment to target resources to meet the needs of at-risk students. Among other programs, the Governor, the State Board of Education and the General Assembly have recently created and funded the following:

- The More at Four Pre-kindergarten Program for at-risk four-year-olds
- A K-3 class size reduction initiative
- The High Priority Schools Act
- The Local Education Agency Assistance Program to provide assistance to poorly performing districts
- The New Schools Project to reform high schools

Most recently, the Governor identified $22 million for use by the State Board of Education to implement the Disadvantaged Students Supplemental Fund (DSSF). The DSSF Program provides targeted resources to assist at-risk students in 16 school districts marked by low student performance, low teacher experience, high poverty, high teacher turnover.

The State remains committed to these important efforts. Nevertheless, State education leaders understand that more remains to be done to improve the achievement of at-risk students and ensure that every student has the opportunity to obtain a high quality education. Towards that end, the State is committed to 1) expanding and enhancing existing initiatives and 2) developing select new initiatives targeted to meet the needs of at-risk students.

Consistent with that commitment, the State intends to construct, prior to the start of the 2005 Legislative session, a detailed plan. The State recognizes that legislative appropriations will be needed to implement elements of this plan. The plan includes the following components:

EXPAND EXISTING PROVEN PROGRAMS

- **Ensure every at-risk four-year-old has access to a quality prekindergarten program.** The State intends to continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to ensure schools and districts implement proven strategies.** Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

- **Strengthen and Expand LEAAP into a new unit under the State Board to improve struggling school, districts.** Building on its pilot experience with the Local Education Agency Assistance Program, the State intends to create a full-time unit under the State Board of Education that works with a set of especially needy school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

- **Continue the Teacher Working Conditions Survey and provide actionable data for problem schools and districts.** Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to attract and retain teachers and principals and increase their effectiveness.

- **Expand the New Schools Project and Learn and Earn.** To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.** The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

- **Provide high quality professional development for teachers and principals.** The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

- **Connect school, social service and delinquency prevention resources.** The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments, these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

PLAN FOR IMMEDIATE ACTION

The State is committed to immediate action to develop these initiatives and implement them to improve the educational opportunities available to at-risk students. The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

Over the course of the last few weeks and months, the Office of the Governor, the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions about the development of a long-range plan to meet the needs of at-risk students. In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The following steps will take place in the coming weeks and months in anticipation of taking a detailed package to the General Assembly for the 2005 session:

October 26, 2004 – January 26, 2005

- **November 5.** The Office of the Governor, Department of Public Instruction (DPI) and State Board of Education (SBE) representatives will hold initial meeting with Amicus groups and teacher groups.

- **November 19.** The Office of the Governor, DPI and SBE representatives will reconvene a group of superintendents and other representatives, including individuals from plaintiff and plaintiff-intervenor districts.

- **November 30.** The Governor will convene the Education Cabinet to meet and take up relevant items from this plan. The Education Cabinet will determine those items needing action by education governing boards.

- **December 1-2.** The State Board of Education will evaluate and approve plans for the five remaining districts under the Disadvantaged Students Supplemental Fund at its monthly meeting in December.

- Representatives from the Governor's Office, DPI, SBE, the Legislature, the Education Cabinet, K-12 school leaders, and other key stakeholders will continue meetings to construct the details of the plan.

- The Office of the Governor, DPI, and SBE will work with legislative representatives on development of a legislative package for the 2005 session of the General Assembly, which opens on Wednesday, January 26, 2005.

Beyond the 2005 Legislative session, the State is committed to continuing the development and implementation of proven strategies for meeting the needs of at-risk students.

BACKGROUND

Over the past two decades, the State has put into place a series of policies that have helped North Carolina make especially significant progress in the academic achievement of its young people.

In the late 1980s, the state began a focus on testing and accountability with the introduction of statewide curriculum standards, testing and public accountability. In the 1990s, the State refined its accountability system and placed a major emphasis on teacher quality. In the mid-nineties, the State implemented the ABCS of Public Education and school level testing and accountability. The testing and accountability system helped to focus attention and resources on the needs of students and schools throughout the state, especially those students not performing at or above grade level on state assessments. In addition to providing information on the achievement of schools and students, the ABCs program also assigned assistance teams to low-performing schools and instituted Gateways in grades three, five and eight to stem social promotion. The ABCs Program has allowed the state to understand which students and which schools are most in need of additional assistance and support.

Also in the 1990s, the State made significant investments in its teaching workforce, including raising teacher pay to near the national average and in the top half of the nation—where it remains today. The Excellent Schools Act of 1997 raised teacher pay, increased teacher standards, created accountability measures for schools of education, and improved the support of new teachers in the profession.

Improvement on national assessments, including the National Assessment of Educational Progress in reading, writing and mathematics and the SAT, demonstrates that North Carolina's approach is yielding results. In addition, reports from the RAND Corporation and the National Education Goals Panel and, most recently, from the Education Trust in October 2004, found that the steps that the state had been taking were increasing achievement scores and reducing achievement gaps on national assessments in reading and math.

The 2000 RAND report, *Improving Student Achievement: What NAEP Test Scores Tell Us* laid out a clear path for moving forward to improve achievement, especially among its at-risk students. The RAND report found that the most cost-effective approach to improving reading and math achievement on the National Assessment of Educational Progress was to lower teacher-student ratios in the early grades, expand public Prekindergarten, and provide additional resources to teachers. The report found that "investing in better working conditions for teachers to make them more productive (lower pupil-teacher ratios, more discretionary resources, and improved readiness for school from Prekindergarten) could produce significant gains in achievement scores" (pp. xxvii-xxviii).

In accordance with that report and other significant education research, Governor Mike Easley, the State Board of Education and the Legislature have worked together to ground the state's school improvement efforts in a research-backed approach for raising achievement of all students, with a particular focus on improving achievement for at-risk students. The State has focused on pre-kindergarten programs, smaller classes in the early grades, and supporting the needs of teachers.

Beginning in 2001, the State began to put these research-backed policies into place:

- **The More at Four Prekindergarten Program** was implemented in 2001 and served 1,500 at-risk four-year-olds in 34 counties. In 2004, it is reaching 12,000 at-risk four-

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.

- **The High Priority Schools** initiative reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program,** which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.

- **The Teacher Working Conditions Initiative,** which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.

- **The New Schools Project to reform high school.** Supported initially by an $11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

  The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

  In addition to the $11 million granted by the Gates Foundation, the state is investing $2.2 million on a recurring basis to begin the Learn and Earn high schools.

These investments and approaches represent research-backed practices to improve teacher retention and effectiveness and boost student achievement. The State believes they represent an important set of building blocks for addressing the needs of at-risk students. Nevertheless, the State believes that more must be done for at-risk students in North Carolina.

ADDITIONAL FUNDING TARGETED TO MEET THE NEEDS OF AT-RISK STUDENTS

In July of this past year, the State began its most recent effort to address the needs of at-risk students with the creation of the Disadvantaged Students Supplemental Fund (DSSF) pilot program. The DSSF pilot is now working in select districts to allocate additional resources for proven strategies to boost the achievement of at-risk students. Governor Easley has identified and made available up to $22 million for use by the State Board of Education to support 16 school districts. The pilot is operating as follows:

- Districts were identified based on levels of student achievement, student poverty, and teacher attrition. Based on a formula, specific funding levels were set for each district.

- The State Board assigned assistance teams to each district to help in the creation of their plans for using the DSSF resources.

- Plans from local districts are based on a "menu of proven strategies" developed by the State Board of Education. Districts have the flexibility to decide which options best meet their needs, but they must use the options provided by the State Board. The options include bonuses for recruiting and retaining teachers; additional personnel for such strategies as reducing class size, hiring reading coaches, and supporting new teachers; professional development for teachers and principals; supporting afterschool and other extended day programs; and implementing personal education plans.

- Funding for districts is contingent upon the approval of the State Board of Education.

- The Board will evaluate the results from the DSSF pilot, including the effectiveness of additional resources, the targeted options, and the DPI assistance on improving student achievement and teacher attrition.

MOVING FORWARD: BUILDING ON THE STATE'S COMMITMENT TO ADDRESS THE NEEDS OF AT-RISK STUDENTS

The aforementioned strategies for improving student achievement—especially the achievement for students below grade level—are yielding results. The State intends for these strategies to serve as the foundation of its continuing effort to construct a system of K-12 public education that provides superior education for all students and, more specifically, meets the needs of at-risk students.

In order to ensure that all students are receiving a high quality education and that they have access to caring, competent teachers in their classrooms, effective principals in their schools, and the instruction they need to meet high standards, the State is committed to taking the following steps to maintain and expand proven strategies for school improvement. Additionally, it is

recognized that the Legislature will need to appropriate additional resources to allow the State to expand a number of these proven strategies for increasing the achievement of at-risk students.

1. **Ensure that every at-risk four-year-old has access to a quality prekindergarten program.**

   Recognizing that students who do not start school ready to learn remain at-risk of school failure and dropping out throughout their career, the State intends to expand the More at Four Prekindergarten Program for at-risk four-year-olds towards its goal of access for the estimated 40,000 at-risk four-year-olds in the state. Quality pre-kindergarten programs are the fundamental building block for the State's effort to meet the needs of at-risk students across the state. Without access to quality pre-kindergarten programs, at-risk students start school behind and remain at-risk of school failure throughout their school careers.

   In expanding More at Four, the State will identify high-need areas with respect to educational performance, families in poverty, and other key indicators to determine priority sites for funding expansion.

2. **Evaluate, refine and expand the Disadvantaged Students Supplemental Fund pilot approach to ensure that districts and schools implement proven strategies for meeting the needs of at-risk students**

   The Governor and State Board of Education have implemented the Disadvantaged Students Supplemental Fund in 16 school districts for the 2004-05 school year. The pilot requires that assistance teams, assembled by the Department of Public Instruction, work with eligible districts to determine plans for using additional resources based on a menu of proven strategies. The Governor, State Board and General Assembly will carefully analyze the success of the different strategies chosen by the 16 districts in order to determine which approaches best met the goals of attracting and retaining teachers, ensuring an effective principal, and providing individualized instruction that increases the achievement of students at-risk of school failure.

   As part of this critical effort, the State Board of Education will evaluate the performance of students, the supply and retention of teachers, the appropriateness of the current menu of options provided, and the efficacy of DPI assistance. In addition, the State will examine the appropriate state and local fiscal responsibilities for additional investments, and the differences in working with urban versus rural school districts.

   Based on evaluation findings, the State will modify the menu of options and expand this effort to additional schools and school districts. The current pilot is a first step and the State recognizes that additional investments are needed for the next school year and beyond.

3. **Strengthen and expand LEAAP into a new unit under the State Board to improve struggling school districts**

   Building on its experience with the Local Education Agency Assistance Program, the State is committed to create a unit under the State Board of Education that works with a set of school districts most in need to analyze the challenges, provide intensive support on resource and policy decision-making, and build the capacity of these districts.

This new unit would work with districts that need immediate and intensive support to improve education for its students. The State will develop criteria to determine which districts are most in need of assistance from this unit.

The unit would provide the following types of assistance: 1) a detailed diagnostic analysis and audit of student performance trends, teacher working conditions, and resource allocation; 2) work with the district to develop a plan for resource reallocation and strategies for deploying additional funding; and 3) brokering relationships/assistance for the districts with higher education partners, the programs of the UNC Center for School Leadership Development, and other appropriate entities. This effort would provide intensive and targeted assistance and guidance on resource allocation and the use of strategies to guide improvement.

The State Board of Education would approve plans for the district's use of state funds based on the unit's work with the district. The unit would be comprised of new personnel assigned solely to this function.

4. **Improve teacher retention and effectiveness by using the Teacher Working Conditions Survey to provide actionable data to schools and districts**

   With data that demonstrates a correlation between working conditions and teacher turnover rates and student achievement, the Teacher Working Conditions survey is an important tool for assisting school and district efforts to attract and retain caring, competent teachers and to develop effective principals. In addition to the statewide administration of the data, the State will look to require administration of the survey in targeted schools and districts. This will ensure a full set of data to use as an assessment tool to determine needed strategies in those locations.

   The survey data has found that improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students. Targeted use of additional resources for this purpose will be considered as a part of state assistance for at-risk students.

5. **Expand the New Schools Project and Learn and Earn Schools to improve the preparation of high school students to access further education and compete for skilled jobs**

   The State is committed to an ambitious effort to improve high schools, especially for those students whom the traditional high school model does not serve well and who are at-risk of dropping out. The State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. The State Board of Education, working with the New Schools Project, will create a priority list of districts to receive funding and assistance under this project based largely on the needs of at-risk students. All new schools have goals and outcome measures that include improving student achievement, graduation rates and the college-going rates of their students.

The State believes that these efforts will target resources and assistance effectively to provide caring, competent teachers, effective principals, and the individualized instruction needed to help

students at-risk of school failure meet high standards and be well prepared for further education and a skilled workforce.

The State will develop an accountability mechanism to evaluate the impact of these investments to improve the achievement of at-risk students. The mechanism will, at a minimum, use student performance from the ABCs program and the teacher working conditions data. The accountability mechanism should also hold the State accountable for its assistance to districts and schools.

ADDITIONAL EFFORTS TO SUPPORT THE STATE'S COMMITMENT TO AT-RISK STUDENTS

In addition to its commitment to expand and maintain existing initiatives to meet the needs of at-risk students, the State also believes that there are additional efforts needed to support schools and districts to help all students achieve.

Expand teacher supply by increasing partnerships between community colleges and schools of education

The State understands that there is a critical need to boost both the supply and retention of teachers in hard-to-staff schools. The shortage of qualified teachers for hard-to-staff schools is a problem that afflicts every state in the nation. While North Carolina has been recognized for its leadership in this area nationally, the State realizes that more remains to be done.

Hard-to-staff schools in the state have a significant number of lateral entry and first-year teachers. While more needs to be done to induct, support and retain these individuals, the fact remains that there is a shortage in the supply of highly qualified teachers for hard-to-staff schools.

This, however, will not be accomplished by merely increasing the supply at schools of education. Existing patterns show that preparation in the state's schools of education generally leads to employment in the surrounding environs of those universities. Unfortunately, many of the schools and districts with the greatest need for qualified teachers are not in close proximity to school of education. In addition to providing targeted incentives to bring teachers to hard-to-staff schools, the State believes that it must look to boost the supply of qualified teachers in the areas where they are needed most.

To do so, the State sees an expansion of "2+2" partnerships between schools of education at four-year institutions and community colleges, which are located in critical regions throughout the state. Existing "2+2" programs have shown great promise in increasing the supply of qualified teachers prepared to teach and remain in areas where teachers are needed. In examining the prospects for expanding this approach, the State will identify regions of the state with high teacher attrition, low levels of teacher candidate supply, and underperforming schools as priorities for "2+2" program expansion.

The state is also committed to examining additional avenues for increasing the supply of teacher candidates from schools of education, resources and approaches to prepare qualified lateral entry candidates, and other strategies to increase the availability of qualified teachers in hard-to-staff schools.

The State recognizes that in working to increase the supply of qualified teachers for hard-to-staff schools it must also remain vigilant to improve the retention of qualified teachers in these schools.

Provide high quality professional development for teachers and principals

Any effort to ensure effective teachers and principals in classrooms and schools must include providing them with high quality professional development that supports their ability to help students reach high standards. The State has invested in a number of important and effective professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals Executive Program. The State has also vested the lion's share of responsibility for providing professional development in schools and school districts. Unfortunately, many teachers and principals report that they lack access to high quality professional development.

The State will explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers. This includes identifying the content areas and skills where teachers and principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers and principals.

Connect School, Social Service and Juvenile Justice Resources

The State recognizes that schools and schools systems alone cannot meet the challenges of educating all students for the challenges of higher education, the workplace, and participating in the democratic life of their communities. It is critical that children and families receive the support they need to be healthy and actively involved in their children's education.

The State intends to bring together the State Board of Education and the Departments of Public Instruction, Health and Human Services, and Juvenile Justice and Delinquency Prevention to jointly develop strategies for connecting school, social service, and juvenile justice resources.

Efforts would aim to target schools and counties with high need of support across the state. Such efforts might provide for the coordination of parent involvement, mental health services, health services, and delinquency prevention and other juvenile justice-related services for youth and families in participating schools.

PLAN FOR IMMEDIATE ACTION

The State has already demonstrated its commitment to pre-kindergarten for at-risk four-year-olds, class size reduction, additional resources to support at-risk students in targeted school, district assistance, high school reform and improving teacher working conditions has been demonstrated. That commitment will continue.

In addition, the State is committed to expanding a number of these proven strategies, targeting them to meet the needs of at-risk students and finding solutions for other important educational problems, such as increasing the supply of teachers and connecting social services with schools and other areas.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

November 23, 2004

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, December 7, 2004, in this matter. The hearing will be in Courtroom 10-C (where the previous hearings have been) at 2:30 P.M. on Tuesday, December 7. I hope that everyone has a safe and pleasant Thanksgiving this year.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)

11-23-04 P12:45 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

January 6, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, January 11, 2005, in this matter. The hearing will be in Courtroom 10-B (same floor but not where the previous hearings have been) at 2:30 P.M. on Tuesday, January 11, 2005. I hope that all of you had a pleasant holiday season and that the "wrinkles" will have been worked out of the Disadvantaged Student Supplemental Fund Formula by Tuesday so we can proceed on other fronts, including, but not limited to, the pressing problem with regard high school student performance referred to in my November 10, 2004 memo, and solutions for that problem. With regard to the DSSF formula issue, I am in receipt of the N.C. School Superintendents' Association Response to the DSSF formula which was issued in mid-December, 2004.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

01-06-04-06-05-P01:35 OUT

Feb-10-2005 11:19 From- T-518 P.001/002 F-020

02-10-05 A10:19 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

February 10, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, February 15, 2005, in this matter. The hearing will be in Courtroom 10-C at 2:30 P.M. on Tuesday, February 15, 2005. While I requested a report from the State on the progress made on the "plan" at this meeting, I have learned that Governor Easley has not put the final touches on the budget and that his budget will not be ready to go to the General Assembly until after the Governor's "State of the State" address several days after next week's hearing. Accordingly, I will not expect any progress report from the State at next week's hearing. However, there are several items that we will need to take up.

First, there is a motion to intervene which has been filed and we will take that matter up.

Second, in anticipation of the March 7 special session regarding the high school problem, I have asked Susan K. Lamar, NC AVID Director, to make a presentation to the Court and the parties about the AVID program, its purpose, and the progress AVID is making in helping North Carolina children realize their Leandro opportunity. The AVID program assists middle and high schools prepare children who are underachievers, with the potential to do college level work, to have the opportunity to become academically prepared and eligible for college work. It is my

understanding that AVID is now present, in one or more schools, in Durham, Nash-Rocky Mount, New Hanover, Onslow, Pitt, Wilson, Cumberland, Catawba, Charlotte-Mecklenburg as well as starting in Wake, among others.

Third, discussion of schedule and presentation for March 7 hearings and any other matters that the parties have been working on with respect to DSSF, etc.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

2/10/05

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

FILED
2003 FEB 10 PM 4:49
WAKE COUNTY, C.S.C.
BY

HOKE COUNTY BOARD OF EDUCATION, et al.,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF EDUCATION, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendants.

MOTION FOR ORDER TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN

Plaintiffs move the Court for an order directing Defendants to show cause why they should not adopt an initial Leandro compliance plan that includes the elements set out below ("Plaintiffs' Plan") and seek funding from the General Assembly to implement such Plan. Alternatively, Plaintiffs ask the Court to approve Plaintiffs' Plan described herein. In support of this motion, Plaintiffs show the Court:

1. The Plaintiffs' Plan is based largely upon proposals submitted previously to this Court by Defendants as to proposed steps to be taken by them to comply with the orders of this Court and the North Carolina Supreme Court in this case. With most of those proposals, Plaintiffs are in agreement with Defendants. However, unlike Defendants' prior submissions, Plaintiffs' Plan identifies specific amounts of additional resources and a concrete timetable to begin to meet the educational needs of North Carolina schoolchildren so that they can enjoy and

exercise the right to the opportunity for a sound basic education. This motion is also supported by the affidavits of Superintendents Colin Armstrong (Robeson), Norman Shearin (Vance), Allen Strickland (Hoke) and Willie Gilchrist (Halifax).

2. The Plaintiffs suggest to the Court that our Supreme Court has already upheld this Court's determination that Defendants must both identify and provide for the needs of at-risk children. Hoke County Board of Education v. State, 358 N.C. 605 at 641-642. Defendants may not permissibly proceed with "all deliberate speed" because our Supreme Court has already recognized that a solution is needed that "... will prevent existing circumstances from remaining static or spiraling further ..." Id at 643.

3. Plaintiffs' Plan has the following five components.

a. Expansion of the Disadvantaged Student Supplemental Fund ("DSSF").

This program was initially proposed by Defendants in June, 2004 in response to the decisions and orders of this Court, to begin to meet the need of at-risk students for a sound basic education and to satisfy constitutional requirements. Defendants proposed the creation of a new education annual allotment of approximately $223 million. Defendants' June 7, 2004 90 Day Report, Attachment 8.

Under Plaintiffs' Plan, the DSSF would operate with the same formula for identification of at-risk students that was proposed by DPI and the State Board of Education and approved by this Court at the hearing in this case on January 11, 2005. All North Carolina LEAs could seek State Board approval for funding from the DSSF to support recommended intervention programs for at-risk students which have been approved by the Defendant State Board. Many such approved intervention programs have been identified in Defendants' October 25, 2004 filing with this Court, and Defendants' filings themselves state those programs are "grounded in

research and proven practices" and constitute a "menu of proven strategies." October 25, 2004 Letter from Howard Lee and Patricia Willoughby to Judge Howard Manning, Jr., and Defendants' accompanying outline of compliance plan, at p.6.

LEAs would be eligible for distributions from the DSSF, for implementing intervention programs approved by the State Board, with the distributions based upon the LEAs' total ADM eligible for disadvantaged student funding, as determined under Defendants' approved formula for the identification of at-risk students, at a level of $1,000 per eligible at-risk student. (The total statewide ADM eligible for DSSF funding is approximately 300,000 students according to Defendants' prior filings with the Court.)

The fact that at-risk students need additional resources and programs to exercise their constitutionally entitled opportunity for a sound basic education was found as a fact by this Court in its several prior decisions in this case, including its Judgment of April 4, 2002. See also, Memorandum of Decision Part III at 71 (March 26, 2001) (at-risk students typically require services, resources and programs not necessary for those students who are not at-risk, to have an opportunity to obtain a sound basic education.) That proposition was not seriously contested by Defendants at the 1999 trial nor at the additional hearings in September, 2001. This Court's holding that at-risk students need additional resources to obtain a sound education was not appealed by Defendants, and the holding was approved by the North Carolina Supreme Court in its opinion issued on July 30, 2004. Hoke County Board of Education v. State, 358 N.C. 605 at 641-643.

The amount of at least $1,000 per at-risk student is reasonable, and probably conservative, in view of evidence previously of record in this case as well as more recent studies and reports.

The amount is supported by evidence from North Carolina educators, including the results of a North Carolina Public School Forum study in the 1990s, The Things That Matter, participated in by members of the General Assembly, business leaders, State Board of Education representatives and other educators. (The group that created that study included State Superintendent Mike Ward, State Senator Howard Lee, former State Board of Education Chair Philip Kirk Jr. and then-superintendent of Johnston County schools, Dr. James Causby.) That study was the subject of testimony and was introduced in evidence in the 1999 trial. See Trial Transcript, October 1, 1999, Testimony of John Dornan, pp. 160-176, and PX 183, The Things That Matter (concluding that additional funding of at least 20% more than the usual per ADM funding is needed to educate adequately an at-risk student.)

At present, the DPI website lists North Carolina per pupil expenditure (for current expense) as $6741 in school year 2002-03. Twenty percent of $6741 is $1348, which is substantially higher than the $1,000 number here suggested. An amount of at least $1,000 per each at-risk student is also supported by more recent studies made by the North Carolina Public School Forum.

The Defendants' June, 2004 original DSSF proposal filed with this Court called for an annual DSSF allocation of $223 million, which equates to approximately $743 per at-risk student. Defendants have represented to the Court that if their $223 million DSSF program were fully implemented it would "begin to address the needs of disadvantaged students across the State." Defendants' August 10, 2004 90 Day Report at 1.

Under the current DSSF program in effect for FY '04-05, where the amounts for each participating LEA were determined by Defendants, Hoke County is receiving just under $1,000 per eligible child in DSSF funding.

Allocation of at least $1,000 per at-risk student appears conservative, particularly in view of many other studies concerning the incremental costs of adequately educating at risk children in other States' public school systems. See, e.g., Mathis, William J., Costs and Benefits (May 2003), summarizing numerous "costing out" studies and noting that recent such studies for public schools in Indiana, Maryland and Montana have all concluded that the costs of providing sufficient educational services to at-risk students for them to meet state and federal test standards very substantially exceeds $1,000 per student. William J. Mathias, Costs and Benefits, at http://course1.winona.edu/lgray/el626/Articlesonline/NCLB_Mathis.html.

Under Plaintiffs' Plan, full funding of the DSSF would be phased in over three years, $100,000,000 in FY '05-06, $200,000,000 in FY '06-07 and full funding of $300,000,000 in FY '07-08. As Defendants have suggested in some conferences they have held with Plaintiff Parties, the 16 districts receiving DSSF funding in '04-05 would be held harmless so that the annual amount of such funding to each would not be reduced as full funding of the DSSF is phased in over the next three fiscal years.

Under Plaintiffs' Plan, DSSF funds would be used to make available intervention programs of proven value for at-risk students. They would not be primarily used for the recruitment and retention of teachers generally, except where such teacher hiring is needed to implement a particular intervention program for at-risk students. Other approaches, discussed in subparagraph (e) below, are required to assure the presence of qualified teachers in every classroom.

b. Full Funding of the Low Wealth Schools Fund This Year.

This would require an annual increase of approximately $66 million from the present annual appropriation of $103.8 million. Full funding of the Low Wealth Schools Fund in the current legislative session was recommended recently by the North Carolina General Assembly's

Joint Legislative Education Oversight Committee. This is necessary in part because neither the State's basic education finance system nor the approved State Board DSSF formula takes into account an LEA's local capacity or ability to support minimal education services for all children, from local funds. The low wealth systems, by definition, lack average capacity to raise such funds locally. The low wealth schools funds, by law, must be used for instructional purposes and they are the best short-term partial remedy for the shortage of qualified teachers in those systems.

c. Continued Expansion of the More at Four Program so that it Makes Pre-Kindergarten Education Services Available to all North Carolina At-Risk Four Year Olds.

Such expansion of the More at Four program was been proposed to this Court by Defendants in their outline compliance plan presented to the Court on October 25, 2004 as a way to help provide an opportunity for a sound basic education for at-risk children.

d. Expansion of the Local Education Agency Assistance Program ("LEAAP") into a New Unit under the State Board of Education to Assist School Districts Most in Need.

Expansion of the LEAAP was proposed by Defendants in their outline of a Leandro compliance plan presented to the Court on October 25, 2004 but as of January, 2005, the State Board's proposed expansion budget contained no funding request to provide for its operation.

e. Specific Steps by Defendants to Ensure the Provision of Competent, Certified, Well-Trained Teachers in Schools Led by Well-Trained, Competent Principals.

The constitutional mandate to provide competent, certified, well-trained teachers in schools led by well-trained, competent principals is clear. Hoke County Board of Education v. State, 358 N.C. 605 at 636. It is also abundantly clear from the trial record and many subsequent submissions to the Court from the parties, that this mandate is not being met.

In the last several years, State agencies, the UNC Board of Governors and North Carolina nonprofit institutions have all performed and published studies concerning programs to supply competent, certified teachers to North Carolina schools. These studies include:

i. Report and Recommendations From the State Board of Education Teacher Retention Task Force (February, 2005).

ii. The Shortage of Teachers in North Carolina: Can We Attract and Retain Enough? and Recommendations To Address the Teacher Shortage in North Carolina, North Carolina Insight (August, 2004) (published by North Carolina Center for Public Policy Research).

iii. Report From the UNC Board of Governors Task Force on Meeting Teacher Supply and Demand, University of North Carolina Board of Governors, March, 2004.

iv. State Board of Education, Teacher Working Conditions Survey (2004).

v. A Profession in Jeopardy: Why Teachers Leave and What We Can Do About It, Public School Forum of North Carolina, December, 1996.

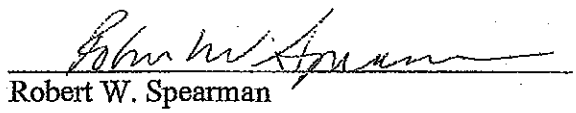
These various reports detail numerous suggestions and policy prescriptions including: increasing teacher compensation; improving teacher working conditions; special incentives to attract teachers to counties with the greatest teacher needs; more teacher training programs run jointly by the University system and the state community college system; expanded and improved professional development programs for teachers and administrators focused on the needs of at-risk children; changes in lateral entry and out-of-state recruitment programs to address the teacher shortage; retirement law changes to increase utilization of retired teachers; and many others.

At this point, the need is not for Defendants to undertake further studies but for them to take concrete action.

Plaintiffs suggest that the Court should require Defendants, within 90 days, to inform the Court specifically as to what they propose to do, and when, to insure that each North Carolina school child is taught in a classroom with a competent, certified, well-trained teacher in a school led by a well-trained, competent principal. That submission can then be tested by the requirements of the Constitution.

This the 10 day of February, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFFS MOTION TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN was served on the parties in this action on this day by e-mail and by depositing copies thereof in the United States mail, postage prepaid, addressed as follows:

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This the 10 day of February, 2005.

Robert W. Spearman

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2005 MAR -3 P 11:57
C.S.C.

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA and ORDER RE: MOTION EXPEDITED DISCOVERY BY UNC CENTER [illegible]

THIS MATTER is before the Court with regard to the evidentiary hearing scheduled for the week of March 7, 2005, for the Court to hear evidence relating to the "high school problem" which exists in a great number of high schools throughout North Carolina relating to poor academic performance in those schools.

The driving force behind the Court scheduling a hearing on the "high school problem" is that way too many of North Carolina's high schools had composite scores **below** 80 for 2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79. (107/326) = 33%

Even more troubling were the number of high schools with composite scores that were below 70% for the past year (102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. **A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.**

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendent of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84,89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84,83,88,83,82,83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are **not** for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are **not**, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005

Howard E. Manning, Jr.
Superior Court Judge

General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
P. O. BOX 351
RALEIGH, NC 27602

TELEPHONE: (919) 755-4100
FAX: (919) 715-4064

FAX ONLY MEMO

July 11, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: Notice of August 9, 2005 special civil session re: hearing on the "high school problem (with emphasis on CMS) and other matters"

Lady and Gentlemen:

On May 24, 2005, this Court filed "Report from the Court: The High School Problem."

Last Friday, I reviewed the N&O's article on the Wake County Public Schools 2004-2005 Composite Scores. I subsequently went on line and took a look at CMS's High School 2004-2005 Composite Scores and their disaggregated data. A copy of the composite scores for CMS for 2002,2003,2004 & 2005 by school is attached.

The CMS results remain dismal. Out of 17 high schools, 10 remain with composite scores below 60 and 5 out of those 10 continue to have composites below 50. While there was some improvement in the scores of the bottom 10, 5 of the CMS high schools, East Mecklenburg, Garinger, Harding, Hopewell and West Mecklenburg went backwards. Olympic made a .01 gain from 53.5 to 53.6. South Mecklenburg made a .01 gain from 71.9 to 72.0, which is basically no gain at all.

The bottom line is that despite the so-called internal plans and improvements and programs for improving CMS's high schools'

academic performance that we heard about at the hearing in March, it appears that the poor academic performance remains business as usual in the majority of those high schools, despite being placed on notice that the poor academic performance cannot be permitted to continue. This sorry state of affairs cannot be permitted to continue.

On the more affluent side of the ledger, Myers Park scored a composite of 81.2% up from 73.4% and Providence increased to 86.0% from 83.5%.

Accordingly, I have made the necessary arrangements to schedule a special civil session beginning Tuesday, August 9,2005 at 10:00 in Courtroom 10-C (the usual courtroom). At that time, the Court will expect to hear a report from CMS as to what, if anything, CMS is doing with regards to the specific substantive, effective, and academically proven corrective measures CMS will be in place in its bottom 10 high schools as of the start of the 2005-2006 school year to ensure those schools are *Leandro* compliant in terms of qualified, competent principals, qualified, competent teachers and resources so that the constitutionally required educational opportunity is provided to in those schools and each and every child.

The Court will also expect a report from the State of North Carolina on the issue of the overall *Leandro* compliance statewide at that time.

In connection with the "high school problem" and the high schools, including CMS' high schools, that have composites below 60, the Court will expect a report from the State of North Carolina as to what action it is taking to provide these high schools with substantive, effective and academically proven corrective measures to be in place as of the start of the 2005-2006 school year so as to ensure that these bottom high schools are providing their students with a *Leandro* compliant learning environment as required by the Constitution of this State.

The Court will also hear the CMS students' motion to intervene relative to the CMS assignment plan during this session of Court.

The Court would also like to hear from the plaintiffs' counsel on the progress, or lack thereof, being made with respect to the ensuring that the schools in those districts, including the high schools, are meeting the constitutional requirement of being *Leandro* compliant.

7/11/05

In the event there are other relevant matters that the parties believe should be on the agenda for the hearing, please write and let me know and I will consider putting them on the agenda. Thank you.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight and Speaker Jim Black, et al. c/o Tonya Williams
(919-733-8740)
Chairman Howard Lee, State Board of Education and DPI
(919-807-3445)

Attached: CMS HIGH SCHOOLS-COMPOSITE SCORES-2002,2003,2004 & 2005 (ONE PAGE)

HEY
7/11/05

CMS HIGH SCHOOLS - COMPOSITE SCORES - 2002,2003,2004 & 2005

	2002	2003	2004	2005
BUTLER	64.1%	70.9%	72.7%	75.5%
MYERS PARK	69.9%	72.0%	73.4%	81.2%
N. MECKL.	65.5%	69.5%	70.3%	71.9%
PROVIDENCE	78.4%	82.7%	83.5%	86.0%
S. MECKL.	66.6%	70.6%	71.9%	72.0%
WADDELL	39.2%	41.5%	39.4%	47.6%
E. MECKL.	64.2%	61.2%	61.2%	58.1%
GARINGER	36.2%	38.6%	43.7%	42.1%
HARDING U.	63.8%	60.2%	58.4%	56.5%
HOPEWELL	65.8%	67.6%	66.0%	64.6%
INDEPENDENCE	59.2%	56.2%	49.3%	56.2%
NW ARTS	60.1%	57.0%	58.6%	63.0%
OLYMPIC	49.8%	55.9%	53.5%	53.6%
OBERRY	xx	50.4%	41.4%	46.6%
VANCE	57.0%	49.3%	48.0%	54.0%
W.CHARLOTTE	30.6%	24.8%	30.1%	35.7%
W. MECKL.	47.8%	43.9%	47.5%	46.7%

It should be noted that EOC tests in U.S.History and ELPS were not administered in 2004 and 2005.

7/11/05

PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Janice O. Davis, *Interim Officer*

August 9, 2005

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Hand Delivery

Re: *Hoke Co. et al. v. State*

Dear Judge Manning:

On July 11, 2005, you sent a Notice to the parties to this action that you would hold a hearing on specified subjects in the Wake County Courthouse on August 9, 2005. Among other things, your Notice stated that you expected a report from the State on "the issue of overall Leandro compliance."

In response to that request, and on behalf of the Governor, the State Board of Education, and the Department of Public Instruction, I am submitting two documents. The first describes the Governor's and the State Board of Education's strategic focus for Leandro compliance. The second documents some of the actions we have recently taken to implement the Plan which we submitted to the Court on October 25, 2004, along with some additional commitments and actions that were not included in the Plan.

I trust that you will agree that the actions described in these documents prove that the State is making substantial and steady progress toward improving educational opportunities for all its students. The Governor and the State Board of Education intend to continue to aggressively implement the Plan to assure all North Carolina children have the educational opportunity to reach their full potential.

With kindest regards and best wishes, I am

Respectfully,

Howard N. Lee

c: The Honorable Michael F. Easley, Governor of North Carolina
State Board of Education Members

STATE BOARD OF EDUCATION
6302 Mail Service Center :: Raleigh, North Carolina 27699-6302 :: 919.807.3430 :: Fax 919.807.3198
An Equal Opportunity/Affirmative Action Employer

GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION'S STRATEGIC FOCUS ON *LEANDRO*

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

Governor Mike Easley and the State Board of Education have put in place a comprehensive strategy to achieve these ends. This plan is built on the following strategic objectives:

1. **Provide significant new resources to low wealth districts and schools** by fully funding the Low Wealth Supplemental Funding formula in order to attract and retain quality teachers and principals and improve educational opportunities for all students.

2. **Make the Disadvantaged Students Supplemental Fund (DSSF) permanent,** implement a rigorous evaluation of the DSSF program in the 16 pilot districts, and identify the appropriate funding levels for the DSSF formula.

3. **Provide new, targeted investments in education** including funding for the More at Four Pre-Kindergarten Program; high school reform (New Schools Project and Learn and Earn); teacher recruitment scholarship programs; teacher production in high need areas; teacher retention; principal effectiveness; and connecting schools and social services to support the achievement of at-risk students.

4. **Institute greater accountability for existing funds** targeted to at-risk students and ensure greater financial accountability for the use of state and local resources to increase student performance in districts across the state.

5. **Strengthen the State's assistance to low-performing schools and their districts,** beginning with high schools. The State needs to assist districts and schools to examine spending patterns, reallocate existing resources, effectively target new resources, and implement proven strategies to increase student performance.

In October 2004, Governor Easley and the State Board of Education submitted a comprehensive Plan to meet these objectives and improve educational opportunities in North Carolina public schools. Since that time, the Governor, the

General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan. They have also taken many additional steps toward addressing the need for qualified teachers and principals and the resources needed to help students meet high academic standards and be prepared for higher education, work and citizenship in the 21st Century.

GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION HAVE TAKEN ACTION TO IMPLEMENT THE STATE'S PLAN FOR *LEANDRO*

The October 2004 Plan submitted to the Court outlined efforts the State would take to:

(1) Expand Existing Proven Programs and

(2) Invest in New Commitments.

The State's efforts in each of these areas are detailed below. Some of the additional commitments and action the State has taken since the Plan was submitted are also noted.

I. EXPAND EXISTING PROVEN PROGRAMS

- **Ensure Every At-Risk Four-Year-Old Has Access to a Quality Pre-Kindergarten Program.**

  - The State intends to continue to expand the More-at-Four Pre-Kindergarten Program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

    1. The Governor's budget proposed $16.6 million in the first year and $29.1 million over the biennium to fund an additional 6,400 at-risk four-year-olds across the state.

    2. Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for the 2005-06 school year to support an additional 3,200 slots, which will bring the total of at-risk four-year-olds served to 15,200.

    3. The Office of School Readiness was created on July 1, 2005, through an Interagency Agreement signed by the Office of the Governor and Departments of Public Instruction and Health and Human Services. The Office will allow the state to align, coordinate and leverage the multiple public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to Ensure Schools and Districts Implement Proven Strategies.**

  - Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

    1 Governor Easley's July 20, 2005, Executive Order No. 80 set aside $22.5 million for DSSF for the 16 pilot districts.

    2 House and Senate conferees have tentatively agreed to include $22.5 million for DSSF in the budget.

    3 The Governor's budget also proposed continuing the funding in 2006-07, but distributing the funds based on the formula submitted to the Court in October 2004.

    4 The Governor's budget recommendations are not intended to cap the DSSF program at $22.5 million.

    5 The Governor's budget also requested $1.6 million for a thorough evaluation of the DSSF approach. The Senate included $1 million for the evaluation and the House included $100,000. The evaluation will focus on the effectiveness of the funds to increase student achievement and the efficacy of the State's assistance to the districts.

    6 DPI has an agreement with the Education Research Council to conduct a study of performance in the 16 DSSF pilot school systems.

    7 The Governor's budget calls on the State Board of Education to provide recommendations for an appropriate DSSF funding level by February 15, 2006, so that it may be implemented for the 2006-07 school year.

8 When the policies and resources outlined above are in place and the required evaluations are completed, the State will be better positioned to consider increases in DSSF in the second year of this biennium and beyond.

- **Strengthen and Expand LEAAP into a new unit under the State Board of Education to improve struggling school districts.**

  - Building on its pilot experience with the Local Education Agency Assistance Program (LEAAP), the State intends to create a full-time unit under the State Board of Education that works with a set of select school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

    1 The LEAAP program was used to provide assistance to the 16 pilot districts in DSSF. They worked with the districts to analyze their challenges and develop their plans for DSSF monies.

    2 Two years ago, the Governor and State Board of Education worked with the General Assembly to secure $500,000 to begin LEAAP, which worked to improve the capacity and achievement in poorly performing school systems. That $500,000 is now part of the continuation budget.

    3 The Governor's budget proposed transferring $6.5 million from within DPI to LEAAP to develop the full-time assistance program.

    4 The authorization for ABCs funding now permits expenditure of ABC funding for LEAAP teams.

- **Continue the N.C. Teacher Working Conditions Survey and Provide Actionable Data for Problem Schools and Districts.**

  - Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to

attract and retain teachers and principals and increase their effectiveness.

1 The Governor's budget requested $215,000 in 2005-06 and $290,000 in 2006-07 to continue the Teacher Working Conditions Survey and to provide customized action plans and resources for grants for DSSF districts, improve teacher working conditions, retain qualified teachers, and boost students achievement. The House included $215,000 and the Senate $115,000 for this effort.

2 The Teacher Working Conditions Initiative surveys teachers and produces school-level, district-level, and state-level reports on the conditions of work for teachers. School-level reports are provided for all schools where at least 40% of teachers return the survey.

3 The Southeast Center for Teaching Quality, in conjunction with the N.C. Teacher Academy, has used these results to work with select DSSF districts to improve their teacher retention efforts.

- A report from the Southeast Center for Teaching Quality is being provided to the Court.

- **Expand the New Schools Project and Learn and Earn to Improve High School Student Performance.**

  - To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

    1 The Governor's budget and his Executive Order No. 80 provided $4.2 million in 2005-06 to open 15 Learn and Earn high schools

    2 The Governor's budget and his Executive Order No. 80 provided $1.44 million to open 11 new economic development-themed high schools.

3 Next year, the State plans to open 11 more economic development-themed, smaller high schools and another 20 Learn and Earn high schools.

4 The State Board of Education, DPI and LEAs are partnering with the Gates Foundation New Schools Project to restructuring or reform of North Carolina high schools

5 The State is supporting the New Schools Project with funding for additional local administrators, *e.g.*, principals, and DPI staff

6 The Governor's budget included $500,000 for Communities in Schools for dropout prevention work in approximately 35 counties and the Senate budget also included $500,000 for this purpose.

II. INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.**

  - The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

    1 The Governor's budget and his Executive Order No. 80 provided $1.5 million to fund the 2+2 UNC-NC Community College System Teacher Education Partnerships. These funds support on-line courses and state positions to increase the numbers of community college students continuing their education and receive degrees that will allow them to teach. The purpose of the 2+2 Initiative is to link UNC schools of education with local community colleges and teach courses at the community college locations so as to develop teaching candidates in the very area where the State needs them most.

2 The Governor proposed $1 million in new scholarship money for participants in the 2+2 program described above. The money was to be part of the Prospective Teacher Scholarship program. The Governor also proposed $330,000 on 2006-07 for 100 scholarships for a new Two-Year Teaching Fellows Program for middle and high school math and science—two areas of major shortage in the State.

3 The Legislature did not support these proposals, but the Senate and House have agreed to provide $650,000 in 2005-06 and $1.3 million in 2006-07 for 100 new Teaching Fellows Scholarships and the same amount for 100 new Future Teachers of North Carolina Scholarships in math, science, special education, and ESL at any NC institution of higher education.

4 The Governor proposed $200,000 for the Teach For America-NC, which operates in 9 counties in northeastern NC with high teacher turnover rates. The House included funding for TFA-NC; the Senate did not.

5 The Governor's budget proposed new restrictions on Low Wealth funding that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers. The Governor is working with the Legislature to include those restrictions in the budget.

6 The State Board of Education revised teacher licensing policies to remove obstacles to hiring teachers from out-of-state, while safeguarding licensing standards and teacher quality.

7 The Governor's budget included two special provisions focused on improving principal attention and effectiveness on retaining qualified teachers. The Senate and House have agreed to these provisions.

- One calls for the study and overhaul of the Master's in School Administration programs at UNC schools of education to include greater focus on teacher working conditions and retention.

- The other mandates the inclusion of teacher working conditions and retention as components of principal evaluations.

- **Provide High Quality Professional Development for Teachers and Principals.**

  - The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

    1 The Governor's budget and Executive Order No. 80 provides $125,000 for the Principals Executive Program for a new professional development for new principals.

      - PEP will use the new funding to expand opportunities for high quality professional development to principals and assistant principals teacher support, teacher retention, instructional leadership, data-driven decision making, and teacher empowerment.

      - A report on Principals Executive Program activities is being provided to the Court.

    2 The Governor's budget proposed $100,000 for an On-line Professional Development Resource Center, which would provide access to teachers, school leaders and district leaders on high-quality professional development for teachers and principals. The Senate included the $100,000 in its budget; the House did not.

    3 Over the past year, the N.C. Teacher Academy, supported by a $2 million dollars appropriation from the State last year, worked in the 16 DSSF districts to provide professional development that responded to critical challenges in the districts.

      - A report on the N.C. Teacher Academy activities in the 16 DSSF LEAs is being provided to the Court.

- **Connect School, Social Service and Delinquency Prevention Resources.**

  - The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments.

these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

1 The Governor's budget and his Executive Order No. 80 provides $11.2 million to fund Child and Family Support Teams in 100 needy schools.

- In the schools, State will fund teams consisting of a school nurse and a school social worker to identify, provide services, and coordinate with mental health and social service professionals.

- In the community, the State will provide new regional mental health facilitators and county social service care coordinators to work directly with the school-based teams.

2 Teams are expected to be in place by the spring of 2006. A cross-agency group from the Office of the Governor, DPI, and DHHS is working to develop the program specifics and select the program sites.

3 The Governor's budget also provided funding for 65 additional school (separate from Child and Family Support Teams) nurses in low wealth school districts. The Senate's budget includes money to fund 50 additional nurses; the House budget did not include these funds.

III. ADDITIONAL COMMITMENTS AND ACTIONS

- **Fully Fund Low Wealth Supplemental Funding.**

  - Low Wealth funding is an important source for improving the capacity of low wealth schools and districts to attract and retain teachers.

    1 In addition to funding for DSSF, the Governor's budget proposed fully funding Low Wealth over the next two years. To accomplish this objective, the Governor's budget proposed $16.6 million for Low Wealth Supplemental Funding in 2005-06 and $58.5 million for 2006-07.

2 Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for Low Wealth which is 75% of full Low Wealth funding. The House and Senate budget conferees have tentatively agreed to provide $20 million for Low Wealth for 2005-06.

3 The Governor's budget also proposed a new restriction that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers because the Governor believes it is imperative that school districts direct new resources to finding and keeping qualified teachers.

- **Impose New Accountability on $220 Million in Funding for At-risk Students.**

  - The Governor believes we need to ensure greater accountability and impose tighter spending controls on the At-Risk Student Services Allotment (which provides funding for all districts based on U.S. Census poverty data) and the Improving Student Accountability allotment (which provides funding for students performing below grade level).

    1 At-Risk Student Services provides $220 million dollars to all 115 school districts.

    2 The Governor's budget and Executive Order No. 80 included provisions ordering new accountability for these two funding streams. The Governor is working with the Legislature to restrict funding for at-risk students to proven strategies for increasing achievement.

    3 If approved, the Governor's request will assure that these funds support proven educational strategies to improve the achievement of At-Risk students.

    4 The Governor has insisted that the "turnaround teams" for improving high school performance include examination of LEA spending to ensure that available funds are being effectively and efficiently allocated to support proven strategies for improving student performance.

- **"Turnaround Teams" to Improve Performance in North Carolina High Schools.**

  - On August 3, 2005, the Governor announced that the State Board of Education and DPI, using the resources of DPI, state assistance teams and LEAAP, will organize and send "turnaround teams" to work with all high schools performing below 60% on composite scores of End-of-Course tests.

    1. Based on the 2004-05 ABC results, there are 44 "traditional" high schools (10 in Charlotte/Mecklenburg) with Performance Composites below 60%.

    2. The State Board of Education and DPI are developing strategies for providing assistance to these high schools within existing resources.

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005, and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT:**

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

NORTH CAROLINA:

WAKE COUNTY:

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a regularly scheduled session of the Wake County Superior Court to begin on Friday, August 18, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court the specifics of (1) the leadership changes and (2) remedial efforts ("turnaround plans") that are being implemented at the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006.

The remedial efforts ("turnaround plans") referred to by the Court in this Notice of Hearing and Order are those efforts and turnaround plans announced by Governor Easley on June 13, 2006 and referred to by the Superintendent of

Public Instruction in the correspondence and other materials attached as Exhibit A for reference.

Due to the fact that there are some (17) high schools that presently fall into this category when the preliminary 2006 composite scores are taken into account [without backing out civics, U.S. History and 10th Grade Writing], there will be no other matters taken up at this hearing.

SO ORDERED this 18th day of July, 2006.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
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WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Thursday, April 19,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court concerning the progress of the remedial efforts ("turnaround progress") that were reported to the Court on August 18, 2006 and are in the process of being implemented since the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006 and those high schools whose performance composite was 60% or below for the past two years (Priority High Schools) and subject to turnaround efforts as directed

by Governor Easely on June 13. 2006. This should also include a brief report on the combined efforts of the Principal's Executive Program and the Kenan Flagler School of Business to assist principals at priority high schools.

B. A report on the progress being made by the State of North Carolina to recruit and retain more highly qualified teachers in low wealth school districts and low performing schools, including priority high schools and other schools with performance composites below 60% for the preceding (2) two years.

C. A report on the progress being made by the State of North Carolina to increase the numbers of nationally board certified teachers assigned to priority schools and low wealth schools.

D. A report on the status of proposed funding for DSSF and More at Four for the next budget cycle.

E. A report on the North Carolina Virtual High School and the timetable for its availability to all high school students of North Carolina.

F. A report on the progress of the New Schools Project: First, the status of the Learn and Earn High Schools and Second, the status of the number of high schools being converted into "21st Century High Schools".

G. A status conference on the scheduling of Plaintiffs' Motion for Attorneys Fees and Costs pending since December,2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 29th day of March, 2007.

Howard E. Manning, Jr.
Superior Court Judge

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
835-3448

FAX ONLY MEMO

June 28, 2007

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-934-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)
JACK BOGER/JULIUS CHAMBERS (919-962-1277)
At UNC Center for Civil Rights

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING focusing on Poor Academic Performance in Middle Schools - August 1 & 2, 2007

Lady and Gentlemen:

As I have gone through the past year dealing with the 17 low performing high school, talking with principals and others and looking as middle school scores for 2005-2006, especially math, it has become obvious that we not only have a high school problem, but one with middle schools as well. For 2005-2006, there were 117 out of 389 middle schools with performance composites of 65% or below. Out of this group there were 84 middle schools with performance composites of 60% and below. With the increased rigor required in math tests, many of these middle schools are sending children into the 9th grade with math skills below proficiency. I sent President Bowles a memo (copy enclosed) on June 19, 2007 outlining the problem and asking for assistance from UNC. Simply put, we need to find out why we are doing so poorly, what best practices are in place in the middle schools that are doing the best and why are we failing in those that are doing so poorly so we can do better. I have secured Courtroom 10-C and we can discuss the format if necessary. We would start at 10:00 a.m. I would appreciate it if Tom Ziko would see that a copy of this goes to Chairman Lee and Superintendent Atkinson. Thanks. Bowles Memo attached at 9 pages.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
919)755-4100/835-3448 (direct)
(919)715-4064 (f)

FAX ONLY MEMO

June 19, 2007

FROM: Howard E. Manning, Jr.

TO: President Erskine Bowles at UNC at 843-9695 c/o Janie/Jan

Subject: The Middle School Problem

Erv,

At the start of this memo on June 5, 2007, I find myself sitting in Courtroom 10-A during jury selection in a medical malpractice case which is anticipated to take from 4 to 6 weeks depending on whether or not the jury answers the first issue on liability yes or no. If no, the trial will end. If yes, the case will have a damages mini trial that will go on for a week or so. We have been in jury selection for three days and no end is in sight at this point.

As you know, I have been focusing on poor performing high schools for the last couple of years and in 2006 threatened to prohibit some 17 high schools from opening unless they were under new "management" based on their sorry performance composites over the previous 5 years.

Fortunately, the State of North Carolina, through its executive branch, responded. Although some principals in these schools retired, resigned or got moved to the central office, the State required the principals in those 17 high schools to go to your "day camp" at PEP/Kenan Flagler for additional training. I hope that these efforts and the scrutiny will lead to educational improvement among the students attending those schools this year.

Governor Easley has also required principals in high schools whose performance composite were 60 or below for two years in a row to start your PEP/Kenan Flagler program which has been attended by the 17 principals under my microscope since last summer.

During the past nine (9) months, I have managed to scratch out the time to go and personally visit all of "my" 17 high schools. I have toured all of the high schools and some more than once. I have also met with all of the 17 principals at their high schools as well as meeting with the group of principals in Chapel Hill on two occasions. I have also spoken to the second PEP cohort of principals of the twice 60 or below high schools which I will refer to as the "Easley" group.

One of the principals in the "Easley" group, a principal whose high school has been below 55% performance composite for 4 out of the past five years, advised me that if the "local politics" could be straightened out, that his high school might improve. Why this man remains in charge of any school year after year is unbelievable. His comment fails to reflect any perception of what is wrong under his watch.

In the course of these visits and discussions with the principals and some superintendents, the lack of quality of the academic preparation of too many of the children entering the ninth grades (9^{th}) in these and other high schools is a matter of grave concern to the high school principals as well as to me.

This is of particular concern at the high school level in connection with the ABC end of course tests given to ninth (9^{th}) grade students for many reasons, not the least being that an unprepared ninth grader has a higher probability of being unable to perform well on the ABC tests and most importantly, the child is not coming to the ninth grade in a sound position to obtain the opportunity to obtain a sound basic education in those courses because they are ill prepared coming from the middle schools.

I asked the LPHS principals to make suggestions for solutions about the influx of non-proficient 8^{th} graders coming to the ninth grade after we met in February, 2007. The LPHS principals wrote me a letter which contained several common sense recommendations, including but not limited to a recommendation that 8^{th} graders who are not

proficient in math and reading be required to attend a month long summer session at the HIGH SCHOOL to which they are assigned so that they receive intensive academic assistance before coming to the Ninth Grade Academy in the fall. A copy of that letter is attached for your information.

Keeping one ear open during jury selection, I have also been reviewing the ABC Performance Composites of Middle Schools and looking at selective schools' performance composites for 2005-2006 and previous years. The performance data was provided by DPI courtesy of Tonya Williams at Marc Basnight's office. Each middle school's performance composites for prior years are available on the NC School Report Cards which are found on line at www.ncpublicschools.org.

I was under the impression, prior to discussing the ninth (9^{th}) grade academic performance with the high school principals during the past nine months and prior to reviewing the 2005-2006 data, that the middle schools were on the upside of the scale overall. In short, I was under the impression that we had a problem with middle schools, but not a problem the size and scope of what is going on now.

For 2005-2006 there were 117 (30%) out of 389 middle schools with performance composites at 65% or below. There are 84 (21.5%) with performance composites of 60% and below in that group. These are designated as "priority" schools by the DPI according to the NC School Report Cards website.

Based on my review of several of the priority middle schools' past histories, it appears that the "drop" in scores for 2005-2006 was largely based on low end of grade (EOG) math scores. If I remember correctly, the State Board of Education increased the number of right answers in order for the math tests to meet better requirements for rigor in the subject matter.

A lot of the middle school math scores that I looked at were well below 50%. The reading scores seemed to remain somewhat stable but did not rise sufficiently to off set the drop in math scores. This is going to be another quagmire because the children are coming out of middle schools not proficient in math and that is a formula for disaster upstream in high school and Algebra I.

Some examples follow:

Broadview Middle School in CMS had a 56.5% composite for 2005-2006, a drop from 2004-2005. I looked at the eighth grade scores. Reading was 75.0 Math was 48.8 There were 213 math tests taken and 212 reading taken.

Assuming that the 8th grade Gateway (ie, the middle school principal passes them up to the high school despite their lack of proficiency in math - which will probably be the case based on what I have heard the past nine months visiting poor performing high schools) did not work for the 110 children in Broadview Middle School who were not proficient in 8th grade mathematics, the receiving high school would start out in the academic hole in mathematics with its 9th grade student population.

C G White Middle School in Bertie County had 2005-2006 percentage of eighth graders taking the EOG Reading test who scored at or above grade level was 84.8 and the percentage of eighth graders taking the EOG Math test who scored at or above grade level was 40.2. The previous year's math score (under the old, less rigorous EOG test scores) was 81.8%. Obviously, the increased rigor(more right answers on the EOG math test) on the EOG Math for the eighth grade caused a major decline in the performance composite for the eighth grade class. There were 92 tests given in 2005-2006. In the event that all of eighth graders were "passed" on to the ninth grade last fall, only 37 of 92 students had received a sound basic education in mathematics at the time they entered high school. 55 of the students were not proficient in mathematics at the end of 2006 and not ready to enter high school and take Algebra I successfully.

At Southwestern Middle in Bertie, a similar result occurred with the 8th grade mathematics EOG tests. In 2004-05, 77.1% of the 175 students taking the eighth grade EOG math tests scored at or above grade level. In 2005-06 only 53.8% of the 171 students taking the eighth grade EOG math tests scored at or above grade level. 78 out of 171 students, if they were "passed" to the ninth grade, were not proficient in mathematics when they started at Bertie high school last fall.

These examples serve to highlight the problem. These children are starting high school with a severe academic deficit in math that the ninth (9th) grade, in absence of extremely effective remediation, most likely cannot make up in terms of remediation in that year. Placed into algebra without a sound math basis, these children are in trouble. Likewise, the high school EOC testing will drop the performance composite for the high school in math for the ninth grade. It is a compounding problem as you can easily surmise.

There is no dispute that the influx of unprepared ninth graders into the high schools constitutes an educational drag on the high school's ABC scores. More importantly, there are way too many children coming into high school without having obtained a sound basic education in math and/or reading. Assuming that many eighth graders who are below grade level in reading are also below grade level in math, this is a untenable situation both for these children and for the high school that has to try to get them up to grade level academic performance and keep them from dropping out.

Suffice it to say, these children are at-risk of academic failure and further, that they have not obtained a sound basic education to this point in their educational journey. These children are also prime candidates for giving up, having little chance of success and dropping out of high school.

Why are these children tanking in mathematics? I had a long telephone discussion Friday afternoon week before last with a mathematics specialist at DPI about this. I asked for this discussion to confirm my general understanding that mathematic concepts are building blocks and that if a student fails to learn these math concepts as he or she goes through the math component of the standard course of study, the student will simply be unable to be successful in mathematics and algebra because of lack of proficiency in the building block concepts. This is in fact the case.

I asked the hard question. What's causing the problem? I was advised that many teachers are not very skilled (I would use the term not competent) at teaching elementary and middle school mathematics and this lack of teaching competence is compounded when the children are at-risk, low performing students. I do not know enough to put a

quantitative weight or number on how many weak math teachers are out there, but there must be a lot looking at the 2006 EOG scores in math once the baseline scores were raised by the State Board of Education.

Cutting to the chase, if the teacher is competent, as required by *Leandro*, the children in his/her class in elementary and middle school should not be scoring below grade level proficiency in spite of the increased rigor imposed on the EOG math tests by the State Board.

While there are some in the education community that would like to place a large part of the problem in the laps of the children and their parents, that's no excuse for a teacher's lack of competence in getting the children to understand the math concepts and become proficient as they move grade by grade towards high school.

What can the University do to help? I have given this question a lot of thought. Based on the lack of strength in middle school mathematics instruction, as evidenced by the 2006 EOG math scores, which had been "masked" by the "higher" math scores in previous years, I would look for help from the mathematics departments in the University system rather than the schools of "education."

Perhaps what the math departments could do is to look at the testing, look at results and devise an assessment system which would identify a student's "missing" math concepts and then devise a teaching protocol to fill in the missing concepts whether the child missed something in the 4th grade, 5th grade, or 6th grade math that is leading to the lack of proficiency.

If this could be done, then the next major obstacle is to get the professional development (ie, training) to principals and the teachers, who are not doing the job in the first place, so that the children are getting the quality of remediation and correct instruction necessary for them to be successful.

In the interim, I am considering dates and an order scheduling a hearing on the middle school problem which is compounding the high school problem so we can find out why these principals and teachers are not doing their jobs in the first place.

T-983 P.008/010 F-618

The bottom line is that I know that there are best practices that are well known in the field that, if the principals and faculty will use them in middle schools, just as in high schools, that will result in children actually scoring at grade level and above which is, after all, the whole purpose of public education and the constitutional requirement.

Anything you can do on this issue will be greatly appreciated, as usual. If we want our high school "graduates" better prepared to attend our great University system, we have got to do better downstream, especially in middle school mathematics.

6/19/2007

Cc: Governor Mike Easley c/o Franklin Freeman at 715-4239
Senator Marc Basnight, Speaker Joe Hackney & Lt. Governor Perdue c/o Tonya Williams at 733-8740
Chairman Howard Lee & Superintendent Atkinson at 807-[redacted] 807-3198

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 AUG 31 PM 3:12
WAKE COUNTY, C.S.C.
By ...

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, September 26 ,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education and The Department of Public Instruction ("DPI") the opportunity to report to the Court concerning the progress of the remedial efforts to be implemented for the 2007-2008 school year with respect to low performing high schools and middle schools in North Carolina, including, but not limited to the 98 "regular" high schools whose performance composites (preliminary) were 55.4% or less for the 2006-2007 school year and the 66 middle schools whose performance composites (preliminary) were 60% or less for the 2006-2007 school year. And further, to provide to the Court and for the record in this

action, the expense and costs to operate each of these individual schools for the 2006-2007 school year.

B. To place on the record, the final 2006-2007 academic performance results for each of the foregoing high schools include the total performance composite data, disaggregated data (number of students tested in each school in each subject on EOC, number of students proficient in each subject and percentage of students in each subject that are proficient) for each EOC subject tested for 2006-2007, which includes English I, Algebra I, Algebra II, Geometry, Civics, United States History, Writing, and Biology.

C. A report from DPI on what constitutes an educationally sound and appropriate protocol/template for a personal education plan ("PEP") for middle and high school students placed at-risk of academic failure as required by law pursuant to G.S. 115C-105.41. This presentation should include, but is not limited to, the use and effective administration of available diagnostic assessments to determine where in the particular subject the student has not mastered the particular concept or material required for grade level performance and above and how those assessments should be utilized for focused intervention and academic improvement during the upcoming school year for that individual student.

D. To put on the record, the performance composites for the 2006-2007 school year for all public elementary, middle and high schools in North Carolina by LEA.

E. To receive a report (executive summary) from Eric Hirsch regarding the Governor's Teacher Working Conditions Initiative report of Teacher Working Conditions in Lower-Performing North Carolina High Schools.

E. To set a schedule date for hearing on the Plaintiffs' motion for attorney's fees filed in December, 2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 31st day of August, 2007.

Howard E. Manning, Jr.

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2008 JUL -2 P 12:55
WAKE CO. C.S.C.
BY

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, August 20, 2008 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

Subject Matter of the Hearing:

A. Math instruction in elementary, middle and high schools – children not being required to learn the multiplication tables by heart, long division and fractions leads to their failure to become proficient in middle school math and algebra.

Without re-inventing the wheel, the Court has spent the last year delving into what first appeared to be a major problem in High School mathematics but which later devolved into both a major problem in Middle School and Elementary school mathematics which, of course, feeds the High School mathematics problem.

The Court learned early in 2008 that the State of North Carolina Standard Course of Study (SCOS) has **not been requiring teachers** to require elementary students to learn (memorize into their dna) multiplication tables, long division, or to multiply and divide fractions since 2000 when the State of North Carolina and DPI followed the recommendations of the National Council of Teachers of

Mathematics ("NCTM") setting out math standards that did proposed a math instruction curriculum that would "allow" all students to do high-level math without mastering "low level" problem solving skills. In short, the SCOS was changed to delete the requirement that our children were required to memorize and solidly learn their multiplication tables, algorithm long division or fractions. See ***University of North Carolina Education Schools: Helping or Hindering Potential Teachers? – Pope Center Series on Higher Education Policy, January, 2008 George K. Cunningham ("Pope Center Report, January, 2008").***

The ***Pope Center Report*** revealed that while the teachers were required to teach the math, the children were not required to really learn the basics. " Develop fluency with multiplication and division," which includes: "two-digit by two-digit multiplication [larger numbers by calculator] and "up to three-digit by two-digit division [larger number by calculator] ***Math Instruction in North Carolina, pages 4,5,6 & 10, Pope Center Report, January, 2008.***

The Court has learned that not all school systems dropped the requirement, despite the change in SCOS. Excellent school systems and schools with excellent leadership and excellent classroom teachers still taught the basics. Unfortunately teachers who were not so excellent and who had principal leadership that was not excellent did not require the "learning" of the basic math facts in multiplication, long division and fractions. In 2006, the **NCTM, reversed its recommendations and recognized that children in grade 4 need to know how to divide using the standard division algorithm, NOT BY CALCULATORS. *Pope Center Report, p 10.*** Yet, despite the reversal by the NCTM in 2006, it appears that DPI and the SBOE have not changed the SCOS to require children to memorize their multiplication tables and conform to the NCTM's "revised" recommendations from 2006.

This failure of too many of our elementary school children to learn the basics of multiplication, fractions and long division in lower performing schools and school districts has a direct link on their failure to be successful in high school algebra. One algebra teacher told the Court on a visit to Bertie County High last fall that her children who were ***not successful in algebra were unable to multiply in their heads. Instead, they were counting on their fingers under their desks when they were unable to use their calculators.*** This information was disturbing and it was corroborated by the ***Pope Center Report.***

In short, these children never achieved the necessary basic proficiency in multiplication, long division and fractions in elementary school. The disastrous result of this lack of proficiency is proven by the math test data. All you have to do is look at the 2007 math data in Halifax County for EOG and EOC in 2006-2007 and elsewhere around the State. See the UNC System's September 2007 report entitled ***Addressing Teacher Quality and Student Achievement in***

Middle Grades Mathematics- A Summary Report of Input from UNC Constituent Institutions.

North Carolina is not alone in having a math instruction problem. Mathematics instruction is a national educational problem which has been documented in a recently released federal report [March, 2008] on the deficiencies of mathematical instruction in the United States.

This federal panel of "experts" – the National Mathematics Advisory Council – found that "American students' math achievement is 'at a mediocre level' compared with that of their peers worldwide, according to a new report by a federal panel, which recommended that schools focus on key skills that prepare students to learn algebra.

A New York Times Article published after the release of the report indicated that the panel's unanimous report "said that pre-kindergarten- to – eighth grade math curriculums should be streamlined and put focused attention on skills like the handling of whole numbers and fractions and certain aspects of geometry and measurement." The panel suggested specific goals that students should master in order to be prepared for algebra. **By the end of grade 3 students should be proficient in addition and subtraction of whole numbers and by the end of grade 5 students should be proficient in multiplication and division of whole numbers.**

It appears that the bottom line --- knowing the basic math facts such as multiplication tables, long division and fractions --- is the linchpin to a child obtaining, in elementary school, a sound basic education in mathematics. Without this foundation in math, the child cannot have the equal opportunity to obtain a sound basic education in middle school math and thereafter high school algebra and thus, will ***lose out on the Leandro required opportunity to obtain a sound basic education in mathematics all the way through high school. To further exacerbate the problem in mathematics [and in other core subjects] instruction, we have learned that in far too many classrooms, the teachers are overlooking, or ineffectively employing, an essential element of instruction – the formative assessment.***

B. Lack of Effective Use [or the non-utilization] of the Formative Assessment as part of classroom instruction in mathematics and other subjects.

While it appears that there is a problem with the children being taught the basics of mathematics in elementary school, it also appears to the Court, after spending a year focusing on mathematics instruction problems, that there are too many classrooms in which an essential element in classroom instruction – the formative assessment – is either missing, or being ineffectively utilized. As a result there is a ***serious gap*** in the instructional process which, when combined

Mr. Spearman reported on the number of classrooms staffed by Long-term Substitutes in each of the plaintiff school districts: Cumberland - 32; Halifax - 16; Hoke - 17; Robeson - 21; and Vance - 35.

There is no dispute that there exists a serious problem in hiring, training and retaining certified teachers in North Carolina, especially in the low wealth plaintiff LEAs, and other low wealth LEAs. The existence of this problem has been identified and acknowledged by the Department of Public Instruction, the State Board of Education, and the Governor of the State of North Carolina.

This problem is not just a "minor" problem that the State of North Carolina can ignore or take its own good time to remedy. ***This problem is a constitutional problem that is not going to disappear. This is because it is the constitutional right of each and every child in the public schools of North Carolina to be provided with the equal opportunity to obtain a sound basic education whether they are at-risk or not.***

That opportunity, as defined in this case by this Court and affirmed by the North Carolina Supreme Court requires that (1) "every classroom be staffed with a competent, certified, well-trained teacher;" (2) "that every school be led by a well-trained competent principal;" and (3)"that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." [Leandro II and previous Orders of this Court]

The existence of the problem with classrooms staffed by teachers that are not certified or well-trained, including Long-term substitutes without college degrees, has been made known to the General Assembly of North Carolina as well as the DPI and State Board of Education.

To its credit, the DPI and the State Board of Education acknowledged the constitutional deficiency and the lack of compliance under *Leandro* in the classroom teacher area and sought $22,000,000 from the General Assembly to fund the DSSF pilot program for sixteen (16) LEAs in which there was

demonstrated need to remedy the constitutional deficiency of the presence of a competent, certified and well trained teacher in individual classrooms.

Despite knowing of this deficiency and being repeatedly advised of demonstrated need for assistance in these low-wealth school districts and despite being advised of the constitutional requirements in *Leandro* concerning the requirement for competent certified, well trained teachers in each classroom, the General Assembly of North Carolina passed its budget and adjourned without funding the DSSF program for any LEA, including HCSS.

In the interim the Supreme Court of North Carolina has spoken and this case has been remanded to this Court for further proceedings, if necessary.

This Court has determined that further proceedings are necessary, initially at least, on two different subjects.

First, this Court, following the dictates of the Supreme Court, will provide the General Assembly of North Carolina with the opportunity, "*initially at least*" to take such action as it may deem appropriate to address its failure to fund the pilot $22,000,000 16 LEA DSSF program as requested by the State Board of Education and DPI.

On this subject, the Court gives NOTICE that it will resume the hearing begun on July 23, 2004, on Thursday, October 7, 2004, at 3:30 P.m. in Courtroom 10A, Wake County Courthouse. The Court directs counsel for the State of North Carolina to be prepared to report to the Court on behalf of the Legislative Branch of Government (the General Assembly) what action the General Assembly has taken, to address its failure to fund the pilot $22,000,000 DSSF program, including, but not limited to, acting in cooperation with Governor Easley to fund the balance of the $22,000,000 (the sum of $10,000,000) requested by the DPI and The State Board of Education for the DSSF program will be made available to the DPI for the benefit of the five school districts originally included in the DSSF for school year 2004-05.

Second, the State of North Carolina has been making commendable overall progress statewide as evidenced by the ABC data submitted for 2003-04 by the State Board of Education in terms of overall student performance in grades

3-8. However, the data reflecting high school academic performance shows that much improvement remain to be made once children leave the eighth grade and enter high school and that in many areas low wealth systems are still struggling to reach grade level for the majority of students.

Much progress notwithstanding, the State of North Carolina has the on-going task of assessing (1) its problem LEAs and schools therein, or elsewhere, that are not providing the children of North Carolina with the opportunity of a sound basic education; (2) examining the allocation of educational resources and (3) if necessary, reallocate resources in order to provide cost-effective, targeted solutions to constitutional educational deficiencies so that the children affected will be provided with their constitutional right to the opportunity to obtain a sound basic education.

It has been more than two and one-half years since this Court entered its Final Judgment on April 2, 2002. During that time, the DPI and State Board of Instruction have, as seen through the 90-Day Reports, made progress in identifying problems in HCSS and taking targeted steps to correct those problems utilizing accountability for resources spent in that endeavor. To its credit, DPI and the State Board of Public Instruction have expanded assistance teams to LEAs other than HCSS on their own initiative and because there is a demonstrated need for their help and assistance.

This Court believes that DPI and the State Board of Public Instruction are heading down the right track towards assessing problems, developing common sense solutions and providing LEAS with guidance and assistance in developing cost-effective, targeted solutions that can be measured for success and accountability.

Now that the appeal is over and *Leandro II* is in full force and effect, it is time for the DPI and State Board to outline and present its plans as to how it will continue to proceed to ensure that the children of North Carolina will be afforded the opportunity to a sound basic education.

On this subject, the Court gives NOTICE that it will hold a hearing at a Special Session of Superior Court to begin on

Monday, October 25 2004, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina the opportunity to present its plan and outline as to how the State of North Carolina, acting through the Executive and Legislative branches, will address the constitutional educational deficiencies and how it plans to remedy them under the guidelines set forth in this case.

To provide the plaintiff LEAs and the plaintiff-intervenor LEAs with an opportunity to be heard with regard to the State of North Carolina's plan and outline to address any constitutional educational deficiencies that are required to be remedied under the Leandro decision.

To address issues relating to future proceedings in this case or matters that may remain as a result of the October 7, 2004 hearing, or such other matters that may be necessary.

To address any motions or other formal requests which may be submitted to the Court in the interim. However, no such matters will be addressed if not filed prior to October 8, 2004 by 5:00 p.m.

The Court is prepared to take evidence during this term of Court, if it is required.

SO ORDERED this 9th day of September, 2004.

Howard E. Manning, Jr.
Superior Court Judge

PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, *State Superintendent*

October 25, 2004

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351

Dear Judge Manning:

The State of North Carolina is committed to ensuring that all children receive an education that prepares them for the future. Our priority is to make sure that every child, in every community, has access to a quality education with competent teachers, effective principals, and adequate resources.

To that end, it has been a priority of the state to ensure that children begin school ready to learn, that they enter a school that has class sizes low enough to provide individual attention, are taught by qualified teachers, and are expected to meet high standards of excellence. In the last few years, the state has made major gains in each of these areas. However, there is more that can be done to ensure that all students, and in particular, at-risk students, are afforded the educational resources and opportunities for a high quality education.

Over the last few weeks and months the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions with education leaders and interested parties about the development of a long-range plan based on the progress of the Disadvantaged Student Supplemental Fund pilots in sixteen counties. With the Governor's charge and collaboration, we have developed the attached action plan. The components of this plan are grounded in research and proven practices.

Sincerely,

Howard N. Lee

Patricia N. Willoughby

HNL/PNW/gnd

OFFICE OF THE STATE SUPERINTENDENT
6301 Mail Service Center :: Raleigh, North Carolina 27699-6301 :: 919.807.3430 :: Fax 919.807.3445
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EXECUTIVE SUMMARY

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

The State has demonstrated a commitment to target resources to meet the needs of at-risk students. Among other programs, the Governor, the State Board of Education and the General Assembly have recently created and funded the following:

- The More at Four Pre-kindergarten Program for at-risk four-year-olds
- A K-3 class size reduction initiative
- The High Priority Schools Act
- The Local Education Agency Assistance Program to provide assistance to poorly performing districts
- The New Schools Project to reform high schools

Most recently, the Governor identified $22 million for use by the State Board of Education to implement the Disadvantaged Students Supplemental Fund (DSSF). The DSSF Program provides targeted resources to assist at-risk students in 16 school districts marked by low student performance, low teacher experience, high poverty, high teacher turnover.

The State remains committed to these important efforts. Nevertheless, State education leaders understand that more remains to be done to improve the achievement of at-risk students and ensure that every student has the opportunity to obtain a high quality education. Towards that end, the State is committed to 1) expanding and enhancing existing initiatives and 2) developing select new initiatives targeted to meet the needs of at-risk students.

Consistent with that commitment, the State intends to construct, prior to the start of the 2005 Legislative session, a detailed plan. The State recognizes that legislative appropriations will be needed to implement elements of this plan. The plan includes the following components:

EXPAND EXISTING PROVEN PROGRAMS

- **Ensure every at-risk four-year-old has access to a quality prekindergarten program.** The State intends to continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to ensure schools and districts implement proven strategies.** Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

- **Strengthen and Expand LEAAP into a new unit under the State Board to improve struggling school, districts.** Building on its pilot experience with the Local Education Agency Assistance Program, the State intends to create a full-time unit under the State Board of Education that works with a set of especially needy school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

- **Continue the Teacher Working Conditions Survey and provide actionable data for problem schools and districts.** Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to attract and retain teachers and principals and increase their effectiveness.

- **Expand the New Schools Project and Learn and Earn.** To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.** The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

- **Provide high quality professional development for teachers and principals.** The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

- **Connect school, social service and delinquency prevention resources.** The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments, these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

PLAN FOR IMMEDIATE ACTION

The State is committed to immediate action to develop these initiatives and implement them to improve the educational opportunities available to at-risk students. The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

Over the course of the last few weeks and months, the Office of the Governor, the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions about the development of a long-range plan to meet the needs of at-risk students. In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The following steps will take place in the coming weeks and months in anticipation of taking a detailed package to the General Assembly for the 2005 session:

October 26, 2004 – January 26, 2005

- **November 5.** The Office of the Governor, Department of Public Instruction (DPI) and State Board of Education (SBE) representatives will hold initial meeting with Amicus groups and teacher groups.

- **November 19.** The Office of the Governor, DPI and SBE representatives will reconvene a group of superintendents and other representatives, including individuals from plaintiff and plaintiff-intervenor districts.

- **November 30.** The Governor will convene the Education Cabinet to meet and take up relevant items from this plan. The Education Cabinet will determine those items needing action by education governing boards.

- **December 1-2.** The State Board of Education will evaluate and approve plans for the five remaining districts under the Disadvantaged Students Supplemental Fund at its monthly meeting in December.

- Representatives from the Governor's Office, DPI, SBE, the Legislature, the Education Cabinet, K-12 school leaders, and other key stakeholders will continue meetings to construct the details of the plan.

- The Office of the Governor, DPI, and SBE will work with legislative representatives on development of a legislative package for the 2005 session of the General Assembly, which opens on Wednesday, January 26, 2005.

Beyond the 2005 Legislative session, the State is committed to continuing the development and implementation of proven strategies for meeting the needs of at-risk students.

BACKGROUND

Over the past two decades, the State has put into place a series of policies that have helped North Carolina make especially significant progress in the academic achievement of its young people.

In the late 1980s, the state began a focus on testing and accountability with the introduction of statewide curriculum standards, testing and public accountability. In the 1990s, the State refined its accountability system and placed a major emphasis on teacher quality. In the mid-nineties, the State implemented the ABCS of Public Education and school level testing and accountability. The testing and accountability system helped to focus attention and resources on the needs of students and schools throughout the state, especially those students not performing at or above grade level on state assessments. In addition to providing information on the achievement of schools and students, the ABCs program also assigned assistance teams to low-performing schools and instituted Gateways in grades three, five and eight to stem social promotion. The ABCs Program has allowed the state to understand which students and which schools are most in need of additional assistance and support.

Also in the 1990s, the State made significant investments in its teaching workforce, including raising teacher pay to near the national average and in the top half of the nation—where it remains today. The Excellent Schools Act of 1997 raised teacher pay, increased teacher standards, created accountability measures for schools of education, and improved the support of new teachers in the profession.

Improvement on national assessments, including the National Assessment of Educational Progress in reading, writing and mathematics and the SAT, demonstrates that North Carolina's approach is yielding results. In addition, reports from the RAND Corporation and the National Education Goals Panel and, most recently, from the Education Trust in October 2004, found that the steps that the state had been taking were increasing achievement scores and reducing achievement gaps on national assessments in reading and math.

The 2000 RAND report, *Improving Student Achievement: What NAEP Test Scores Tell Us* laid out a clear path for moving forward to improve achievement, especially among its at-risk students. The RAND report found that the most cost-effective approach to improving reading and math achievement on the National Assessment of Educational Progress was to lower teacher-student ratios in the early grades, expand public Prekindergarten, and provide additional resources to teachers. The report found that "investing in better working conditions for teachers to make them more productive (lower pupil-teacher ratios, more discretionary resources, and improved readiness for school from Prekindergarten) could produce significant gains in achievement scores" (pp. xxvii-xxviii).

In accordance with that report and other significant education research, Governor Mike Easley, the State Board of Education and the Legislature have worked together to ground the state's school improvement efforts in a research-backed approach for raising achievement of all students, with a particular focus on improving achievement for at-risk students. The State has focused on pre-kindergarten programs, smaller classes in the early grades, and supporting the needs of teachers.

Beginning in 2001, the State began to put these research-backed policies into place:

- **The More at Four Prekindergarten Program** was implemented in 2001 and served 1,500 at-risk four-year-olds in 34 counties. In 2004, it is reaching 12,000 at-risk four-

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.

- **The High Priority Schools** initiative reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program,** which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.

- **The Teacher Working Conditions Initiative,** which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.

- **The New Schools Project to reform high school.** Supported initially by an $11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

  The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

  In addition to the $11 million granted by the Gates Foundation, the state is investing $2.2 million on a recurring basis to begin the Learn and Earn high schools.

These investments and approaches represent research-backed practices to improve teacher retention and effectiveness and boost student achievement. The State believes they represent an important set of building blocks for addressing the needs of at-risk students. Nevertheless, the State believes that more must be done for at-risk students in North Carolina.

ADDITIONAL FUNDING TARGETED TO MEET THE NEEDS OF AT-RISK STUDENTS

In July of this past year, the State began its most recent effort to address the needs of at-risk students with the creation of the Disadvantaged Students Supplemental Fund (DSSF) pilot program. The DSSF pilot is now working in select districts to allocate additional resources for proven strategies to boost the achievement of at-risk students. Governor Easley has identified and made available up to $22 million for use by the State Board of Education to support 16 school districts. The pilot is operating as follows:

- Districts were identified based on levels of student achievement, student poverty, and teacher attrition. Based on a formula, specific funding levels were set for each district.

- The State Board assigned assistance teams to each district to help in the creation of their plans for using the DSSF resources.

- Plans from local districts are based on a "menu of proven strategies" developed by the State Board of Education. Districts have the flexibility to decide which options best meet their needs, but they must use the options provided by the State Board. The options include bonuses for recruiting and retaining teachers; additional personnel for such strategies as reducing class size, hiring reading coaches, and supporting new teachers; professional development for teachers and principals; supporting afterschool and other extended day programs; and implementing personal education plans.

- Funding for districts is contingent upon the approval of the State Board of Education.

- The Board will evaluate the results from the DSSF pilot, including the effectiveness of additional resources, the targeted options, and the DPI assistance on improving student achievement and teacher attrition.

MOVING FORWARD: BUILDING ON THE STATE'S COMMITMENT TO ADDRESS THE NEEDS OF AT-RISK STUDENTS

The aforementioned strategies for improving student achievement—especially the achievement for students below grade level—are yielding results. The State intends for these strategies to serve as the foundation of its continuing effort to construct a system of K-12 public education that provides superior education for all students and, more specifically, meets the needs of at-risk students.

In order to ensure that all students are receiving a high quality education and that they have access to caring, competent teachers in their classrooms, effective principals in their schools, and the instruction they need to meet high standards, the State is committed to taking the following steps to maintain and expand proven strategies for school improvement. Additionally, it is

recognized that the Legislature will need to appropriate additional resources to allow the State to expand a number of these proven strategies for increasing the achievement of at-risk students.

1. **Ensure that every at-risk four-year-old has access to a quality prekindergarten program.**

   Recognizing that students who do not start school ready to learn remain at-risk of school failure and dropping out throughout their career, the State intends to expand the More at Four Prekindergarten Program for at-risk four-year-olds towards its goal of access for the estimated 40,000 at-risk four-year-olds in the state. Quality pre-kindergarten programs are the fundamental building block for the State's effort to meet the needs of at-risk students across the state. Without access to quality pre-kindergarten programs, at-risk students start school behind and remain at-risk of school failure throughout their school careers.

   In expanding More at Four, the State will identify high-need areas with respect to educational performance, families in poverty, and other key indicators to determine priority sites for funding expansion.

2. **Evaluate, refine and expand the Disadvantaged Students Supplemental Fund pilot approach to ensure that districts and schools implement proven strategies for meeting the needs of at-risk students**

   The Governor and State Board of Education have implemented the Disadvantaged Students Supplemental Fund in 16 school districts for the 2004-05 school year. The pilot requires that assistance teams, assembled by the Department of Public Instruction, work with eligible districts to determine plans for using additional resources based on a menu of proven strategies. The Governor, State Board and General Assembly will carefully analyze the success of the different strategies chosen by the 16 districts in order to determine which approaches best met the goals of attracting and retaining teachers, ensuring an effective principal, and providing individualized instruction that increases the achievement of students at-risk of school failure.

   As part of this critical effort, the State Board of Education will evaluate the performance of students, the supply and retention of teachers, the appropriateness of the current menu of options provided, and the efficacy of DPI assistance. In addition, the State will examine the appropriate state and local fiscal responsibilities for additional investments, and the differences in working with urban versus rural school districts.

   Based on evaluation findings, the State will modify the menu of options and expand this effort to additional schools and school districts. The current pilot is a first step and the State recognizes that additional investments are needed for the next school year and beyond.

3. **Strengthen and expand LEAAP into a new unit under the State Board to improve struggling school districts**

   Building on its experience with the Local Education Agency Assistance Program, the State is committed to create a unit under the State Board of Education that works with a set of school districts most in need to analyze the challenges, provide intensive support on resource and policy decision-making, and build the capacity of these districts.

This new unit would work with districts that need immediate and intensive support to improve education for its students. The State will develop criteria to determine which districts are most in need of assistance from this unit.

The unit would provide the following types of assistance: 1) a detailed diagnostic analysis and audit of student performance trends, teacher working conditions, and resource allocation; 2) work with the district to develop a plan for resource reallocation and strategies for deploying additional funding; and 3) brokering relationships/assistance for the districts with higher education partners, the programs of the UNC Center for School Leadership Development, and other appropriate entities. This effort would provide intensive and targeted assistance and guidance on resource allocation and the use of strategies to guide improvement.

The State Board of Education would approve plans for the district's use of state funds based on the unit's work with the district. The unit would be comprised of new personnel assigned solely to this function.

4. **Improve teacher retention and effectiveness by using the Teacher Working Conditions Survey to provide actionable data to schools and districts**

   With data that demonstrates a correlation between working conditions and teacher turnover rates and student achievement, the Teacher Working Conditions survey is an important tool for assisting school and district efforts to attract and retain caring, competent teachers and to develop effective principals. In addition to the statewide administration of the data, the State will look to require administration of the survey in targeted schools and districts. This will ensure a full set of data to use as an assessment tool to determine needed strategies in those locations.

   The survey data has found that improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students. Targeted use of additional resources for this purpose will be considered as a part of state assistance for at-risk students.

5. **Expand the New Schools Project and Learn and Earn Schools to improve the preparation of high school students to access further education and compete for skilled jobs**

   The State is committed to an ambitious effort to improve high schools, especially for those students whom the traditional high school model does not serve well and who are at-risk of dropping out. The State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. The State Board of Education, working with the New Schools Project, will create a priority list of districts to receive funding and assistance under this project based largely on the needs of at-risk students. All new schools have goals and outcome measures that include improving student achievement, graduation rates and the college-going rates of their students.

The State believes that these efforts will target resources and assistance effectively to provide caring, competent teachers, effective principals, and the individualized instruction needed to help

students at-risk of school failure meet high standards and be well prepared for further education and a skilled workforce.

The State will develop an accountability mechanism to evaluate the impact of these investments to improve the achievement of at-risk students. The mechanism will, at a minimum, use student performance from the ABCs program and the teacher working conditions data. The accountability mechanism should also hold the State accountable for its assistance to districts and schools.

ADDITIONAL EFFORTS TO SUPPORT THE STATE'S COMMITMENT TO AT-RISK STUDENTS

In addition to its commitment to expand and maintain existing initiatives to meet the needs of at-risk students, the State also believes that there are additional efforts needed to support schools and districts to help all students achieve.

Expand teacher supply by increasing partnerships between community colleges and schools of education

The State understands that there is a critical need to boost both the supply and retention of teachers in hard-to-staff schools. The shortage of qualified teachers for hard-to-staff schools is a problem that afflicts every state in the nation. While North Carolina has been recognized for its leadership in this area nationally, the State realizes that more remains to be done.

Hard-to-staff schools in the state have a significant number of lateral entry and first-year teachers. While more needs to be done to induct, support and retain these individuals, the fact remains that there is a shortage in the supply of highly qualified teachers for hard-to-staff schools.

This, however, will not be accomplished by merely increasing the supply at schools of education. Existing patterns show that preparation in the state's schools of education generally leads to employment in the surrounding environs of those universities. Unfortunately, many of the schools and districts with the greatest need for qualified teachers are not in close proximity to school of education. In addition to providing targeted incentives to bring teachers to hard-to-staff schools, the State believes that it must look to boost the supply of qualified teachers in the areas where they are needed most.

To do so, the State sees an expansion of "2+2" partnerships between schools of education at four-year institutions and community colleges, which are located in critical regions throughout the state. Existing "2+2" programs have shown great promise in increasing the supply of qualified teachers prepared to teach and remain in areas where teachers are needed. In examining the prospects for expanding this approach, the State will identify regions of the state with high teacher attrition, low levels of teacher candidate supply, and underperforming schools as priorities for "2+2" program expansion.

The state is also committed to examining additional avenues for increasing the supply of teacher candidates from schools of education, resources and approaches to prepare qualified lateral entry candidates, and other strategies to increase the availability of qualified teachers in hard-to-staff schools.

The State recognizes that in working to increase the supply of qualified teachers for hard-to-staff schools it must also remain vigilant to improve the retention of qualified teachers in these schools.

Provide high quality professional development for teachers and principals

Any effort to ensure effective teachers and principals in classrooms and schools must include providing them with high quality professional development that supports their ability to help students reach high standards. The State has invested in a number of important and effective professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals Executive Program. The State has also vested the lion's share of responsibility for providing professional development in schools and school districts. Unfortunately, many teachers and principals report that they lack access to high quality professional development.

The State will explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers. This includes identifying the content areas and skills where teachers and principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers and principals.

Connect School, Social Service and Juvenile Justice Resources

The State recognizes that schools and schools systems alone cannot meet the challenges of educating all students for the challenges of higher education, the workplace, and participating in the democratic life of their communities. It is critical that children and families receive the support they need to be healthy and actively involved in their children's education.

The State intends to bring together the State Board of Education and the Departments of Public Instruction, Health and Human Services, and Juvenile Justice and Delinquency Prevention to jointly develop strategies for connecting school, social service, and juvenile justice resources.

Efforts would aim to target schools and counties with high need of support across the state. Such efforts might provide for the coordination of parent involvement, mental health services, health services, and delinquency prevention and other juvenile justice-related services for youth and families in participating schools.

PLAN FOR IMMEDIATE ACTION

The State has already demonstrated its commitment to pre-kindergarten for at-risk four-year-olds, class size reduction, additional resources to support at-risk students in targeted school, district assistance, high school reform and improving teacher working conditions has been demonstrated. That commitment will continue.

In addition, the State is committed to expanding a number of these proven strategies, targeting them to meet the needs of at-risk students and finding solutions for other important educational problems, such as increasing the supply of teachers and connecting social services with schools and other areas.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

November 23, 2004

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, December 7, 2004, in this matter. The hearing will be in Courtroom 10-C (where the previous hearings have been) at 2:30 P.M. on Tuesday, December 7. I hope that everyone has a safe and pleasant Thanksgiving this year.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)

11-23-04 P12:45 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

January 6, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, January 11, 2005, in this matter. The hearing will be in Courtroom 10-B (same floor but not where the previous hearings have been) at 2:30 P.M. on Tuesday, January 11, 2005. I hope that all of you had a pleasant holiday season and that the "wrinkles" will have been worked out of the Disadvantaged Student Supplemental Fund Formula by Tuesday so we can proceed on other fronts, including, but not limited to, the pressing problem with regard high school student performance referred to in my November 10, 2004 memo, and solutions for that problem. With regard to the DSSF formula issue, I am in receipt of the N.C. School Superintendents' Association Response to the DSSF formula which was issued in mid-December, 2004.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

01-06-04-06-05-P01:35 OUT

Feb-10-2005 11:19 From- T-518 P.001/002 F-020

02-10-05 A10:19 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

February 10, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, February 15, 2005, in this matter. The hearing will be in Courtroom 10-C at 2:30 P.M. on Tuesday, February 15, 2005. While I requested a report from the State on the progress made on the "plan" at this meeting, I have learned that Governor Easley has not put the final touches on the budget and that his budget will not be ready to go to the General Assembly until after the Governor's "State of the State" address several days after next week's hearing. Accordingly, I will not expect any progress report from the State at next week's hearing. However, there are several items that we will need to take up.

First, there is a motion to intervene which has been filed and we will take that matter up.

Second, in anticipation of the March 7 special session regarding the high school problem, I have asked Susan K. Lamar, NC AVID Director, to make a presentation to the Court and the parties about the AVID program, its purpose, and the progress AVID is making in helping North Carolina children realize their Leandro opportunity. The AVID program assists middle and high schools prepare children who are underachievers, with the potential to do college level work, to have the opportunity to become academically prepared and eligible for college work. It is my

understanding that AVID is now present, in one or more schools, in Durham, Nash-Rocky Mount, New Hanover, Onslow, Pitt, Wilson, Cumberland, Catawba, Charlotte-Mecklenburg as well as starting in Wake, among others.

Third, discussion of schedule and presentation for March 7 hearings and any other matters that the parties have been working on with respect to DSSF, etc.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

2/10/05

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

FILED
2003 FEB 10 PM 4:49
WAKE COUNTY, C.S.C.
BY

HOKE COUNTY BOARD OF EDUCATION, et al.,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF EDUCATION, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendants.

MOTION FOR ORDER TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN

Plaintiffs move the Court for an order directing Defendants to show cause why they should not adopt an initial Leandro compliance plan that includes the elements set out below ("Plaintiffs' Plan") and seek funding from the General Assembly to implement such Plan. Alternatively, Plaintiffs ask the Court to approve Plaintiffs' Plan described herein. In support of this motion, Plaintiffs show the Court:

1. The Plaintiffs' Plan is based largely upon proposals submitted previously to this Court by Defendants as to proposed steps to be taken by them to comply with the orders of this Court and the North Carolina Supreme Court in this case. With most of those proposals, Plaintiffs are in agreement with Defendants. However, unlike Defendants' prior submissions, Plaintiffs' Plan identifies specific amounts of additional resources and a concrete timetable to begin to meet the educational needs of North Carolina schoolchildren so that they can enjoy and

exercise the right to the opportunity for a sound basic education. This motion is also supported by the affidavits of Superintendents Colin Armstrong (Robeson), Norman Shearin (Vance), Allen Strickland (Hoke) and Willie Gilchrist (Halifax).

2. The Plaintiffs suggest to the Court that our Supreme Court has already upheld this Court's determination that Defendants must both identify and provide for the needs of at-risk children. Hoke County Board of Education v. State, 358 N.C. 605 at 641-642. Defendants may not permissibly proceed with "all deliberate speed" because our Supreme Court has already recognized that a solution is needed that "... will prevent existing circumstances from remaining static or spiraling further ..." Id at 643.

3. Plaintiffs' Plan has the following five components.

a. Expansion of the Disadvantaged Student Supplemental Fund ("DSSF").

This program was initially proposed by Defendants in June, 2004 in response to the decisions and orders of this Court, to begin to meet the need of at-risk students for a sound basic education and to satisfy constitutional requirements. Defendants proposed the creation of a new education annual allotment of approximately $223 million. Defendants' June 7, 2004 90 Day Report, Attachment 8.

Under Plaintiffs' Plan, the DSSF would operate with the same formula for identification of at-risk students that was proposed by DPI and the State Board of Education and approved by this Court at the hearing in this case on January 11, 2005. All North Carolina LEAs could seek State Board approval for funding from the DSSF to support recommended intervention programs for at-risk students which have been approved by the Defendant State Board. Many such approved intervention programs have been identified in Defendants' October 25, 2004 filing with this Court, and Defendants' filings themselves state those programs are "grounded in

research and proven practices" and constitute a "menu of proven strategies." October 25, 2004 Letter from Howard Lee and Patricia Willoughby to Judge Howard Manning, Jr., and Defendants' accompanying outline of compliance plan, at p.6.

LEAs would be eligible for distributions from the DSSF, for implementing intervention programs approved by the State Board, with the distributions based upon the LEAs' total ADM eligible for disadvantaged student funding, as determined under Defendants' approved formula for the identification of at-risk students, at a level of $1,000 per eligible at-risk student. (The total statewide ADM eligible for DSSF funding is approximately 300,000 students according to Defendants' prior filings with the Court.)

The fact that at-risk students need additional resources and programs to exercise their constitutionally entitled opportunity for a sound basic education was found as a fact by this Court in its several prior decisions in this case, including its Judgment of April 4, 2002. See also, Memorandum of Decision Part III at 71 (March 26, 2001) (at-risk students typically require services, resources and programs not necessary for those students who are not at-risk, to have an opportunity to obtain a sound basic education.) That proposition was not seriously contested by Defendants at the 1999 trial nor at the additional hearings in September, 2001. This Court's holding that at-risk students need additional resources to obtain a sound education was not appealed by Defendants, and the holding was approved by the North Carolina Supreme Court in its opinion issued on July 30, 2004. Hoke County Board of Education v. State, 358 N.C. 605 at 641-643.

The amount of at least $1,000 per at-risk student is reasonable, and probably conservative, in view of evidence previously of record in this case as well as more recent studies and reports.

The amount is supported by evidence from North Carolina educators, including the results of a North Carolina Public School Forum study in the 1990s, The Things That Matter, participated in by members of the General Assembly, business leaders, State Board of Education representatives and other educators. (The group that created that study included State Superintendent Mike Ward, State Senator Howard Lee, former State Board of Education Chair Philip Kirk Jr. and then-superintendent of Johnston County schools, Dr. James Causby.) That study was the subject of testimony and was introduced in evidence in the 1999 trial. See Trial Transcript, October 1, 1999, Testimony of John Dornan, pp. 160-176, and PX 183, The Things That Matter (concluding that additional funding of at least 20% more than the usual per ADM funding is needed to educate adequately an at-risk student.)

At present, the DPI website lists North Carolina per pupil expenditure (for current expense) as $6741 in school year 2002-03. Twenty percent of $6741 is $1348, which is substantially higher than the $1,000 number here suggested. An amount of at least $1,000 per each at-risk student is also supported by more recent studies made by the North Carolina Public School Forum.

The Defendants' June, 2004 original DSSF proposal filed with this Court called for an annual DSSF allocation of $223 million, which equates to approximately $743 per at-risk student. Defendants have represented to the Court that if their $223 million DSSF program were fully implemented it would "begin to address the needs of disadvantaged students across the State." Defendants' August 10, 2004 90 Day Report at 1.

Under the current DSSF program in effect for FY '04-05, where the amounts for each participating LEA were determined by Defendants, Hoke County is receiving just under $1,000 per eligible child in DSSF funding.

Allocation of at least $1,000 per at-risk student appears conservative, particularly in view of many other studies concerning the incremental costs of adequately educating at risk children in other States' public school systems. See, e.g., Mathis, William J., Costs and Benefits (May 2003), summarizing numerous "costing out" studies and noting that recent such studies for public schools in Indiana, Maryland and Montana have all concluded that the costs of providing sufficient educational services to at-risk students for them to meet state and federal test standards very substantially exceeds $1,000 per student. William J. Mathias, Costs and Benefits, at http://course1.winona.edu/lgray/el626/Articlesonline/NCLB_Mathis.html.

Under Plaintiffs' Plan, full funding of the DSSF would be phased in over three years, $100,000,000 in FY '05-06, $200,000,000 in FY '06-07 and full funding of $300,000,000 in FY '07-08. As Defendants have suggested in some conferences they have held with Plaintiff Parties, the 16 districts receiving DSSF funding in '04-05 would be held harmless so that the annual amount of such funding to each would not be reduced as full funding of the DSSF is phased in over the next three fiscal years.

Under Plaintiffs' Plan, DSSF funds would be used to make available intervention programs of proven value for at-risk students. They would not be primarily used for the recruitment and retention of teachers generally, except where such teacher hiring is needed to implement a particular intervention program for at-risk students. Other approaches, discussed in subparagraph (e) below, are required to assure the presence of qualified teachers in every classroom.

b. Full Funding of the Low Wealth Schools Fund This Year.

This would require an annual increase of approximately $66 million from the present annual appropriation of $103.8 million. Full funding of the Low Wealth Schools Fund in the current legislative session was recommended recently by the North Carolina General Assembly's

Joint Legislative Education Oversight Committee. This is necessary in part because neither the State's basic education finance system nor the approved State Board DSSF formula takes into account an LEA's local capacity or ability to support minimal education services for all children, from local funds. The low wealth systems, by definition, lack average capacity to raise such funds locally. The low wealth schools funds, by law, must be used for instructional purposes and they are the best short-term partial remedy for the shortage of qualified teachers in those systems.

c. Continued Expansion of the More at Four Program so that it Makes Pre-Kindergarten Education Services Available to all North Carolina At-Risk Four Year Olds.

Such expansion of the More at Four program was been proposed to this Court by Defendants in their outline compliance plan presented to the Court on October 25, 2004 as a way to help provide an opportunity for a sound basic education for at-risk children.

d. Expansion of the Local Education Agency Assistance Program ("LEAAP") into a New Unit under the State Board of Education to Assist School Districts Most in Need.

Expansion of the LEAAP was proposed by Defendants in their outline of a Leandro compliance plan presented to the Court on October 25, 2004 but as of January, 2005, the State Board's proposed expansion budget contained no funding request to provide for its operation.

e. Specific Steps by Defendants to Ensure the Provision of Competent, Certified, Well-Trained Teachers in Schools Led by Well-Trained, Competent Principals.

The constitutional mandate to provide competent, certified, well-trained teachers in schools led by well-trained, competent principals is clear. Hoke County Board of Education v. State, 358 N.C. 605 at 636. It is also abundantly clear from the trial record and many subsequent submissions to the Court from the parties, that this mandate is not being met.

In the last several years, State agencies, the UNC Board of Governors and North Carolina nonprofit institutions have all performed and published studies concerning programs to supply competent, certified teachers to North Carolina schools. These studies include:

i. Report and Recommendations From the State Board of Education Teacher Retention Task Force (February, 2005).

ii. The Shortage of Teachers in North Carolina: Can We Attract and Retain Enough? and Recommendations To Address the Teacher Shortage in North Carolina, North Carolina Insight (August, 2004) (published by North Carolina Center for Public Policy Research).

iii. Report From the UNC Board of Governors Task Force on Meeting Teacher Supply and Demand, University of North Carolina Board of Governors, March, 2004.

iv. State Board of Education, Teacher Working Conditions Survey (2004).

v. A Profession in Jeopardy: Why Teachers Leave and What We Can Do About It, Public School Forum of North Carolina, December, 1996.

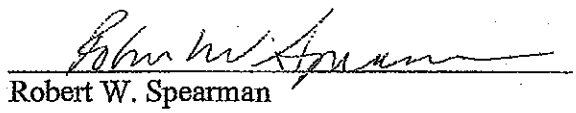
These various reports detail numerous suggestions and policy prescriptions including: increasing teacher compensation; improving teacher working conditions; special incentives to attract teachers to counties with the greatest teacher needs; more teacher training programs run jointly by the University system and the state community college system; expanded and improved professional development programs for teachers and administrators focused on the needs of at-risk children; changes in lateral entry and out-of-state recruitment programs to address the teacher shortage; retirement law changes to increase utilization of retired teachers; and many others.

At this point, the need is not for Defendants to undertake further studies but for them to take concrete action.

Plaintiffs suggest that the Court should require Defendants, within 90 days, to inform the Court specifically as to what they propose to do, and when, to insure that each North Carolina school child is taught in a classroom with a competent, certified, well-trained teacher in a school led by a well-trained, competent principal. That submission can then be tested by the requirements of the Constitution.

This the 10 day of February, 2005.

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFFS MOTION TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN was served on the parties in this action on this day by e-mail and by depositing copies thereof in the United States mail, postage prepaid, addressed as follows:

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This the 10 day of February, 2005.

Robert W. Spearman

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2005 MAR -3 P 11:57
C.S.C.

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA and ORDER RE: MOTION EXPEDITED DISCOVERY BY UNC CENTER [illegible]

THIS MATTER is before the Court with regard to the evidentiary hearing scheduled for the week of March 7, 2005, for the Court to hear evidence relating to the "high school problem" which exists in a great number of high schools throughout North Carolina relating to poor academic performance in those schools.

The driving force behind the Court scheduling a hearing on the "high school problem" is that way too many of North Carolina's high schools had composite scores **below** 80 for 2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79. (107/326) = 33%

Even more troubling were the number of high schools with composite scores that were below 70% for the past year (102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. **A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.**

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendent of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84,89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84,83,88,83,82,83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are **not** for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are **not**, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005

Howard E. Manning, Jr.
Superior Court Judge

General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
P. O. BOX 351
RALEIGH, NC 27602

TELEPHONE: (919) 755-4100
FAX: (919) 715-4064

FAX ONLY MEMO

July 11, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: Notice of August 9, 2005 special civil session re: hearing on the "high school problem (with emphasis on CMS) and other matters"

Lady and Gentlemen:

On May 24, 2005, this Court filed "Report from the Court: The High School Problem."

Last Friday, I reviewed the N&O's article on the Wake County Public Schools 2004-2005 Composite Scores. I subsequently went on line and took a look at CMS's High School 2004-2005 Composite Scores and their disaggregated data. A copy of the composite scores for CMS for 2002,2003,2004 & 2005 by school is attached.

The CMS results remain dismal. Out of 17 high schools, 10 remain with composite scores below 60 and 5 out of those 10 continue to have composites below 50. While there was some improvement in the scores of the bottom 10, 5 of the CMS high schools, East Mecklenburg, Garinger, Harding, Hopewell and West Mecklenburg went backwards. Olympic made a .01 gain from 53.5 to 53.6. South Mecklenburg made a .01 gain from 71.9 to 72.0, which is basically no gain at all.

The bottom line is that despite the so-called internal plans and improvements and programs for improving CMS's high schools'

academic performance that we heard about at the hearing in March, it appears that the poor academic performance remains business as usual in the majority of those high schools, despite being placed on notice that the poor academic performance cannot be permitted to continue. This sorry state of affairs cannot be permitted to continue.

On the more affluent side of the ledger, Myers Park scored a composite of 81.2% up from 73.4% and Providence increased to 86.0% from 83.5%.

Accordingly, I have made the necessary arrangements to schedule a special civil session beginning Tuesday, August 9,2005 at 10:00 in Courtroom 10-C (the usual courtroom). At that time, the Court will expect to hear a report from CMS as to what, if anything, CMS is doing with regards to the specific substantive, effective, and academically proven corrective measures CMS will be in place in its bottom 10 high schools as of the start of the 2005-2006 school year to ensure those schools are *Leandro* compliant in terms of qualified, competent principals, qualified, competent teachers and resources so that the constitutionally required educational opportunity is provided to in those schools and each and every child.

The Court will also expect a report from the State of North Carolina on the issue of the overall *Leandro* compliance statewide at that time.

In connection with the "high school problem" and the high schools, including CMS' high schools, that have composites below 60, the Court will expect a report from the State of North Carolina as to what action it is taking to provide these high schools with substantive, effective and academically proven corrective measures to be in place as of the start of the 2005-2006 school year so as to ensure that these bottom high schools are providing their students with a *Leandro* compliant learning environment as required by the Constitution of this State.

The Court will also hear the CMS students' motion to intervene relative to the CMS assignment plan during this session of Court.

The Court would also like to hear from the plaintiffs' counsel on the progress, or lack thereof, being made with respect to the ensuring that the schools in those districts, including the high schools, are meeting the constitutional requirement of being *Leandro* compliant.

7/11/05

In the event there are other relevant matters that the parties believe should be on the agenda for the hearing, please write and let me know and I will consider putting them on the agenda. Thank you.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight and Speaker Jim Black, et al. c/o Tonya Williams
(919-733-8740)
Chairman Howard Lee, State Board of Education and DPI
(919-807-3445)

Attached: CMS HIGH SCHOOLS-COMPOSITE SCORES-2002,2003,2004 & 2005 (ONE PAGE)

HEY
7/11/05

CMS HIGH SCHOOLS - COMPOSITE SCORES - 2002,2003,2004 & 2005

	2002	2003	2004	2005
BUTLER	64.1%	70.9%	72.7%	75.5%
MYERS PARK	69.9%	72.0%	73.4%	81.2%
N. MECKL.	65.5%	69.5%	70.3%	71.9%
PROVIDENCE	78.4%	82.7%	83.5%	86.0%
S. MECKL.	66.6%	70.6%	71.9%	72.0%
WADDELL	39.2%	41.5%	39.4%	47.6%
E. MECKL.	64.2%	61.2%	61.2%	58.1%
GARINGER	36.2%	38.6%	43.7%	42.1%
HARDING U.	63.8%	60.2%	58.4%	56.5%
HOPEWELL	65.8%	67.6%	66.0%	64.6%
INDEPENDENCE	59.2%	56.2%	49.3%	56.2%
NW ARTS	60.1%	57.0%	58.6%	63.0%
OLYMPIC	49.8%	55.9%	53.5%	53.6%
OBERRY	xx	50.4%	41.4%	46.6%
VANCE	57.0%	49.3%	48.0%	54.0%
W.CHARLOTTE	30.6%	24.8%	30.1%	35.7%
W. MECKL.	47.8%	43.9%	47.5%	46.7%

It should be noted that EOC tests in U.S.History and ELPS were not administered in 2004 and 2005.

7/11/05

PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Janice O. Davis, *Interim Officer*

August 9, 2005

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Hand Delivery

Re: *Hoke Co. et al. v. State*

Dear Judge Manning:

On July 11, 2005, you sent a Notice to the parties to this action that you would hold a hearing on specified subjects in the Wake County Courthouse on August 9, 2005. Among other things, your Notice stated that you expected a report from the State on "the issue of overall Leandro compliance."

In response to that request, and on behalf of the Governor, the State Board of Education, and the Department of Public Instruction, I am submitting two documents. The first describes the Governor's and the State Board of Education's strategic focus for Leandro compliance. The second documents some of the actions we have recently taken to implement the Plan which we submitted to the Court on October 25, 2004, along with some additional commitments and actions that were not included in the Plan.

I trust that you will agree that the actions described in these documents prove that the State is making substantial and steady progress toward improving educational opportunities for all its students. The Governor and the State Board of Education intend to continue to aggressively implement the Plan to assure all North Carolina children have the educational opportunity to reach their full potential.

With kindest regards and best wishes, I am

Respectfully,

Howard N. Lee

c: The Honorable Michael F. Easley, Governor of North Carolina
State Board of Education Members

STATE BOARD OF EDUCATION
6302 Mail Service Center :: Raleigh, North Carolina 27699-6302 :: 919.807.3430 :: Fax 919.807.3198
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GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION'S STRATEGIC FOCUS ON *LEANDRO*

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

Governor Mike Easley and the State Board of Education have put in place a comprehensive strategy to achieve these ends. This plan is built on the following strategic objectives:

1. **Provide significant new resources to low wealth districts and schools** by fully funding the Low Wealth Supplemental Funding formula in order to attract and retain quality teachers and principals and improve educational opportunities for all students.

2. **Make the Disadvantaged Students Supplemental Fund (DSSF) permanent,** implement a rigorous evaluation of the DSSF program in the 16 pilot districts, and identify the appropriate funding levels for the DSSF formula.

3. **Provide new, targeted investments in education** including funding for the More at Four Pre-Kindergarten Program; high school reform (New Schools Project and Learn and Earn); teacher recruitment scholarship programs; teacher production in high need areas; teacher retention; principal effectiveness; and connecting schools and social services to support the achievement of at-risk students.

4. **Institute greater accountability for existing funds** targeted to at-risk students and ensure greater financial accountability for the use of state and local resources to increase student performance in districts across the state.

5. **Strengthen the State's assistance to low-performing schools and their districts,** beginning with high schools. The State needs to assist districts and schools to examine spending patterns, reallocate existing resources, effectively target new resources, and implement proven strategies to increase student performance.

In October 2004, Governor Easley and the State Board of Education submitted a comprehensive Plan to meet these objectives and improve educational opportunities in North Carolina public schools. Since that time, the Governor, the

General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan. They have also taken many additional steps toward addressing the need for qualified teachers and principals and the resources needed to help students meet high academic standards and be prepared for higher education, work and citizenship in the 21st Century.

GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION HAVE TAKEN ACTION TO IMPLEMENT THE STATE'S PLAN FOR *LEANDRO*

The October 2004 Plan submitted to the Court outlined efforts the State would take to:

(1) Expand Existing Proven Programs and

(2) Invest in New Commitments.

The State's efforts in each of these areas are detailed below. Some of the additional commitments and action the State has taken since the Plan was submitted are also noted.

I. EXPAND EXISTING PROVEN PROGRAMS

- **Ensure Every At-Risk Four-Year-Old Has Access to a Quality Pre-Kindergarten Program.**

  - The State intends to continue to expand the More-at-Four Pre-Kindergarten Program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

    1. The Governor's budget proposed $16.6 million in the first year and $29.1 million over the biennium to fund an additional 6,400 at-risk four-year-olds across the state.

    2. Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for the 2005-06 school year to support an additional 3,200 slots, which will bring the total of at-risk four-year-olds served to 15,200.

    3. The Office of School Readiness was created on July 1, 2005, through an Interagency Agreement signed by the Office of the Governor and Departments of Public Instruction and Health and Human Services. The Office will allow the state to align, coordinate and leverage the multiple public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to Ensure Schools and Districts Implement Proven Strategies.**

  - Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

    1 Governor Easley's July 20, 2005, Executive Order No. 80 set aside $22.5 million for DSSF for the 16 pilot districts.

    2 House and Senate conferees have tentatively agreed to include $22.5 million for DSSF in the budget.

    3 The Governor's budget also proposed continuing the funding in 2006-07, but distributing the funds based on the formula submitted to the Court in October 2004.

    4 The Governor's budget recommendations are not intended to cap the DSSF program at $22.5 million.

    5 The Governor's budget also requested $1.6 million for a thorough evaluation of the DSSF approach. The Senate included $1 million for the evaluation and the House included $100,000. The evaluation will focus on the effectiveness of the funds to increase student achievement and the efficacy of the State's assistance to the districts.

    6 DPI has an agreement with the Education Research Council to conduct a study of performance in the 16 DSSF pilot school systems.

    7 The Governor's budget calls on the State Board of Education to provide recommendations for an appropriate DSSF funding level by February 15, 2006, so that it may be implemented for the 2006-07 school year.

8 When the policies and resources outlined above are in place and the required evaluations are completed, the State will be better positioned to consider increases in DSSF in the second year of this biennium and beyond.

- **Strengthen and Expand LEAAP into a new unit under the State Board of Education to improve struggling school districts.**

  - Building on its pilot experience with the Local Education Agency Assistance Program (LEAAP), the State intends to create a full-time unit under the State Board of Education that works with a set of select school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

    1 The LEAAP program was used to provide assistance to the 16 pilot districts in DSSF. They worked with the districts to analyze their challenges and develop their plans for DSSF monies.

    2 Two years ago, the Governor and State Board of Education worked with the General Assembly to secure $500,000 to begin LEAAP, which worked to improve the capacity and achievement in poorly performing school systems. That $500,000 is now part of the continuation budget.

    3 The Governor's budget proposed transferring $6.5 million from within DPI to LEAAP to develop the full-time assistance program.

    4 The authorization for ABCs funding now permits expenditure of ABC funding for LEAAP teams.

- **Continue the N.C. Teacher Working Conditions Survey and Provide Actionable Data for Problem Schools and Districts.**

  - Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to

attract and retain teachers and principals and increase their effectiveness.

1 The Governor's budget requested $215,000 in 2005-06 and $290,000 in 2006-07 to continue the Teacher Working Conditions Survey and to provide customized action plans and resources for grants for DSSF districts, improve teacher working conditions, retain qualified teachers, and boost students achievement. The House included $215,000 and the Senate $115,000 for this effort.

2 The Teacher Working Conditions Initiative surveys teachers and produces school-level, district-level, and state-level reports on the conditions of work for teachers. School-level reports are provided for all schools where at least 40% of teachers return the survey.

3 The Southeast Center for Teaching Quality, in conjunction with the N.C. Teacher Academy, has used these results to work with select DSSF districts to improve their teacher retention efforts.

- A report from the Southeast Center for Teaching Quality is being provided to the Court.

- **Expand the New Schools Project and Learn and Earn to Improve High School Student Performance.**

  - To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

    1 The Governor's budget and his Executive Order No. 80 provided $4.2 million in 2005-06 to open 15 Learn and Earn high schools

    2 The Governor's budget and his Executive Order No. 80 provided $1.44 million to open 11 new economic development-themed high schools.

3 Next year, the State plans to open 11 more economic development-themed, smaller high schools and another 20 Learn and Earn high schools.

4 The State Board of Education, DPI and LEAs are partnering with the Gates Foundation New Schools Project to restructuring or reform of North Carolina high schools

5 The State is supporting the New Schools Project with funding for additional local administrators, *e.g.*, principals, and DPI staff

6 The Governor's budget included $500,000 for Communities in Schools for dropout prevention work in approximately 35 counties and the Senate budget also included $500,000 for this purpose.

II. INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.**

  - The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

    1 The Governor's budget and his Executive Order No. 80 provided $1.5 million to fund the 2+2 UNC-NC Community College System Teacher Education Partnerships. These funds support on-line courses and state positions to increase the numbers of community college students continuing their education and receive degrees that will allow them to teach. The purpose of the 2+2 Initiative is to link UNC schools of education with local community colleges and teach courses at the community college locations so as to develop teaching candidates in the very area where the State needs them most.

2 The Governor proposed $1 million in new scholarship money for participants in the 2+2 program described above. The money was to be part of the Prospective Teacher Scholarship program. The Governor also proposed $330,000 on 2006-07 for 100 scholarships for a new Two-Year Teaching Fellows Program for middle and high school math and science—two areas of major shortage in the State.

3 The Legislature did not support these proposals, but the Senate and House have agreed to provide $650,000 in 2005-06 and $1.3 million in 2006-07 for 100 new Teaching Fellows Scholarships and the same amount for 100 new Future Teachers of North Carolina Scholarships in math, science, special education, and ESL at any NC institution of higher education.

4 The Governor proposed $200,000 for the Teach For America-NC, which operates in 9 counties in northeastern NC with high teacher turnover rates. The House included funding for TFA-NC; the Senate did not.

5 The Governor's budget proposed new restrictions on Low Wealth funding that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers. The Governor is working with the Legislature to include those restrictions in the budget.

6 The State Board of Education revised teacher licensing policies to remove obstacles to hiring teachers from out-of-state, while safeguarding licensing standards and teacher quality.

7 The Governor's budget included two special provisions focused on improving principal attention and effectiveness on retaining qualified teachers. The Senate and House have agreed to these provisions.

- One calls for the study and overhaul of the Master's in School Administration programs at UNC schools of education to include greater focus on teacher working conditions and retention.

- The other mandates the inclusion of teacher working conditions and retention as components of principal evaluations.

- **Provide High Quality Professional Development for Teachers and Principals.**

  - The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

    1 The Governor's budget and Executive Order No. 80 provides $125,000 for the Principals Executive Program for a new professional development for new principals.

      - PEP will use the new funding to expand opportunities for high quality professional development to principals and assistant principals teacher support, teacher retention, instructional leadership, data-driven decision making, and teacher empowerment.

      - A report on Principals Executive Program activities is being provided to the Court.

    2 The Governor's budget proposed $100,000 for an On-line Professional Development Resource Center, which would provide access to teachers, school leaders and district leaders on high-quality professional development for teachers and principals. The Senate included the $100,000 in its budget; the House did not.

    3 Over the past year, the N.C. Teacher Academy, supported by a $2 million dollars appropriation from the State last year, worked in the 16 DSSF districts to provide professional development that responded to critical challenges in the districts.

      - A report on the N.C. Teacher Academy activities in the 16 DSSF LEAs is being provided to the Court.

- **Connect School, Social Service and Delinquency Prevention Resources.**

  - The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments.

these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

1 The Governor's budget and his Executive Order No. 80 provides $11.2 million to fund Child and Family Support Teams in 100 needy schools.

- In the schools, State will fund teams consisting of a school nurse and a school social worker to identify, provide services, and coordinate with mental health and social service professionals.

- In the community, the State will provide new regional mental health facilitators and county social service care coordinators to work directly with the school-based teams.

2 Teams are expected to be in place by the spring of 2006. A cross-agency group from the Office of the Governor, DPI, and DHHS is working to develop the program specifics and select the program sites.

3 The Governor's budget also provided funding for 65 additional school (separate from Child and Family Support Teams) nurses in low wealth school districts. The Senate's budget includes money to fund 50 additional nurses; the House budget did not include these funds.

III. ADDITIONAL COMMITMENTS AND ACTIONS

- **Fully Fund Low Wealth Supplemental Funding.**

  - Low Wealth funding is an important source for improving the capacity of low wealth schools and districts to attract and retain teachers.

    1 In addition to funding for DSSF, the Governor's budget proposed fully funding Low Wealth over the next two years. To accomplish this objective, the Governor's budget proposed $16.6 million for Low Wealth Supplemental Funding in 2005-06 and $58.5 million for 2006-07.

2 Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for Low Wealth which is 75% of full Low Wealth funding. The House and Senate budget conferees have tentatively agreed to provide $20 million for Low Wealth for 2005-06.

3 The Governor's budget also proposed a new restriction that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers because the Governor believes it is imperative that school districts direct new resources to finding and keeping qualified teachers.

- **Impose New Accountability on $220 Million in Funding for At-risk Students.**

  - The Governor believes we need to ensure greater accountability and impose tighter spending controls on the At-Risk Student Services Allotment (which provides funding for all districts based on U.S. Census poverty data) and the Improving Student Accountability allotment (which provides funding for students performing below grade level).

    1 At-Risk Student Services provides $220 million dollars to all 115 school districts.

    2 The Governor's budget and Executive Order No. 80 included provisions ordering new accountability for these two funding streams. The Governor is working with the Legislature to restrict funding for at-risk students to proven strategies for increasing achievement.

    3 If approved, the Governor's request will assure that these funds support proven educational strategies to improve the achievement of At-Risk students.

    4 The Governor has insisted that the "turnaround teams" for improving high school performance include examination of LEA spending to ensure that available funds are being effectively and efficiently allocated to support proven strategies for improving student performance.

- **"Turnaround Teams" to Improve Performance in North Carolina High Schools.**

  - On August 3, 2005, the Governor announced that the State Board of Education and DPI, using the resources of DPI, state assistance teams and LEAAP, will organize and send "turnaround teams" to work with all high schools performing below 60% on composite scores of End-of-Course tests.

    1. Based on the 2004-05 ABC results, there are 44 "traditional" high schools (10 in Charlotte/Mecklenburg) with Performance Composites below 60%.

    2. The State Board of Education and DPI are developing strategies for providing assistance to these high schools within existing resources.

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005, and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT:**

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

NORTH CAROLINA:

WAKE COUNTY:

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a regularly scheduled session of the Wake County Superior Court to begin on Friday, August 18, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court the specifics of (1) the leadership changes and (2) remedial efforts ("turnaround plans") that are being implemented at the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006.

The remedial efforts ("turnaround plans") referred to by the Court in this Notice of Hearing and Order are those efforts and turnaround plans announced by Governor Easley on June 13, 2006 and referred to by the Superintendent of

Public Instruction in the correspondence and other materials attached as Exhibit A for reference.

Due to the fact that there are some (17) high schools that presently fall into this category when the preliminary 2006 composite scores are taken into account [without backing out civics, U.S. History and 10th Grade Writing], there will be no other matters taken up at this hearing.

SO ORDERED this 18th day of July, 2006.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 MAR 29 AM 11:11
WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Thursday, April 19,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court concerning the progress of the remedial efforts ("turnaround progress") that were reported to the Court on August 18, 2006 and are in the process of being implemented since the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006 and those high schools whose performance composite was 60% or below for the past two years (Priority High Schools) and subject to turnaround efforts as directed

by Governor Easely on June 13. 2006. This should also include a brief report on the combined efforts of the Principal's Executive Program and the Kenan Flagler School of Business to assist principals at priority high schools.

B. A report on the progress being made by the State of North Carolina to recruit and retain more highly qualified teachers in low wealth school districts and low performing schools, including priority high schools and other schools with performance composites below 60% for the preceding (2) two years.

C. A report on the progress being made by the State of North Carolina to increase the numbers of nationally board certified teachers assigned to priority schools and low wealth schools.

D. A report on the status of proposed funding for DSSF and More at Four for the next budget cycle.

E. A report on the North Carolina Virtual High School and the timetable for its availability to all high school students of North Carolina.

F. A report on the progress of the New Schools Project: First, the status of the Learn and Earn High Schools and Second, the status of the number of high schools being converted into "21st Century High Schools".

G. A status conference on the scheduling of Plaintiffs' Motion for Attorneys Fees and Costs pending since December,2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 29th day of March, 2007.

Howard E. Manning, Jr.
Superior Court Judge

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
835-3448

FAX ONLY MEMO

June 28, 2007

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-934-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)
JACK BOGER/JULIUS CHAMBERS (919-962-1277)
At UNC Center for Civil Rights

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING focusing on Poor Academic Performance in Middle Schools - August 1 & 2, 2007

Lady and Gentlemen:

As I have gone through the past year dealing with the 17 low performing high school, talking with principals and others and looking as middle school scores for 2005-2006, especially math, it has become obvious that we not only have a high school problem, but one with middle schools as well. For 2005-2006, there were 117 out of 389 middle schools with performance composites of 65% or below. Out of this group there were 84 middle schools with performance composites of 60% and below. With the increased rigor required in math tests, many of these middle schools are sending children into the 9th grade with math skills below proficiency. I sent President Bowles a memo (copy enclosed) on June 19, 2007 outlining the problem and asking for assistance from UNC. Simply put, we need to find out why we are doing so poorly, what best practices are in place in the middle schools that are doing the best and why are we failing in those that are doing so poorly so we can do better. I have secured Courtroom 10-C and we can discuss the format if necessary. We would start at 10:00 a.m. I would appreciate it if Tom Ziko would see that a copy of this goes to Chairman Lee and Superintendent Atkinson. Thanks. Bowles Memo attached at 9 pages.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
919)755-4100/835-3448 (direct)
(919)715-4064 (f)

FAX ONLY MEMO

June 19, 2007

FROM: Howard E. Manning, Jr.

TO: President Erskine Bowles at UNC at 843-9695 c/o Janie/Jan

Subject: The Middle School Problem

Erv,

At the start of this memo on June 5, 2007, I find myself sitting in Courtroom 10-A during jury selection in a medical malpractice case which is anticipated to take from 4 to 6 weeks depending on whether or not the jury answers the first issue on liability yes or no. If no, the trial will end. If yes, the case will have a damages mini trial that will go on for a week or so. We have been in jury selection for three days and no end is in sight at this point.

As you know, I have been focusing on poor performing high schools for the last couple of years and in 2006 threatened to prohibit some 17 high schools from opening unless they were under new "management" based on their sorry performance composites over the previous 5 years.

Fortunately, the State of North Carolina, through its executive branch, responded. Although some principals in these schools retired, resigned or got moved to the central office, the State required the principals in those 17 high schools to go to your "day camp" at PEP/Kenan Flagler for additional training. I hope that these efforts and the scrutiny will lead to educational improvement among the students attending those schools this year.

Governor Easley has also required principals in high schools whose performance composite were 60 or below for two years in a row to start your PEP/Kenan Flagler program which has been attended by the 17 principals under my microscope since last summer.

During the past nine (9) months, I have managed to scratch out the time to go and personally visit all of "my" 17 high schools. I have toured all of the high schools and some more than once. I have also met with all of the 17 principals at their high schools as well as meeting with the group of principals in Chapel Hill on two occasions. I have also spoken to the second PEP cohort of principals of the twice 60 or below high schools which I will refer to as the "Easley" group.

One of the principals in the "Easley" group, a principal whose high school has been below 55% performance composite for 4 out of the past five years, advised me that if the "local politics" could be straightened out, that his high school might improve. Why this man remains in charge of any school year after year is unbelievable. His comment fails to reflect any perception of what is wrong under his watch.

In the course of these visits and discussions with the principals and some superintendents, the lack of quality of the academic preparation of too many of the children entering the ninth grades (9^{th}) in these and other high schools is a matter of grave concern to the high school principals as well as to me.

This is of particular concern at the high school level in connection with the ABC end of course tests given to ninth (9^{th}) grade students for many reasons, not the least being that an unprepared ninth grader has a higher probability of being unable to perform well on the ABC tests and most importantly, the child is not coming to the ninth grade in a sound position to obtain the opportunity to obtain a sound basic education in those courses because they are ill prepared coming from the middle schools.

I asked the LPHS principals to make suggestions for solutions about the influx of non-proficient 8^{th} graders coming to the ninth grade after we met in February, 2007. The LPHS principals wrote me a letter which contained several common sense recommendations, including but not limited to a recommendation that 8^{th} graders who are not

proficient in math and reading be required to attend a month long summer session at the HIGH SCHOOL to which they are assigned so that they receive intensive academic assistance before coming to the Ninth Grade Academy in the fall. A copy of that letter is attached for your information.

Keeping one ear open during jury selection, I have also been reviewing the ABC Performance Composites of Middle Schools and looking at selective schools' performance composites for 2005-2006 and previous years. The performance data was provided by DPI courtesy of Tonya Williams at Marc Basnight's office. Each middle school's performance composites for prior years are available on the NC School Report Cards which are found on line at www.ncpublicschools.org.

I was under the impression, prior to discussing the ninth (9^{th}) grade academic performance with the high school principals during the past nine months and prior to reviewing the 2005-2006 data, that the middle schools were on the upside of the scale overall. In short, I was under the impression that we had a problem with middle schools, but not a problem the size and scope of what is going on now.

For 2005-2006 there were 117 (30%) out of 389 middle schools with performance composites at 65% or below. There are 84 (21.5%) with performance composites of 60% and below in that group. These are designated as "priority" schools by the DPI according to the NC School Report Cards website.

Based on my review of several of the priority middle schools' past histories, it appears that the "drop" in scores for 2005-2006 was largely based on low end of grade (EOG) math scores. If I remember correctly, the State Board of Education increased the number of right answers in order for the math tests to meet better requirements for rigor in the subject matter.

A lot of the middle school math scores that I looked at were well below 50%. The reading scores seemed to remain somewhat stable but did not rise sufficiently to off set the drop in math scores. This is going to be another quagmire because the children are coming out of middle schools not proficient in math and that is a formula for disaster upstream in high school and Algebra I.

Some examples follow:

Broadview Middle School in CMS had a 56.5% composite for 2005-2006, a drop from 2004-2005. I looked at the eighth grade scores. Reading was 75.0 Math was 48.8 There were 213 math tests taken and 212 reading taken.

Assuming that the 8th grade Gateway (ie, the middle school principal passes them up to the high school despite their lack of proficiency in math - which will probably be the case based on what I have heard the past nine months visiting poor performing high schools) did not work for the 110 children in Broadview Middle School who were not proficient in 8th grade mathematics, the receiving high school would start out in the academic hole in mathematics with its 9th grade student population.

C G White Middle School in Bertie County had 2005-2006 percentage of eighth graders taking the EOG Reading test who scored at or above grade level was 84.8 and the percentage of eighth graders taking the EOG Math test who scored at or above grade level was 40.2. The previous year's math score (under the old, less rigorous EOG test scores) was 81.8%. Obviously, the increased rigor(more right answers on the EOG math test) on the EOG Math for the eighth grade caused a major decline in the performance composite for the eighth grade class. There were 92 tests given in 2005-2006. In the event that all of eighth graders were "passed" on to the ninth grade last fall, only 37 of 92 students had received a sound basic education in mathematics at the time they entered high school. 55 of the students were not proficient in mathematics at the end of 2006 and not ready to enter high school and take Algebra I successfully.

At Southwestern Middle in Bertie, a similar result occurred with the 8th grade mathematics EOG tests. In 2004-05, 77.1% of the 175 students taking the eighth grade EOG math tests scored at or above grade level. In 2005-06 only 53.8% of the 171 students taking the eighth grade EOG math tests scored at or above grade level. 78 out of 171 students, if they were "passed" to the ninth grade, were not proficient in mathematics when they started at Bertie high school last fall.

These examples serve to highlight the problem. These children are starting high school with a severe academic deficit in math that the ninth (9th) grade, in absence of extremely effective remediation, most likely cannot make up in terms of remediation in that year. Placed into algebra without a sound math basis, these children are in trouble. Likewise, the high school EOC testing will drop the performance composite for the high school in math for the ninth grade. It is a compounding problem as you can easily surmise.

There is no dispute that the influx of unprepared ninth graders into the high schools constitutes an educational drag on the high school's ABC scores. More importantly, there are way too many children coming into high school without having obtained a sound basic education in math and/or reading. Assuming that many eighth graders who are below grade level in reading are also below grade level in math, this is a untenable situation both for these children and for the high school that has to try to get them up to grade level academic performance and keep them from dropping out.

Suffice it to say, these children are at-risk of academic failure and further, that they have not obtained a sound basic education to this point in their educational journey. These children are also prime candidates for giving up, having little chance of success and dropping out of high school.

Why are these children tanking in mathematics? I had a long telephone discussion Friday afternoon week before last with a mathematics specialist at DPI about this. I asked for this discussion to confirm my general understanding that mathematic concepts are building blocks and that if a student fails to learn these math concepts as he or she goes through the math component of the standard course of study, the student will simply be unable to be successful in mathematics and algebra because of lack of proficiency in the building block concepts. This is in fact the case.

I asked the hard question. What's causing the problem? I was advised that many teachers are not very skilled (I would use the term not competent) at teaching elementary and middle school mathematics and this lack of teaching competence is compounded when the children are at-risk, low performing students. I do not know enough to put a

quantitative weight or number on how many weak math teachers are out there, but there must be a lot looking at the 2006 EOG scores in math once the baseline scores were raised by the State Board of Education.

Cutting to the chase, if the teacher is competent, as required by *Leandro*, the children in his/her class in elementary and middle school should not be scoring below grade level proficiency in spite of the increased rigor imposed on the EOG math tests by the State Board.

While there are some in the education community that would like to place a large part of the problem in the laps of the children and their parents, that's no excuse for a teacher's lack of competence in getting the children to understand the math concepts and become proficient as they move grade by grade towards high school.

What can the University do to help? I have given this question a lot of thought. Based on the lack of strength in middle school mathematics instruction, as evidenced by the 2006 EOG math scores, which had been "masked" by the "higher" math scores in previous years, I would look for help from the mathematics departments in the University system rather than the schools of "education."

Perhaps what the math departments could do is to look at the testing, look at results and devise an assessment system which would identify a student's "missing" math concepts and then devise a teaching protocol to fill in the missing concepts whether the child missed something in the 4th grade, 5th grade, or 6th grade math that is leading to the lack of proficiency.

If this could be done, then the next major obstacle is to get the professional development (ie, training) to principals and the teachers, who are not doing the job in the first place, so that the children are getting the quality of remediation and correct instruction necessary for them to be successful.

In the interim, I am considering dates and an order scheduling a hearing on the middle school problem which is compounding the high school problem so we can find out why these principals and teachers are not doing their jobs in the first place.

T-983 P.008/010 F-618

The bottom line is that I know that there are best practices that are well known in the field that, if the principals and faculty will use them in middle schools, just as in high schools, that will result in children actually scoring at grade level and above which is, after all, the whole purpose of public education and the constitutional requirement.

Anything you can do on this issue will be greatly appreciated, as usual. If we want our high school "graduates" better prepared to attend our great University system, we have got to do better downstream, especially in middle school mathematics.

6/19/2007

Cc: Governor Mike Easley c/o Franklin Freeman at 715-4239
Senator Marc Basnight, Speaker Joe Hackney & Lt. Governor Perdue c/o Tonya Williams at 733-8740
Chairman Howard Lee & Superintendent Atkinson at 807-[redacted] 807-3198

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 AUG 31 PM 3:12
WAKE COUNTY, C.S.C.
By ...

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, September 26 ,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education and The Department of Public Instruction ("DPI") the opportunity to report to the Court concerning the progress of the remedial efforts to be implemented for the 2007-2008 school year with respect to low performing high schools and middle schools in North Carolina, including, but not limited to the 98 "regular" high schools whose performance composites (preliminary) were 55.4% or less for the 2006-2007 school year and the 66 middle schools whose performance composites (preliminary) were 60% or less for the 2006-2007 school year. And further, to provide to the Court and for the record in this

action, the expense and costs to operate each of these individual schools for the 2006-2007 school year.

B. To place on the record, the final 2006-2007 academic performance results for each of the foregoing high schools include the total performance composite data, disaggregated data (number of students tested in each school in each subject on EOC, number of students proficient in each subject and percentage of students in each subject that are proficient) for each EOC subject tested for 2006-2007, which includes English I, Algebra I, Algebra II, Geometry, Civics, United States History, Writing, and Biology.

C. A report from DPI on what constitutes an educationally sound and appropriate protocol/template for a personal education plan ("PEP") for middle and high school students placed at-risk of academic failure as required by law pursuant to G.S. 115C-105.41. This presentation should include, but is not limited to, the use and effective administration of available diagnostic assessments to determine where in the particular subject the student has not mastered the particular concept or material required for grade level performance and above and how those assessments should be utilized for focused intervention and academic improvement during the upcoming school year for that individual student.

D. To put on the record, the performance composites for the 2006-2007 school year for all public elementary, middle and high schools in North Carolina by LEA.

E. To receive a report (executive summary) from Eric Hirsch regarding the Governor's Teacher Working Conditions Initiative report of Teacher Working Conditions in Lower-Performing North Carolina High Schools.

E. To set a schedule date for hearing on the Plaintiffs' motion for attorney's fees filed in December, 2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 31st day of August, 2007.

Howard E. Manning, Jr.

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2008 JUL -2 P 12:55
WAKE CO. C.S.C.
BY

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, August 20, 2008 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

Subject Matter of the Hearing:

A. Math instruction in elementary, middle and high schools – children not being required to learn the multiplication tables by heart, long division and fractions leads to their failure to become proficient in middle school math and algebra.

Without re-inventing the wheel, the Court has spent the last year delving into what first appeared to be a major problem in High School mathematics but which later devolved into both a major problem in Middle School and Elementary school mathematics which, of course, feeds the High School mathematics problem.

The Court learned early in 2008 that the State of North Carolina Standard Course of Study (SCOS) has **not been requiring teachers** to require elementary students to learn (memorize into their dna) multiplication tables, long division, or to multiply and divide fractions since 2000 when the State of North Carolina and DPI followed the recommendations of the National Council of Teachers of

Mathematics ("NCTM") setting out math standards that did proposed a math instruction curriculum that would "allow" all students to do high-level math without mastering "low level" problem solving skills. In short, the SCOS was changed to delete the requirement that our children were required to memorize and solidly learn their multiplication tables, algorithm long division or fractions. See ***University of North Carolina Education Schools: Helping or Hindering Potential Teachers? – Pope Center Series on Higher Education Policy, January, 2008 George K. Cunningham ("Pope Center Report, January, 2008").***

The ***Pope Center Report*** revealed that while the teachers were required to teach the math, the children were not required to really learn the basics. " Develop fluency with multiplication and division," which includes: "two-digit by two-digit multiplication [larger numbers by calculator] and "up to three-digit by two-digit division [larger number by calculator] ***Math Instruction in North Carolina, pages 4,5,6 & 10, Pope Center Report, January, 2008.***

The Court has learned that not all school systems dropped the requirement, despite the change in SCOS. Excellent school systems and schools with excellent leadership and excellent classroom teachers still taught the basics. Unfortunately teachers who were not so excellent and who had principal leadership that was not excellent did not require the "learning" of the basic math facts in multiplication, long division and fractions. In 2006, the **NCTM, reversed its recommendations and recognized that children in grade 4 need to know how to divide using the standard division algorithm, NOT BY CALCULATORS. *Pope Center Report, p 10.*** Yet, despite the reversal by the NCTM in 2006, it appears that DPI and the SBOE have not changed the SCOS to require children to memorize their multiplication tables and conform to the NCTM's "revised" recommendations from 2006.

This failure of too many of our elementary school children to learn the basics of multiplication, fractions and long division in lower performing schools and school districts has a direct link on their failure to be successful in high school algebra. One algebra teacher told the Court on a visit to Bertie County High last fall that her children who were ***not successful in algebra were unable to multiply in their heads. Instead, they were counting on their fingers under their desks when they were unable to use their calculators.*** This information was disturbing and it was corroborated by the ***Pope Center Report.***

In short, these children never achieved the necessary basic proficiency in multiplication, long division and fractions in elementary school. The disastrous result of this lack of proficiency is proven by the math test data. All you have to do is look at the 2007 math data in Halifax County for EOG and EOC in 2006-2007 and elsewhere around the State. See the UNC System's September 2007 report entitled ***Addressing Teacher Quality and Student Achievement in***

Middle Grades Mathematics- A Summary Report of Input from UNC Constituent Institutions.

North Carolina is not alone in having a math instruction problem. Mathematics instruction is a national educational problem which has been documented in a recently released federal report [March, 2008] on the deficiencies of mathematical instruction in the United States.

This federal panel of "experts" – the National Mathematics Advisory Council – found that "American students' math achievement is 'at a mediocre level' compared with that of their peers worldwide, according to a new report by a federal panel, which recommended that schools focus on key skills that prepare students to learn algebra.

A New York Times Article published after the release of the report indicated that the panel's unanimous report "said that pre-kindergarten- to – eighth grade math curriculums should be streamlined and put focused attention on skills like the handling of whole numbers and fractions and certain aspects of geometry and measurement." The panel suggested specific goals that students should master in order to be prepared for algebra. **By the end of grade 3 students should be proficient in addition and subtraction of whole numbers and by the end of grade 5 students should be proficient in multiplication and division of whole numbers.**

It appears that the bottom line --- knowing the basic math facts such as multiplication tables, long division and fractions --- is the linchpin to a child obtaining, in elementary school, a sound basic education in mathematics. Without this foundation in math, the child cannot have the equal opportunity to obtain a sound basic education in middle school math and thereafter high school algebra and thus, will ***lose out on the Leandro required opportunity to obtain a sound basic education in mathematics all the way through high school. To further exacerbate the problem in mathematics [and in other core subjects] instruction, we have learned that in far too many classrooms, the teachers are overlooking, or ineffectively employing, an essential element of instruction – the formative assessment.***

B. Lack of Effective Use [or the non-utilization] of the Formative Assessment as part of classroom instruction in mathematics and other subjects.

While it appears that there is a problem with the children being taught the basics of mathematics in elementary school, it also appears to the Court, after spending a year focusing on mathematics instruction problems, that there are too many classrooms in which an essential element in classroom instruction – the formative assessment – is either missing, or being ineffectively utilized. As a result there is a ***serious gap*** in the instructional process which, when combined

Mr. Spearman reported on the number of classrooms staffed by Long-term Substitutes in each of the plaintiff school districts: Cumberland - 32; Halifax - 16; Hoke - 17; Robeson - 21; and Vance - 35.

There is no dispute that there exists a serious problem in hiring, training and retaining certified teachers in North Carolina, especially in the low wealth plaintiff LEAs, and other low wealth LEAs. The existence of this problem has been identified and acknowledged by the Department of Public Instruction, the State Board of Education, and the Governor of the State of North Carolina.

This problem is not just a "minor" problem that the State of North Carolina can ignore or take its own good time to remedy. ***This problem is a constitutional problem that is not going to disappear. This is because it is the constitutional right of each and every child in the public schools of North Carolina to be provided with the equal opportunity to obtain a sound basic education whether they are at-risk or not.***

That opportunity, as defined in this case by this Court and affirmed by the North Carolina Supreme Court requires that (1) "every classroom be staffed with a competent, certified, well-trained teacher;" (2) "that every school be led by a well-trained competent principal;" and (3)"that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." [Leandro II and previous Orders of this Court]

The existence of the problem with classrooms staffed by teachers that are not certified or well-trained, including Long-term substitutes without college degrees, has been made known to the General Assembly of North Carolina as well as the DPI and State Board of Education.

To its credit, the DPI and the State Board of Education acknowledged the constitutional deficiency and the lack of compliance under *Leandro* in the classroom teacher area and sought $22,000,000 from the General Assembly to fund the DSSF pilot program for sixteen (16) LEAs in which there was

demonstrated need to remedy the constitutional deficiency of the presence of a competent, certified and well trained teacher in individual classrooms.

Despite knowing of this deficiency and being repeatedly advised of demonstrated need for assistance in these low-wealth school districts and despite being advised of the constitutional requirements in *Leandro* concerning the requirement for competent certified, well trained teachers in each classroom, the General Assembly of North Carolina passed its budget and adjourned without funding the DSSF program for any LEA, including HCSS.

In the interim the Supreme Court of North Carolina has spoken and this case has been remanded to this Court for further proceedings, if necessary.

This Court has determined that further proceedings are necessary, initially at least, on two different subjects.

First, this Court, following the dictates of the Supreme Court, will provide the General Assembly of North Carolina with the opportunity, "*initially at least*" to take such action as it may deem appropriate to address its failure to fund the pilot $22,000,000 16 LEA DSSF program as requested by the State Board of Education and DPI.

On this subject, the Court gives NOTICE that it will resume the hearing begun on July 23, 2004, on Thursday, October 7, 2004, at 3:30 P.m. in Courtroom 10A, Wake County Courthouse. The Court directs counsel for the State of North Carolina to be prepared to report to the Court on behalf of the Legislative Branch of Government (the General Assembly) what action the General Assembly has taken, to address its failure to fund the pilot $22,000,000 DSSF program, including, but not limited to, acting in cooperation with Governor Easley to fund the balance of the $22,000,000 (the sum of $10,000,000) requested by the DPI and The State Board of Education for the DSSF program will be made available to the DPI for the benefit of the five school districts originally included in the DSSF for school year 2004-05.

Second, the State of North Carolina has been making commendable overall progress statewide as evidenced by the ABC data submitted for 2003-04 by the State Board of Education in terms of overall student performance in grades

3-8. However, the data reflecting high school academic performance shows that much improvement remain to be made once children leave the eighth grade and enter high school and that in many areas low wealth systems are still struggling to reach grade level for the majority of students.

Much progress notwithstanding, the State of North Carolina has the on-going task of assessing (1) its problem LEAs and schools therein, or elsewhere, that are not providing the children of North Carolina with the opportunity of a sound basic education; (2) examining the allocation of educational resources and (3) if necessary, reallocate resources in order to provide cost-effective, targeted solutions to constitutional educational deficiencies so that the children affected will be provided with their constitutional right to the opportunity to obtain a sound basic education.

It has been more than two and one-half years since this Court entered its Final Judgment on April 2, 2002. During that time, the DPI and State Board of Instruction have, as seen through the 90-Day Reports, made progress in identifying problems in HCSS and taking targeted steps to correct those problems utilizing accountability for resources spent in that endeavor. To its credit, DPI and the State Board of Public Instruction have expanded assistance teams to LEAs other than HCSS on their own initiative and because there is a demonstrated need for their help and assistance.

This Court believes that DPI and the State Board of Public Instruction are heading down the right track towards assessing problems, developing common sense solutions and providing LEAS with guidance and assistance in developing cost-effective, targeted solutions that can be measured for success and accountability.

Now that the appeal is over and *Leandro II* is in full force and effect, it is time for the DPI and State Board to outline and present its plans as to how it will continue to proceed to ensure that the children of North Carolina will be afforded the opportunity to a sound basic education.

On this subject, the Court gives NOTICE that it will hold a hearing at a Special Session of Superior Court to begin on

Monday, October 25 2004, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina the opportunity to present its plan and outline as to how the State of North Carolina, acting through the Executive and Legislative branches, will address the constitutional educational deficiencies and how it plans to remedy them under the guidelines set forth in this case.

To provide the plaintiff LEAs and the plaintiff-intervenor LEAs with an opportunity to be heard with regard to the State of North Carolina's plan and outline to address any constitutional educational deficiencies that are required to be remedied under the Leandro decision.

To address issues relating to future proceedings in this case or matters that may remain as a result of the October 7, 2004 hearing, or such other matters that may be necessary.

To address any motions or other formal requests which may be submitted to the Court in the interim. However, no such matters will be addressed if not filed prior to October 8, 2004 by 5:00 p.m.

The Court is prepared to take evidence during this term of Court, if it is required.

SO ORDERED this 9th day of September, 2004.

Howard E. Manning, Jr.
Superior Court Judge

PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, *State Superintendent*

October 25, 2004

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351

Dear Judge Manning:

The State of North Carolina is committed to ensuring that all children receive an education that prepares them for the future. Our priority is to make sure that every child, in every community, has access to a quality education with competent teachers, effective principals, and adequate resources.

To that end, it has been a priority of the state to ensure that children begin school ready to learn, that they enter a school that has class sizes low enough to provide individual attention, are taught by qualified teachers, and are expected to meet high standards of excellence. In the last few years, the state has made major gains in each of these areas. However, there is more that can be done to ensure that all students, and in particular, at-risk students, are afforded the educational resources and opportunities for a high quality education.

Over the last few weeks and months the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions with education leaders and interested parties about the development of a long-range plan based on the progress of the Disadvantaged Student Supplemental Fund pilots in sixteen counties. With the Governor's charge and collaboration, we have developed the attached action plan. The components of this plan are grounded in research and proven practices.

Sincerely,

Howard N. Lee

Patricia N. Willoughby

HNL/PNW/gnd

OFFICE OF THE STATE SUPERINTENDENT
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EXECUTIVE SUMMARY

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

The State has demonstrated a commitment to target resources to meet the needs of at-risk students. Among other programs, the Governor, the State Board of Education and the General Assembly have recently created and funded the following:

- The More at Four Pre-kindergarten Program for at-risk four-year-olds
- A K-3 class size reduction initiative
- The High Priority Schools Act
- The Local Education Agency Assistance Program to provide assistance to poorly performing districts
- The New Schools Project to reform high schools

Most recently, the Governor identified $22 million for use by the State Board of Education to implement the Disadvantaged Students Supplemental Fund (DSSF). The DSSF Program provides targeted resources to assist at-risk students in 16 school districts marked by low student performance, low teacher experience, high poverty, high teacher turnover.

The State remains committed to these important efforts. Nevertheless, State education leaders understand that more remains to be done to improve the achievement of at-risk students and ensure that every student has the opportunity to obtain a high quality education. Towards that end, the State is committed to 1) expanding and enhancing existing initiatives and 2) developing select new initiatives targeted to meet the needs of at-risk students.

Consistent with that commitment, the State intends to construct, prior to the start of the 2005 Legislative session, a detailed plan. The State recognizes that legislative appropriations will be needed to implement elements of this plan. The plan includes the following components:

EXPAND EXISTING PROVEN PROGRAMS

- **Ensure every at-risk four-year-old has access to a quality prekindergarten program.** The State intends to continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to ensure schools and districts implement proven strategies.** Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

- **Strengthen and Expand LEAAP into a new unit under the State Board to improve struggling school, districts.** Building on its pilot experience with the Local Education Agency Assistance Program, the State intends to create a full-time unit under the State Board of Education that works with a set of especially needy school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

- **Continue the Teacher Working Conditions Survey and provide actionable data for problem schools and districts.** Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to attract and retain teachers and principals and increase their effectiveness.

- **Expand the New Schools Project and Learn and Earn.** To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.** The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

- **Provide high quality professional development for teachers and principals.** The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

- **Connect school, social service and delinquency prevention resources.** The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments, these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

PLAN FOR IMMEDIATE ACTION

The State is committed to immediate action to develop these initiatives and implement them to improve the educational opportunities available to at-risk students. The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

Over the course of the last few weeks and months, the Office of the Governor, the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions about the development of a long-range plan to meet the needs of at-risk students. In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The following steps will take place in the coming weeks and months in anticipation of taking a detailed package to the General Assembly for the 2005 session:

October 26, 2004 – January 26, 2005

- **November 5.** The Office of the Governor, Department of Public Instruction (DPI) and State Board of Education (SBE) representatives will hold initial meeting with Amicus groups and teacher groups.

- **November 19.** The Office of the Governor, DPI and SBE representatives will reconvene a group of superintendents and other representatives, including individuals from plaintiff and plaintiff-intervenor districts.

- **November 30.** The Governor will convene the Education Cabinet to meet and take up relevant items from this plan. The Education Cabinet will determine those items needing action by education governing boards.

- **December 1-2.** The State Board of Education will evaluate and approve plans for the five remaining districts under the Disadvantaged Students Supplemental Fund at its monthly meeting in December.

- Representatives from the Governor's Office, DPI, SBE, the Legislature, the Education Cabinet, K-12 school leaders, and other key stakeholders will continue meetings to construct the details of the plan.

- The Office of the Governor, DPI, and SBE will work with legislative representatives on development of a legislative package for the 2005 session of the General Assembly, which opens on Wednesday, January 26, 2005.

Beyond the 2005 Legislative session, the State is committed to continuing the development and implementation of proven strategies for meeting the needs of at-risk students.

BACKGROUND

Over the past two decades, the State has put into place a series of policies that have helped North Carolina make especially significant progress in the academic achievement of its young people.

In the late 1980s, the state began a focus on testing and accountability with the introduction of statewide curriculum standards, testing and public accountability. In the 1990s, the State refined its accountability system and placed a major emphasis on teacher quality. In the mid-nineties, the State implemented the ABCS of Public Education and school level testing and accountability. The testing and accountability system helped to focus attention and resources on the needs of students and schools throughout the state, especially those students not performing at or above grade level on state assessments. In addition to providing information on the achievement of schools and students, the ABCs program also assigned assistance teams to low-performing schools and instituted Gateways in grades three, five and eight to stem social promotion. The ABCs Program has allowed the state to understand which students and which schools are most in need of additional assistance and support.

Also in the 1990s, the State made significant investments in its teaching workforce, including raising teacher pay to near the national average and in the top half of the nation—where it remains today. The Excellent Schools Act of 1997 raised teacher pay, increased teacher standards, created accountability measures for schools of education, and improved the support of new teachers in the profession.

Improvement on national assessments, including the National Assessment of Educational Progress in reading, writing and mathematics and the SAT, demonstrates that North Carolina's approach is yielding results. In addition, reports from the RAND Corporation and the National Education Goals Panel and, most recently, from the Education Trust in October 2004, found that the steps that the state had been taking were increasing achievement scores and reducing achievement gaps on national assessments in reading and math.

The 2000 RAND report, *Improving Student Achievement: What NAEP Test Scores Tell Us* laid out a clear path for moving forward to improve achievement, especially among its at-risk students. The RAND report found that the most cost-effective approach to improving reading and math achievement on the National Assessment of Educational Progress was to lower teacher-student ratios in the early grades, expand public Prekindergarten, and provide additional resources to teachers. The report found that "investing in better working conditions for teachers to make them more productive (lower pupil-teacher ratios, more discretionary resources, and improved readiness for school from Prekindergarten) could produce significant gains in achievement scores" (pp. xxvii-xxviii).

In accordance with that report and other significant education research, Governor Mike Easley, the State Board of Education and the Legislature have worked together to ground the state's school improvement efforts in a research-backed approach for raising achievement of all students, with a particular focus on improving achievement for at-risk students. The State has focused on pre-kindergarten programs, smaller classes in the early grades, and supporting the needs of teachers.

Beginning in 2001, the State began to put these research-backed policies into place:

- **The More at Four Prekindergarten Program** was implemented in 2001 and served 1,500 at-risk four-year-olds in 34 counties. In 2004, it is reaching 12,000 at-risk four-

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.

- **The High Priority Schools** initiative reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program,** which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.

- **The Teacher Working Conditions Initiative,** which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.

- **The New Schools Project to reform high school.** Supported initially by an $11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

  The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

  In addition to the $11 million granted by the Gates Foundation, the state is investing $2.2 million on a recurring basis to begin the Learn and Earn high schools.

These investments and approaches represent research-backed practices to improve teacher retention and effectiveness and boost student achievement. The State believes they represent an important set of building blocks for addressing the needs of at-risk students. Nevertheless, the State believes that more must be done for at-risk students in North Carolina.

ADDITIONAL FUNDING TARGETED TO MEET THE NEEDS OF AT-RISK STUDENTS

In July of this past year, the State began its most recent effort to address the needs of at-risk students with the creation of the Disadvantaged Students Supplemental Fund (DSSF) pilot program. The DSSF pilot is now working in select districts to allocate additional resources for proven strategies to boost the achievement of at-risk students. Governor Easley has identified and made available up to $22 million for use by the State Board of Education to support 16 school districts. The pilot is operating as follows:

- Districts were identified based on levels of student achievement, student poverty, and teacher attrition. Based on a formula, specific funding levels were set for each district.

- The State Board assigned assistance teams to each district to help in the creation of their plans for using the DSSF resources.

- Plans from local districts are based on a "menu of proven strategies" developed by the State Board of Education. Districts have the flexibility to decide which options best meet their needs, but they must use the options provided by the State Board. The options include bonuses for recruiting and retaining teachers; additional personnel for such strategies as reducing class size, hiring reading coaches, and supporting new teachers; professional development for teachers and principals; supporting afterschool and other extended day programs; and implementing personal education plans.

- Funding for districts is contingent upon the approval of the State Board of Education.

- The Board will evaluate the results from the DSSF pilot, including the effectiveness of additional resources, the targeted options, and the DPI assistance on improving student achievement and teacher attrition.

MOVING FORWARD: BUILDING ON THE STATE'S COMMITMENT TO ADDRESS THE NEEDS OF AT-RISK STUDENTS

The aforementioned strategies for improving student achievement—especially the achievement for students below grade level—are yielding results. The State intends for these strategies to serve as the foundation of its continuing effort to construct a system of K-12 public education that provides superior education for all students and, more specifically, meets the needs of at-risk students.

In order to ensure that all students are receiving a high quality education and that they have access to caring, competent teachers in their classrooms, effective principals in their schools, and the instruction they need to meet high standards, the State is committed to taking the following steps to maintain and expand proven strategies for school improvement. Additionally, it is

recognized that the Legislature will need to appropriate additional resources to allow the State to expand a number of these proven strategies for increasing the achievement of at-risk students.

1. **Ensure that every at-risk four-year-old has access to a quality prekindergarten program.**

   Recognizing that students who do not start school ready to learn remain at-risk of school failure and dropping out throughout their career, the State intends to expand the More at Four Prekindergarten Program for at-risk four-year-olds towards its goal of access for the estimated 40,000 at-risk four-year-olds in the state. Quality pre-kindergarten programs are the fundamental building block for the State's effort to meet the needs of at-risk students across the state. Without access to quality pre-kindergarten programs, at-risk students start school behind and remain at-risk of school failure throughout their school careers.

   In expanding More at Four, the State will identify high-need areas with respect to educational performance, families in poverty, and other key indicators to determine priority sites for funding expansion.

2. **Evaluate, refine and expand the Disadvantaged Students Supplemental Fund pilot approach to ensure that districts and schools implement proven strategies for meeting the needs of at-risk students**

   The Governor and State Board of Education have implemented the Disadvantaged Students Supplemental Fund in 16 school districts for the 2004-05 school year. The pilot requires that assistance teams, assembled by the Department of Public Instruction, work with eligible districts to determine plans for using additional resources based on a menu of proven strategies. The Governor, State Board and General Assembly will carefully analyze the success of the different strategies chosen by the 16 districts in order to determine which approaches best met the goals of attracting and retaining teachers, ensuring an effective principal, and providing individualized instruction that increases the achievement of students at-risk of school failure.

   As part of this critical effort, the State Board of Education will evaluate the performance of students, the supply and retention of teachers, the appropriateness of the current menu of options provided, and the efficacy of DPI assistance. In addition, the State will examine the appropriate state and local fiscal responsibilities for additional investments, and the differences in working with urban versus rural school districts.

   Based on evaluation findings, the State will modify the menu of options and expand this effort to additional schools and school districts. The current pilot is a first step and the State recognizes that additional investments are needed for the next school year and beyond.

3. **Strengthen and expand LEAAP into a new unit under the State Board to improve struggling school districts**

   Building on its experience with the Local Education Agency Assistance Program, the State is committed to create a unit under the State Board of Education that works with a set of school districts most in need to analyze the challenges, provide intensive support on resource and policy decision-making, and build the capacity of these districts.

This new unit would work with districts that need immediate and intensive support to improve education for its students. The State will develop criteria to determine which districts are most in need of assistance from this unit.

The unit would provide the following types of assistance: 1) a detailed diagnostic analysis and audit of student performance trends, teacher working conditions, and resource allocation; 2) work with the district to develop a plan for resource reallocation and strategies for deploying additional funding; and 3) brokering relationships/assistance for the districts with higher education partners, the programs of the UNC Center for School Leadership Development, and other appropriate entities. This effort would provide intensive and targeted assistance and guidance on resource allocation and the use of strategies to guide improvement.

The State Board of Education would approve plans for the district's use of state funds based on the unit's work with the district. The unit would be comprised of new personnel assigned solely to this function.

4. **Improve teacher retention and effectiveness by using the Teacher Working Conditions Survey to provide actionable data to schools and districts**

   With data that demonstrates a correlation between working conditions and teacher turnover rates and student achievement, the Teacher Working Conditions survey is an important tool for assisting school and district efforts to attract and retain caring, competent teachers and to develop effective principals. In addition to the statewide administration of the data, the State will look to require administration of the survey in targeted schools and districts. This will ensure a full set of data to use as an assessment tool to determine needed strategies in those locations.

   The survey data has found that improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students. Targeted use of additional resources for this purpose will be considered as a part of state assistance for at-risk students.

5. **Expand the New Schools Project and Learn and Earn Schools to improve the preparation of high school students to access further education and compete for skilled jobs**

   The State is committed to an ambitious effort to improve high schools, especially for those students whom the traditional high school model does not serve well and who are at-risk of dropping out. The State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. The State Board of Education, working with the New Schools Project, will create a priority list of districts to receive funding and assistance under this project based largely on the needs of at-risk students. All new schools have goals and outcome measures that include improving student achievement, graduation rates and the college-going rates of their students.

The State believes that these efforts will target resources and assistance effectively to provide caring, competent teachers, effective principals, and the individualized instruction needed to help

students at-risk of school failure meet high standards and be well prepared for further education and a skilled workforce.

The State will develop an accountability mechanism to evaluate the impact of these investments to improve the achievement of at-risk students. The mechanism will, at a minimum, use student performance from the ABCs program and the teacher working conditions data. The accountability mechanism should also hold the State accountable for its assistance to districts and schools.

ADDITIONAL EFFORTS TO SUPPORT THE STATE'S COMMITMENT TO AT-RISK STUDENTS

In addition to its commitment to expand and maintain existing initiatives to meet the needs of at-risk students, the State also believes that there are additional efforts needed to support schools and districts to help all students achieve.

Expand teacher supply by increasing partnerships between community colleges and schools of education

The State understands that there is a critical need to boost both the supply and retention of teachers in hard-to-staff schools. The shortage of qualified teachers for hard-to-staff schools is a problem that afflicts every state in the nation. While North Carolina has been recognized for its leadership in this area nationally, the State realizes that more remains to be done.

Hard-to-staff schools in the state have a significant number of lateral entry and first-year teachers. While more needs to be done to induct, support and retain these individuals, the fact remains that there is a shortage in the supply of highly qualified teachers for hard-to-staff schools.

This, however, will not be accomplished by merely increasing the supply at schools of education. Existing patterns show that preparation in the state's schools of education generally leads to employment in the surrounding environs of those universities. Unfortunately, many of the schools and districts with the greatest need for qualified teachers are not in close proximity to school of education. In addition to providing targeted incentives to bring teachers to hard-to-staff schools, the State believes that it must look to boost the supply of qualified teachers in the areas where they are needed most.

To do so, the State sees an expansion of "2+2" partnerships between schools of education at four-year institutions and community colleges, which are located in critical regions throughout the state. Existing "2+2" programs have shown great promise in increasing the supply of qualified teachers prepared to teach and remain in areas where teachers are needed. In examining the prospects for expanding this approach, the State will identify regions of the state with high teacher attrition, low levels of teacher candidate supply, and underperforming schools as priorities for "2+2" program expansion.

The state is also committed to examining additional avenues for increasing the supply of teacher candidates from schools of education, resources and approaches to prepare qualified lateral entry candidates, and other strategies to increase the availability of qualified teachers in hard-to-staff schools.

The State recognizes that in working to increase the supply of qualified teachers for hard-to-staff schools it must also remain vigilant to improve the retention of qualified teachers in these schools.

Provide high quality professional development for teachers and principals

Any effort to ensure effective teachers and principals in classrooms and schools must include providing them with high quality professional development that supports their ability to help students reach high standards. The State has invested in a number of important and effective professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals Executive Program. The State has also vested the lion's share of responsibility for providing professional development in schools and school districts. Unfortunately, many teachers and principals report that they lack access to high quality professional development.

The State will explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers. This includes identifying the content areas and skills where teachers and principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers and principals.

Connect School, Social Service and Juvenile Justice Resources

The State recognizes that schools and schools systems alone cannot meet the challenges of educating all students for the challenges of higher education, the workplace, and participating in the democratic life of their communities. It is critical that children and families receive the support they need to be healthy and actively involved in their children's education.

The State intends to bring together the State Board of Education and the Departments of Public Instruction, Health and Human Services, and Juvenile Justice and Delinquency Prevention to jointly develop strategies for connecting school, social service, and juvenile justice resources.

Efforts would aim to target schools and counties with high need of support across the state. Such efforts might provide for the coordination of parent involvement, mental health services, health services, and delinquency prevention and other juvenile justice-related services for youth and families in participating schools.

PLAN FOR IMMEDIATE ACTION

The State has already demonstrated its commitment to pre-kindergarten for at-risk four-year-olds, class size reduction, additional resources to support at-risk students in targeted school, district assistance, high school reform and improving teacher working conditions has been demonstrated. That commitment will continue.

In addition, the State is committed to expanding a number of these proven strategies, targeting them to meet the needs of at-risk students and finding solutions for other important educational problems, such as increasing the supply of teachers and connecting social services with schools and other areas.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

November 23, 2004

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, December 7, 2004, in this matter. The hearing will be in Courtroom 10-C (where the previous hearings have been) at 2:30 P.M. on Tuesday, December 7. I hope that everyone has a safe and pleasant Thanksgiving this year.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)

11-23-04 P12:45 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

January 6, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, January 11, 2005, in this matter. The hearing will be in Courtroom 10-B (same floor but not where the previous hearings have been) at 2:30 P.M. on Tuesday, January 11, 2005. I hope that all of you had a pleasant holiday season and that the "wrinkles" will have been worked out of the Disadvantaged Student Supplemental Fund Formula by Tuesday so we can proceed on other fronts, including, but not limited to, the pressing problem with regard high school student performance referred to in my November 10, 2004 memo, and solutions for that problem. With regard to the DSSF formula issue, I am in receipt of the N.C. School Superintendents' Association Response to the DSSF formula which was issued in mid-December, 2004.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

01-06-04-06-05-P01:35 OUT

Feb-10-2005 11:19 From- T-518 P.001/002 F-020

02-10-05 A10:19 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

February 10, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, February 15, 2005, in this matter. The hearing will be in Courtroom 10-C at 2:30 P.M. on Tuesday, February 15, 2005. While I requested a report from the State on the progress made on the "plan" at this meeting, I have learned that Governor Easley has not put the final touches on the budget and that his budget will not be ready to go to the General Assembly until after the Governor's "State of the State" address several days after next week's hearing. Accordingly, I will not expect any progress report from the State at next week's hearing. However, there are several items that we will need to take up.

First, there is a motion to intervene which has been filed and we will take that matter up.

Second, in anticipation of the March 7 special session regarding the high school problem, I have asked Susan K. Lamar, NC AVID Director, to make a presentation to the Court and the parties about the AVID program, its purpose, and the progress AVID is making in helping North Carolina children realize their Leandro opportunity. The AVID program assists middle and high schools prepare children who are underachievers, with the potential to do college level work, to have the opportunity to become academically prepared and eligible for college work. It is my

understanding that AVID is now present, in one or more schools, in Durham, Nash-Rocky Mount, New Hanover, Onslow, Pitt, Wilson, Cumberland, Catawba, Charlotte-Mecklenburg as well as starting in Wake, among others.

Third, discussion of schedule and presentation for March 7 hearings and any other matters that the parties have been working on with respect to DSSF, etc.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

2/10/05

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

FILED
2003 FEB 10 PM 4:49
WAKE COUNTY, C.S.C.
BY

HOKE COUNTY BOARD OF EDUCATION, et al.,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF EDUCATION, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendants.

MOTION FOR ORDER TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN

Plaintiffs move the Court for an order directing Defendants to show cause why they should not adopt an initial Leandro compliance plan that includes the elements set out below ("Plaintiffs' Plan") and seek funding from the General Assembly to implement such Plan. Alternatively, Plaintiffs ask the Court to approve Plaintiffs' Plan described herein. In support of this motion, Plaintiffs show the Court:

1. The Plaintiffs' Plan is based largely upon proposals submitted previously to this Court by Defendants as to proposed steps to be taken by them to comply with the orders of this Court and the North Carolina Supreme Court in this case. With most of those proposals, Plaintiffs are in agreement with Defendants. However, unlike Defendants' prior submissions, Plaintiffs' Plan identifies specific amounts of additional resources and a concrete timetable to begin to meet the educational needs of North Carolina schoolchildren so that they can enjoy and

exercise the right to the opportunity for a sound basic education. This motion is also supported by the affidavits of Superintendents Colin Armstrong (Robeson), Norman Shearin (Vance), Allen Strickland (Hoke) and Willie Gilchrist (Halifax).

2. The Plaintiffs suggest to the Court that our Supreme Court has already upheld this Court's determination that Defendants must both identify and provide for the needs of at-risk children. Hoke County Board of Education v. State, 358 N.C. 605 at 641-642. Defendants may not permissibly proceed with "all deliberate speed" because our Supreme Court has already recognized that a solution is needed that "... will prevent existing circumstances from remaining static or spiraling further ..." Id at 643.

3. Plaintiffs' Plan has the following five components.

a. Expansion of the Disadvantaged Student Supplemental Fund ("DSSF").

This program was initially proposed by Defendants in June, 2004 in response to the decisions and orders of this Court, to begin to meet the need of at-risk students for a sound basic education and to satisfy constitutional requirements. Defendants proposed the creation of a new education annual allotment of approximately $223 million. Defendants' June 7, 2004 90 Day Report, Attachment 8.

Under Plaintiffs' Plan, the DSSF would operate with the same formula for identification of at-risk students that was proposed by DPI and the State Board of Education and approved by this Court at the hearing in this case on January 11, 2005. All North Carolina LEAs could seek State Board approval for funding from the DSSF to support recommended intervention programs for at-risk students which have been approved by the Defendant State Board. Many such approved intervention programs have been identified in Defendants' October 25, 2004 filing with this Court, and Defendants' filings themselves state those programs are "grounded in

research and proven practices" and constitute a "menu of proven strategies." October 25, 2004 Letter from Howard Lee and Patricia Willoughby to Judge Howard Manning, Jr., and Defendants' accompanying outline of compliance plan, at p.6.

LEAs would be eligible for distributions from the DSSF, for implementing intervention programs approved by the State Board, with the distributions based upon the LEAs' total ADM eligible for disadvantaged student funding, as determined under Defendants' approved formula for the identification of at-risk students, at a level of $1,000 per eligible at-risk student. (The total statewide ADM eligible for DSSF funding is approximately 300,000 students according to Defendants' prior filings with the Court.)

The fact that at-risk students need additional resources and programs to exercise their constitutionally entitled opportunity for a sound basic education was found as a fact by this Court in its several prior decisions in this case, including its Judgment of April 4, 2002. See also, Memorandum of Decision Part III at 71 (March 26, 2001) (at-risk students typically require services, resources and programs not necessary for those students who are not at-risk, to have an opportunity to obtain a sound basic education.) That proposition was not seriously contested by Defendants at the 1999 trial nor at the additional hearings in September, 2001. This Court's holding that at-risk students need additional resources to obtain a sound education was not appealed by Defendants, and the holding was approved by the North Carolina Supreme Court in its opinion issued on July 30, 2004. Hoke County Board of Education v. State, 358 N.C. 605 at 641-643.

The amount of at least $1,000 per at-risk student is reasonable, and probably conservative, in view of evidence previously of record in this case as well as more recent studies and reports.

The amount is supported by evidence from North Carolina educators, including the results of a North Carolina Public School Forum study in the 1990s, The Things That Matter, participated in by members of the General Assembly, business leaders, State Board of Education representatives and other educators. (The group that created that study included State Superintendent Mike Ward, State Senator Howard Lee, former State Board of Education Chair Philip Kirk Jr. and then-superintendent of Johnston County schools, Dr. James Causby.) That study was the subject of testimony and was introduced in evidence in the 1999 trial. See Trial Transcript, October 1, 1999, Testimony of John Dornan, pp. 160-176, and PX 183, The Things That Matter (concluding that additional funding of at least 20% more than the usual per ADM funding is needed to educate adequately an at-risk student.)

At present, the DPI website lists North Carolina per pupil expenditure (for current expense) as $6741 in school year 2002-03. Twenty percent of $6741 is $1348, which is substantially higher than the $1,000 number here suggested. An amount of at least $1,000 per each at-risk student is also supported by more recent studies made by the North Carolina Public School Forum.

The Defendants' June, 2004 original DSSF proposal filed with this Court called for an annual DSSF allocation of $223 million, which equates to approximately $743 per at-risk student. Defendants have represented to the Court that if their $223 million DSSF program were fully implemented it would "begin to address the needs of disadvantaged students across the State." Defendants' August 10, 2004 90 Day Report at 1.

Under the current DSSF program in effect for FY '04-05, where the amounts for each participating LEA were determined by Defendants, Hoke County is receiving just under $1,000 per eligible child in DSSF funding.

Allocation of at least $1,000 per at-risk student appears conservative, particularly in view of many other studies concerning the incremental costs of adequately educating at risk children in other States' public school systems. See, e.g., Mathis, William J., Costs and Benefits (May 2003), summarizing numerous "costing out" studies and noting that recent such studies for public schools in Indiana, Maryland and Montana have all concluded that the costs of providing sufficient educational services to at-risk students for them to meet state and federal test standards very substantially exceeds $1,000 per student. William J. Mathias, Costs and Benefits, at http://course1.winona.edu/lgray/el626/Articlesonline/NCLB_Mathis.html.

Under Plaintiffs' Plan, full funding of the DSSF would be phased in over three years, $100,000,000 in FY '05-06, $200,000,000 in FY '06-07 and full funding of $300,000,000 in FY '07-08. As Defendants have suggested in some conferences they have held with Plaintiff Parties, the 16 districts receiving DSSF funding in '04-05 would be held harmless so that the annual amount of such funding to each would not be reduced as full funding of the DSSF is phased in over the next three fiscal years.

Under Plaintiffs' Plan, DSSF funds would be used to make available intervention programs of proven value for at-risk students. They would not be primarily used for the recruitment and retention of teachers generally, except where such teacher hiring is needed to implement a particular intervention program for at-risk students. Other approaches, discussed in subparagraph (e) below, are required to assure the presence of qualified teachers in every classroom.

b. Full Funding of the Low Wealth Schools Fund This Year.

This would require an annual increase of approximately $66 million from the present annual appropriation of $103.8 million. Full funding of the Low Wealth Schools Fund in the current legislative session was recommended recently by the North Carolina General Assembly's

Joint Legislative Education Oversight Committee. This is necessary in part because neither the State's basic education finance system nor the approved State Board DSSF formula takes into account an LEA's local capacity or ability to support minimal education services for all children, from local funds. The low wealth systems, by definition, lack average capacity to raise such funds locally. The low wealth schools funds, by law, must be used for instructional purposes and they are the best short-term partial remedy for the shortage of qualified teachers in those systems.

c. Continued Expansion of the More at Four Program so that it Makes Pre-Kindergarten Education Services Available to all North Carolina At-Risk Four Year Olds.

Such expansion of the More at Four program was been proposed to this Court by Defendants in their outline compliance plan presented to the Court on October 25, 2004 as a way to help provide an opportunity for a sound basic education for at-risk children.

d. Expansion of the Local Education Agency Assistance Program ("LEAAP") into a New Unit under the State Board of Education to Assist School Districts Most in Need.

Expansion of the LEAAP was proposed by Defendants in their outline of a Leandro compliance plan presented to the Court on October 25, 2004 but as of January, 2005, the State Board's proposed expansion budget contained no funding request to provide for its operation.

e. Specific Steps by Defendants to Ensure the Provision of Competent, Certified, Well-Trained Teachers in Schools Led by Well-Trained, Competent Principals.

The constitutional mandate to provide competent, certified, well-trained teachers in schools led by well-trained, competent principals is clear. Hoke County Board of Education v. State, 358 N.C. 605 at 636. It is also abundantly clear from the trial record and many subsequent submissions to the Court from the parties, that this mandate is not being met.

In the last several years, State agencies, the UNC Board of Governors and North Carolina nonprofit institutions have all performed and published studies concerning programs to supply competent, certified teachers to North Carolina schools. These studies include:

i. Report and Recommendations From the State Board of Education Teacher Retention Task Force (February, 2005).

ii. The Shortage of Teachers in North Carolina: Can We Attract and Retain Enough? and Recommendations To Address the Teacher Shortage in North Carolina, North Carolina Insight (August, 2004) (published by North Carolina Center for Public Policy Research).

iii. Report From the UNC Board of Governors Task Force on Meeting Teacher Supply and Demand, University of North Carolina Board of Governors, March, 2004.

iv. State Board of Education, Teacher Working Conditions Survey (2004).

v. A Profession in Jeopardy: Why Teachers Leave and What We Can Do About It, Public School Forum of North Carolina, December, 1996.

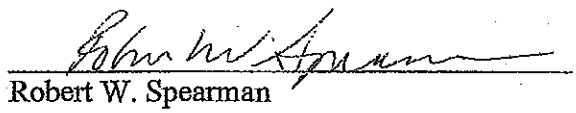
These various reports detail numerous suggestions and policy prescriptions including: increasing teacher compensation; improving teacher working conditions; special incentives to attract teachers to counties with the greatest teacher needs; more teacher training programs run jointly by the University system and the state community college system; expanded and improved professional development programs for teachers and administrators focused on the needs of at-risk children; changes in lateral entry and out-of-state recruitment programs to address the teacher shortage; retirement law changes to increase utilization of retired teachers; and many others.

At this point, the need is not for Defendants to undertake further studies but for them to take concrete action.

Plaintiffs suggest that the Court should require Defendants, within 90 days, to inform the Court specifically as to what they propose to do, and when, to insure that each North Carolina school child is taught in a classroom with a competent, certified, well-trained teacher in a school led by a well-trained, competent principal. That submission can then be tested by the requirements of the Constitution.

This the 10 day of February, 2005.

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFFS MOTION TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN was served on the parties in this action on this day by e-mail and by depositing copies thereof in the United States mail, postage prepaid, addressed as follows:

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This the 10 day of February, 2005.

Robert W. Spearman

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2005 MAR -3 P 11:57
C.S.C.

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA and ORDER RE: MOTION EXPEDITED DISCOVERY BY UNC CENTER [illegible]

THIS MATTER is before the Court with regard to the evidentiary hearing scheduled for the week of March 7, 2005, for the Court to hear evidence relating to the "high school problem" which exists in a great number of high schools throughout North Carolina relating to poor academic performance in those schools.

The driving force behind the Court scheduling a hearing on the "high school problem" is that way too many of North Carolina's high schools had composite scores **below** 80 for 2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79. (107/326) = 33%

Even more troubling were the number of high schools with composite scores that were below 70% for the past year (102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. **A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.**

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendent of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84,89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84,83,88,83,82,83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are **not** for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are **not**, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005

Howard E. Manning, Jr.
Superior Court Judge

General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
P. O. BOX 351
RALEIGH, NC 27602

TELEPHONE: (919) 755-4100
FAX: (919) 715-4064

FAX ONLY MEMO

July 11, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: Notice of August 9, 2005 special civil session re: hearing on the "high school problem (with emphasis on CMS) and other matters"

Lady and Gentlemen:

On May 24, 2005, this Court filed "Report from the Court: The High School Problem."

Last Friday, I reviewed the N&O's article on the Wake County Public Schools 2004-2005 Composite Scores. I subsequently went on line and took a look at CMS's High School 2004-2005 Composite Scores and their disaggregated data. A copy of the composite scores for CMS for 2002,2003,2004 & 2005 by school is attached.

The CMS results remain dismal. Out of 17 high schools, 10 remain with composite scores below 60 and 5 out of those 10 continue to have composites below 50. While there was some improvement in the scores of the bottom 10, 5 of the CMS high schools, East Mecklenburg, Garinger, Harding, Hopewell and West Mecklenburg went backwards. Olympic made a .01 gain from 53.5 to 53.6. South Mecklenburg made a .01 gain from 71.9 to 72.0, which is basically no gain at all.

The bottom line is that despite the so-called internal plans and improvements and programs for improving CMS's high schools'

academic performance that we heard about at the hearing in March, it appears that the poor academic performance remains business as usual in the majority of those high schools, despite being placed on notice that the poor academic performance cannot be permitted to continue. This sorry state of affairs cannot be permitted to continue.

On the more affluent side of the ledger, Myers Park scored a composite of 81.2% up from 73.4% and Providence increased to 86.0% from 83.5%.

Accordingly, I have made the necessary arrangements to schedule a special civil session beginning Tuesday, August 9,2005 at 10:00 in Courtroom 10-C (the usual courtroom). At that time, the Court will expect to hear a report from CMS as to what, if anything, CMS is doing with regards to the specific substantive, effective, and academically proven corrective measures CMS will be in place in its bottom 10 high schools as of the start of the 2005-2006 school year to ensure those schools are *Leandro* compliant in terms of qualified, competent principals, qualified, competent teachers and resources so that the constitutionally required educational opportunity is provided to in those schools and each and every child.

The Court will also expect a report from the State of North Carolina on the issue of the overall *Leandro* compliance statewide at that time.

In connection with the "high school problem" and the high schools, including CMS' high schools, that have composites below 60, the Court will expect a report from the State of North Carolina as to what action it is taking to provide these high schools with substantive, effective and academically proven corrective measures to be in place as of the start of the 2005-2006 school year so as to ensure that these bottom high schools are providing their students with a *Leandro* compliant learning environment as required by the Constitution of this State.

The Court will also hear the CMS students' motion to intervene relative to the CMS assignment plan during this session of Court.

The Court would also like to hear from the plaintiffs' counsel on the progress, or lack thereof, being made with respect to the ensuring that the schools in those districts, including the high schools, are meeting the constitutional requirement of being *Leandro* compliant.

7/11/05

In the event there are other relevant matters that the parties believe should be on the agenda for the hearing, please write and let me know and I will consider putting them on the agenda. Thank you.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight and Speaker Jim Black, et al. c/o Tonya Williams
(919-733-8740)
Chairman Howard Lee, State Board of Education and DPI
(919-807-3445)

Attached: CMS HIGH SCHOOLS-COMPOSITE SCORES-2002,2003,2004 & 2005 (ONE PAGE)

HEY
7/11/05

CMS HIGH SCHOOLS - COMPOSITE SCORES - 2002,2003,2004 & 2005

	2002	2003	2004	2005
BUTLER	64.1%	70.9%	72.7%	75.5%
MYERS PARK	69.9%	72.0%	73.4%	81.2%
N. MECKL.	65.5%	69.5%	70.3%	71.9%
PROVIDENCE	78.4%	82.7%	83.5%	86.0%
S. MECKL.	66.6%	70.6%	71.9%	72.0%
WADDELL	39.2%	41.5%	39.4%	47.6%
E. MECKL.	64.2%	61.2%	61.2%	58.1%
GARINGER	36.2%	38.6%	43.7%	42.1%
HARDING U.	63.8%	60.2%	58.4%	56.5%
HOPEWELL	65.8%	67.6%	66.0%	64.6%
INDEPENDENCE	59.2%	56.2%	49.3%	56.2%
NW ARTS	60.1%	57.0%	58.6%	63.0%
OLYMPIC	49.8%	55.9%	53.5%	53.6%
OBERRY	xx	50.4%	41.4%	46.6%
VANCE	57.0%	49.3%	48.0%	54.0%
W.CHARLOTTE	30.6%	24.8%	30.1%	35.7%
W. MECKL.	47.8%	43.9%	47.5%	46.7%

It should be noted that EOC tests in U.S.History and ELPS were not administered in 2004 and 2005.

7/11/05

PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Janice O. Davis, *Interim Officer*

August 9, 2005

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Hand Delivery

Re: *Hoke Co. et al. v. State*

Dear Judge Manning:

On July 11, 2005, you sent a Notice to the parties to this action that you would hold a hearing on specified subjects in the Wake County Courthouse on August 9, 2005. Among other things, your Notice stated that you expected a report from the State on "the issue of overall Leandro compliance."

In response to that request, and on behalf of the Governor, the State Board of Education, and the Department of Public Instruction, I am submitting two documents. The first describes the Governor's and the State Board of Education's strategic focus for Leandro compliance. The second documents some of the actions we have recently taken to implement the Plan which we submitted to the Court on October 25, 2004, along with some additional commitments and actions that were not included in the Plan.

I trust that you will agree that the actions described in these documents prove that the State is making substantial and steady progress toward improving educational opportunities for all its students. The Governor and the State Board of Education intend to continue to aggressively implement the Plan to assure all North Carolina children have the educational opportunity to reach their full potential.

With kindest regards and best wishes, I am

Respectfully,

Howard N. Lee

c: The Honorable Michael F. Easley, Governor of North Carolina
State Board of Education Members

STATE BOARD OF EDUCATION
6302 Mail Service Center :: Raleigh, North Carolina 27699-6302 :: 919.807.3430 :: Fax 919.807.3198
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GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION'S STRATEGIC FOCUS ON *LEANDRO*

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

Governor Mike Easley and the State Board of Education have put in place a comprehensive strategy to achieve these ends. This plan is built on the following strategic objectives:

1. **Provide significant new resources to low wealth districts and schools** by fully funding the Low Wealth Supplemental Funding formula in order to attract and retain quality teachers and principals and improve educational opportunities for all students.

2. **Make the Disadvantaged Students Supplemental Fund (DSSF) permanent,** implement a rigorous evaluation of the DSSF program in the 16 pilot districts, and identify the appropriate funding levels for the DSSF formula.

3. **Provide new, targeted investments in education** including funding for the More at Four Pre-Kindergarten Program; high school reform (New Schools Project and Learn and Earn); teacher recruitment scholarship programs; teacher production in high need areas; teacher retention; principal effectiveness; and connecting schools and social services to support the achievement of at-risk students.

4. **Institute greater accountability for existing funds** targeted to at-risk students and ensure greater financial accountability for the use of state and local resources to increase student performance in districts across the state.

5. **Strengthen the State's assistance to low-performing schools and their districts,** beginning with high schools. The State needs to assist districts and schools to examine spending patterns, reallocate existing resources, effectively target new resources, and implement proven strategies to increase student performance.

In October 2004, Governor Easley and the State Board of Education submitted a comprehensive Plan to meet these objectives and improve educational opportunities in North Carolina public schools. Since that time, the Governor, the

General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan. They have also taken many additional steps toward addressing the need for qualified teachers and principals and the resources needed to help students meet high academic standards and be prepared for higher education, work and citizenship in the 21st Century.

GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION HAVE TAKEN ACTION TO IMPLEMENT THE STATE'S PLAN FOR *LEANDRO*

The October 2004 Plan submitted to the Court outlined efforts the State would take to:

(1) Expand Existing Proven Programs and

(2) Invest in New Commitments.

The State's efforts in each of these areas are detailed below. Some of the additional commitments and action the State has taken since the Plan was submitted are also noted.

I. EXPAND EXISTING PROVEN PROGRAMS

- **Ensure Every At-Risk Four-Year-Old Has Access to a Quality Pre-Kindergarten Program.**

  - The State intends to continue to expand the More-at-Four Pre-Kindergarten Program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

    1. The Governor's budget proposed $16.6 million in the first year and $29.1 million over the biennium to fund an additional 6,400 at-risk four-year-olds across the state.

    2. Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for the 2005-06 school year to support an additional 3,200 slots, which will bring the total of at-risk four-year-olds served to 15,200.

    3. The Office of School Readiness was created on July 1, 2005, through an Interagency Agreement signed by the Office of the Governor and Departments of Public Instruction and Health and Human Services. The Office will allow the state to align, coordinate and leverage the multiple public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to Ensure Schools and Districts Implement Proven Strategies.**

  - Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

    1 Governor Easley's July 20, 2005, Executive Order No. 80 set aside $22.5 million for DSSF for the 16 pilot districts.

    2 House and Senate conferees have tentatively agreed to include $22.5 million for DSSF in the budget.

    3 The Governor's budget also proposed continuing the funding in 2006-07, but distributing the funds based on the formula submitted to the Court in October 2004.

    4 The Governor's budget recommendations are not intended to cap the DSSF program at $22.5 million.

    5 The Governor's budget also requested $1.6 million for a thorough evaluation of the DSSF approach. The Senate included $1 million for the evaluation and the House included $100,000. The evaluation will focus on the effectiveness of the funds to increase student achievement and the efficacy of the State's assistance to the districts.

    6 DPI has an agreement with the Education Research Council to conduct a study of performance in the 16 DSSF pilot school systems.

    7 The Governor's budget calls on the State Board of Education to provide recommendations for an appropriate DSSF funding level by February 15, 2006, so that it may be implemented for the 2006-07 school year.

8 When the policies and resources outlined above are in place and the required evaluations are completed, the State will be better positioned to consider increases in DSSF in the second year of this biennium and beyond.

- **Strengthen and Expand LEAAP into a new unit under the State Board of Education to improve struggling school districts.**

  - Building on its pilot experience with the Local Education Agency Assistance Program (LEAAP), the State intends to create a full-time unit under the State Board of Education that works with a set of select school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

    1 The LEAAP program was used to provide assistance to the 16 pilot districts in DSSF. They worked with the districts to analyze their challenges and develop their plans for DSSF monies.

    2 Two years ago, the Governor and State Board of Education worked with the General Assembly to secure $500,000 to begin LEAAP, which worked to improve the capacity and achievement in poorly performing school systems. That $500,000 is now part of the continuation budget.

    3 The Governor's budget proposed transferring $6.5 million from within DPI to LEAAP to develop the full-time assistance program.

    4 The authorization for ABCs funding now permits expenditure of ABC funding for LEAAP teams.

- **Continue the N.C. Teacher Working Conditions Survey and Provide Actionable Data for Problem Schools and Districts.**

  - Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to

attract and retain teachers and principals and increase their effectiveness.

1 The Governor's budget requested $215,000 in 2005-06 and $290,000 in 2006-07 to continue the Teacher Working Conditions Survey and to provide customized action plans and resources for grants for DSSF districts, improve teacher working conditions, retain qualified teachers, and boost students achievement. The House included $215,000 and the Senate $115,000 for this effort.

2 The Teacher Working Conditions Initiative surveys teachers and produces school-level, district-level, and state-level reports on the conditions of work for teachers. School-level reports are provided for all schools where at least 40% of teachers return the survey.

3 The Southeast Center for Teaching Quality, in conjunction with the N.C. Teacher Academy, has used these results to work with select DSSF districts to improve their teacher retention efforts.

- A report from the Southeast Center for Teaching Quality is being provided to the Court.

- **Expand the New Schools Project and Learn and Earn to Improve High School Student Performance.**

  - To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

    1 The Governor's budget and his Executive Order No. 80 provided $4.2 million in 2005-06 to open 15 Learn and Earn high schools

    2 The Governor's budget and his Executive Order No. 80 provided $1.44 million to open 11 new economic development-themed high schools.

3 Next year, the State plans to open 11 more economic development-themed, smaller high schools and another 20 Learn and Earn high schools.

4 The State Board of Education, DPI and LEAs are partnering with the Gates Foundation New Schools Project to restructuring or reform of North Carolina high schools

5 The State is supporting the New Schools Project with funding for additional local administrators, *e.g.*, principals, and DPI staff

6 The Governor's budget included $500,000 for Communities in Schools for dropout prevention work in approximately 35 counties and the Senate budget also included $500,000 for this purpose.

II. INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.**

  - The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

    1 The Governor's budget and his Executive Order No. 80 provided $1.5 million to fund the 2+2 UNC-NC Community College System Teacher Education Partnerships. These funds support on-line courses and state positions to increase the numbers of community college students continuing their education and receive degrees that will allow them to teach. The purpose of the 2+2 Initiative is to link UNC schools of education with local community colleges and teach courses at the community college locations so as to develop teaching candidates in the very area where the State needs them most.

2 The Governor proposed $1 million in new scholarship money for participants in the 2+2 program described above. The money was to be part of the Prospective Teacher Scholarship program. The Governor also proposed $330,000 on 2006-07 for 100 scholarships for a new Two-Year Teaching Fellows Program for middle and high school math and science—two areas of major shortage in the State.

3 The Legislature did not support these proposals, but the Senate and House have agreed to provide $650,000 in 2005-06 and $1.3 million in 2006-07 for 100 new Teaching Fellows Scholarships and the same amount for 100 new Future Teachers of North Carolina Scholarships in math, science, special education, and ESL at any NC institution of higher education.

4 The Governor proposed $200,000 for the Teach For America-NC, which operates in 9 counties in northeastern NC with high teacher turnover rates. The House included funding for TFA-NC; the Senate did not.

5 The Governor's budget proposed new restrictions on Low Wealth funding that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers. The Governor is working with the Legislature to include those restrictions in the budget.

6 The State Board of Education revised teacher licensing policies to remove obstacles to hiring teachers from out-of-state, while safeguarding licensing standards and teacher quality.

7 The Governor's budget included two special provisions focused on improving principal attention and effectiveness on retaining qualified teachers. The Senate and House have agreed to these provisions.

- One calls for the study and overhaul of the Master's in School Administration programs at UNC schools of education to include greater focus on teacher working conditions and retention.

- The other mandates the inclusion of teacher working conditions and retention as components of principal evaluations.

- **Provide High Quality Professional Development for Teachers and Principals.**

  - The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

    1 The Governor's budget and Executive Order No. 80 provides $125,000 for the Principals Executive Program for a new professional development for new principals.

      - PEP will use the new funding to expand opportunities for high quality professional development to principals and assistant principals teacher support, teacher retention, instructional leadership, data-driven decision making, and teacher empowerment.

      - A report on Principals Executive Program activities is being provided to the Court.

    2 The Governor's budget proposed $100,000 for an On-line Professional Development Resource Center, which would provide access to teachers, school leaders and district leaders on high-quality professional development for teachers and principals. The Senate included the $100,000 in its budget; the House did not.

    3 Over the past year, the N.C. Teacher Academy, supported by a $2 million dollars appropriation from the State last year, worked in the 16 DSSF districts to provide professional development that responded to critical challenges in the districts.

      - A report on the N.C. Teacher Academy activities in the 16 DSSF LEAs is being provided to the Court.

- **Connect School, Social Service and Delinquency Prevention Resources.**

  - The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments.

these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

1 The Governor's budget and his Executive Order No. 80 provides $11.2 million to fund Child and Family Support Teams in 100 needy schools.

- In the schools, State will fund teams consisting of a school nurse and a school social worker to identify, provide services, and coordinate with mental health and social service professionals.

- In the community, the State will provide new regional mental health facilitators and county social service care coordinators to work directly with the school-based teams.

2 Teams are expected to be in place by the spring of 2006. A cross-agency group from the Office of the Governor, DPI, and DHHS is working to develop the program specifics and select the program sites.

3 The Governor's budget also provided funding for 65 additional school (separate from Child and Family Support Teams) nurses in low wealth school districts. The Senate's budget includes money to fund 50 additional nurses; the House budget did not include these funds.

III. ADDITIONAL COMMITMENTS AND ACTIONS

- **Fully Fund Low Wealth Supplemental Funding.**

  - Low Wealth funding is an important source for improving the capacity of low wealth schools and districts to attract and retain teachers.

    1 In addition to funding for DSSF, the Governor's budget proposed fully funding Low Wealth over the next two years. To accomplish this objective, the Governor's budget proposed $16.6 million for Low Wealth Supplemental Funding in 2005-06 and $58.5 million for 2006-07.

2 Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for Low Wealth which is 75% of full Low Wealth funding. The House and Senate budget conferees have tentatively agreed to provide $20 million for Low Wealth for 2005-06.

3 The Governor's budget also proposed a new restriction that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers because the Governor believes it is imperative that school districts direct new resources to finding and keeping qualified teachers.

- **Impose New Accountability on $220 Million in Funding for At-risk Students.**

  - The Governor believes we need to ensure greater accountability and impose tighter spending controls on the At-Risk Student Services Allotment (which provides funding for all districts based on U.S. Census poverty data) and the Improving Student Accountability allotment (which provides funding for students performing below grade level).

    1 At-Risk Student Services provides $220 million dollars to all 115 school districts.

    2 The Governor's budget and Executive Order No. 80 included provisions ordering new accountability for these two funding streams. The Governor is working with the Legislature to restrict funding for at-risk students to proven strategies for increasing achievement.

    3 If approved, the Governor's request will assure that these funds support proven educational strategies to improve the achievement of At-Risk students.

    4 The Governor has insisted that the "turnaround teams" for improving high school performance include examination of LEA spending to ensure that available funds are being effectively and efficiently allocated to support proven strategies for improving student performance.

- **"Turnaround Teams" to Improve Performance in North Carolina High Schools.**

  - On August 3, 2005, the Governor announced that the State Board of Education and DPI, using the resources of DPI, state assistance teams and LEAAP, will organize and send "turnaround teams" to work with all high schools performing below 60% on composite scores of End-of-Course tests.

    1. Based on the 2004-05 ABC results, there are 44 "traditional" high schools (10 in Charlotte/Mecklenburg) with Performance Composites below 60%.

    2. The State Board of Education and DPI are developing strategies for providing assistance to these high schools within existing resources.

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005, and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT:**

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

NORTH CAROLINA:

WAKE COUNTY:

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a regularly scheduled session of the Wake County Superior Court to begin on Friday, August 18, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court the specifics of (1) the leadership changes and (2) remedial efforts ("turnaround plans") that are being implemented at the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006.

The remedial efforts ("turnaround plans") referred to by the Court in this Notice of Hearing and Order are those efforts and turnaround plans announced by Governor Easley on June 13, 2006 and referred to by the Superintendent of

Public Instruction in the correspondence and other materials attached as Exhibit A for reference.

Due to the fact that there are some (17) high schools that presently fall into this category when the preliminary 2006 composite scores are taken into account [without backing out civics, U.S. History and 10th Grade Writing], there will be no other matters taken up at this hearing.

SO ORDERED this 18th day of July, 2006.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 MAR 29 AM 11:11
WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Thursday, April 19,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court concerning the progress of the remedial efforts ("turnaround progress") that were reported to the Court on August 18, 2006 and are in the process of being implemented since the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006 and those high schools whose performance composite was 60% or below for the past two years (Priority High Schools) and subject to turnaround efforts as directed

by Governor Easely on June 13. 2006. This should also include a brief report on the combined efforts of the Principal's Executive Program and the Kenan Flagler School of Business to assist principals at priority high schools.

B. A report on the progress being made by the State of North Carolina to recruit and retain more highly qualified teachers in low wealth school districts and low performing schools, including priority high schools and other schools with performance composites below 60% for the preceding (2) two years.

C. A report on the progress being made by the State of North Carolina to increase the numbers of nationally board certified teachers assigned to priority schools and low wealth schools.

D. A report on the status of proposed funding for DSSF and More at Four for the next budget cycle.

E. A report on the North Carolina Virtual High School and the timetable for its availability to all high school students of North Carolina.

F. A report on the progress of the New Schools Project: First, the status of the Learn and Earn High Schools and Second, the status of the number of high schools being converted into "21st Century High Schools".

G. A status conference on the scheduling of Plaintiffs' Motion for Attorneys Fees and Costs pending since December,2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 29th day of March, 2007.

Howard E. Manning, Jr.
Superior Court Judge

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
835-3448

FAX ONLY MEMO

June 28, 2007

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-934-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)
JACK BOGER/JULIUS CHAMBERS (919-962-1277)
At UNC Center for Civil Rights

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING focusing on Poor Academic Performance in Middle Schools - August 1 & 2, 2007

Lady and Gentlemen:

As I have gone through the past year dealing with the 17 low performing high school, talking with principals and others and looking as middle school scores for 2005-2006, especially math, it has become obvious that we not only have a high school problem, but one with middle schools as well. For 2005-2006, there were 117 out of 389 middle schools with performance composites of 65% or below. Out of this group there were 84 middle schools with performance composites of 60% and below. With the increased rigor required in math tests, many of these middle schools are sending children into the 9th grade with math skills below proficiency. I sent President Bowles a memo (copy enclosed) on June 19, 2007 outlining the problem and asking for assistance from UNC. Simply put, we need to find out why we are doing so poorly, what best practices are in place in the middle schools that are doing the best and why are we failing in those that are doing so poorly so we can do better. I have secured Courtroom 10-C and we can discuss the format if necessary. We would start at 10:00 a.m. I would appreciate it if Tom Ziko would see that a copy of this goes to Chairman Lee and Superintendent Atkinson. Thanks. Bowles Memo attached at 9 pages.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
919)755-4100/835-3448 (direct)
(919)715-4064 (f)

FAX ONLY MEMO

June 19, 2007

FROM: Howard E. Manning, Jr.

TO: President Erskine Bowles at UNC at 843-9695 c/o Janie/Jan

Subject: The Middle School Problem

Erv,

At the start of this memo on June 5, 2007, I find myself sitting in Courtroom 10-A during jury selection in a medical malpractice case which is anticipated to take from 4 to 6 weeks depending on whether or not the jury answers the first issue on liability yes or no. If no, the trial will end. If yes, the case will have a damages mini trial that will go on for a week or so. We have been in jury selection for three days and no end is in sight at this point.

As you know, I have been focusing on poor performing high schools for the last couple of years and in 2006 threatened to prohibit some 17 high schools from opening unless they were under new "management" based on their sorry performance composites over the previous 5 years.

Fortunately, the State of North Carolina, through its executive branch, responded. Although some principals in these schools retired, resigned or got moved to the central office, the State required the principals in those 17 high schools to go to your "day camp" at PEP/Kenan Flagler for additional training. I hope that these efforts and the scrutiny will lead to educational improvement among the students attending those schools this year.

Governor Easley has also required principals in high schools whose performance composite were 60 or below for two years in a row to start your PEP/Kenan Flagler program which has been attended by the 17 principals under my microscope since last summer.

During the past nine (9) months, I have managed to scratch out the time to go and personally visit all of "my" 17 high schools. I have toured all of the high schools and some more than once. I have also met with all of the 17 principals at their high schools as well as meeting with the group of principals in Chapel Hill on two occasions. I have also spoken to the second PEP cohort of principals of the twice 60 or below high schools which I will refer to as the "Easley" group.

One of the principals in the "Easley" group, a principal whose high school has been below 55% performance composite for 4 out of the past five years, advised me that if the "local politics" could be straightened out, that his high school might improve. Why this man remains in charge of any school year after year is unbelievable. His comment fails to reflect any perception of what is wrong under his watch.

In the course of these visits and discussions with the principals and some superintendents, the lack of quality of the academic preparation of too many of the children entering the ninth grades (9^{th}) in these and other high schools is a matter of grave concern to the high school principals as well as to me.

This is of particular concern at the high school level in connection with the ABC end of course tests given to ninth (9^{th}) grade students for many reasons, not the least being that an unprepared ninth grader has a higher probability of being unable to perform well on the ABC tests and most importantly, the child is not coming to the ninth grade in a sound position to obtain the opportunity to obtain a sound basic education in those courses because they are ill prepared coming from the middle schools.

I asked the LPHS principals to make suggestions for solutions about the influx of non-proficient 8^{th} graders coming to the ninth grade after we met in February, 2007. The LPHS principals wrote me a letter which contained several common sense recommendations, including but not limited to a recommendation that 8^{th} graders who are not

proficient in math and reading be required to attend a month long summer session at the HIGH SCHOOL to which they are assigned so that they receive intensive academic assistance before coming to the Ninth Grade Academy in the fall. A copy of that letter is attached for your information.

Keeping one ear open during jury selection, I have also been reviewing the ABC Performance Composites of Middle Schools and looking at selective schools' performance composites for 2005-2006 and previous years. The performance data was provided by DPI courtesy of Tonya Williams at Marc Basnight's office. Each middle school's performance composites for prior years are available on the NC School Report Cards which are found on line at www.ncpublicschools.org.

I was under the impression, prior to discussing the ninth (9^{th}) grade academic performance with the high school principals during the past nine months and prior to reviewing the 2005-2006 data, that the middle schools were on the upside of the scale overall. In short, I was under the impression that we had a problem with middle schools, but not a problem the size and scope of what is going on now.

For 2005-2006 there were 117 (30%) out of 389 middle schools with performance composites at 65% or below. There are 84 (21.5%) with performance composites of 60% and below in that group. These are designated as "priority" schools by the DPI according to the NC School Report Cards website.

Based on my review of several of the priority middle schools' past histories, it appears that the "drop" in scores for 2005-2006 was largely based on low end of grade (EOG) math scores. If I remember correctly, the State Board of Education increased the number of right answers in order for the math tests to meet better requirements for rigor in the subject matter.

A lot of the middle school math scores that I looked at were well below 50%. The reading scores seemed to remain somewhat stable but did not rise sufficiently to off set the drop in math scores. This is going to be another quagmire because the children are coming out of middle schools not proficient in math and that is a formula for disaster upstream in high school and Algebra I.

Some examples follow:

Broadview Middle School in CMS had a 56.5% composite for 2005-2006, a drop from 2004-2005. I looked at the eighth grade scores. Reading was 75.0 Math was 48.8 There were 213 math tests taken and 212 reading taken.

Assuming that the 8th grade Gateway (ie, the middle school principal passes them up to the high school despite their lack of proficiency in math - which will probably be the case based on what I have heard the past nine months visiting poor performing high schools) did not work for the 110 children in Broadview Middle School who were not proficient in 8th grade mathematics, the receiving high school would start out in the academic hole in mathematics with its 9th grade student population.

C G White Middle School in Bertie County had 2005-2006 percentage of eighth graders taking the EOG Reading test who scored at or above grade level was 84.8 and the percentage of eighth graders taking the EOG Math test who scored at or above grade level was 40.2. The previous year's math score (under the old, less rigorous EOG test scores) was 81.8%. Obviously, the increased rigor(more right answers on the EOG math test) on the EOG Math for the eighth grade caused a major decline in the performance composite for the eighth grade class. There were 92 tests given in 2005-2006. In the event that all of eighth graders were "passed" on to the ninth grade last fall, only 37 of 92 students had received a sound basic education in mathematics at the time they entered high school. 55 of the students were not proficient in mathematics at the end of 2006 and not ready to enter high school and take Algebra I successfully.

At Southwestern Middle in Bertie, a similar result occurred with the 8th grade mathematics EOG tests. In 2004-05, 77.1% of the 175 students taking the eighth grade EOG math tests scored at or above grade level. In 2005-06 only 53.8% of the 171 students taking the eighth grade EOG math tests scored at or above grade level. 78 out of 171 students, if they were "passed" to the ninth grade, were not proficient in mathematics when they started at Bertie high school last fall.

These examples serve to highlight the problem. These children are starting high school with a severe academic deficit in math that the ninth (9th) grade, in absence of extremely effective remediation, most likely cannot make up in terms of remediation in that year. Placed into algebra without a sound math basis, these children are in trouble. Likewise, the high school EOC testing will drop the performance composite for the high school in math for the ninth grade. It is a compounding problem as you can easily surmise.

There is no dispute that the influx of unprepared ninth graders into the high schools constitutes an educational drag on the high school's ABC scores. More importantly, there are way too many children coming into high school without having obtained a sound basic education in math and/or reading. Assuming that many eighth graders who are below grade level in reading are also below grade level in math, this is a untenable situation both for these children and for the high school that has to try to get them up to grade level academic performance and keep them from dropping out.

Suffice it to say, these children are at-risk of academic failure and further, that they have not obtained a sound basic education to this point in their educational journey. These children are also prime candidates for giving up, having little chance of success and dropping out of high school.

Why are these children tanking in mathematics? I had a long telephone discussion Friday afternoon week before last with a mathematics specialist at DPI about this. I asked for this discussion to confirm my general understanding that mathematic concepts are building blocks and that if a student fails to learn these math concepts as he or she goes through the math component of the standard course of study, the student will simply be unable to be successful in mathematics and algebra because of lack of proficiency in the building block concepts. This is in fact the case.

I asked the hard question. What's causing the problem? I was advised that many teachers are not very skilled (I would use the term not competent) at teaching elementary and middle school mathematics and this lack of teaching competence is compounded when the children are at-risk, low performing students. I do not know enough to put a

quantitative weight or number on how many weak math teachers are out there, but there must be a lot looking at the 2006 EOG scores in math once the baseline scores were raised by the State Board of Education.

Cutting to the chase, if the teacher is competent, as required by *Leandro*, the children in his/her class in elementary and middle school should not be scoring below grade level proficiency in spite of the increased rigor imposed on the EOG math tests by the State Board.

While there are some in the education community that would like to place a large part of the problem in the laps of the children and their parents, that's no excuse for a teacher's lack of competence in getting the children to understand the math concepts and become proficient as they move grade by grade towards high school.

What can the University do to help? I have given this question a lot of thought. Based on the lack of strength in middle school mathematics instruction, as evidenced by the 2006 EOG math scores, which had been "masked" by the "higher" math scores in previous years, I would look for help from the mathematics departments in the University system rather than the schools of "education."

Perhaps what the math departments could do is to look at the testing, look at results and devise an assessment system which would identify a student's "missing" math concepts and then devise a teaching protocol to fill in the missing concepts whether the child missed something in the 4th grade, 5th grade, or 6th grade math that is leading to the lack of proficiency.

If this could be done, then the next major obstacle is to get the professional development (ie, training) to principals and the teachers, who are not doing the job in the first place, so that the children are getting the quality of remediation and correct instruction necessary for them to be successful.

In the interim, I am considering dates and an order scheduling a hearing on the middle school problem which is compounding the high school problem so we can find out why these principals and teachers are not doing their jobs in the first place.

T-983 P.008/010 F-618

The bottom line is that I know that there are best practices that are well known in the field that, if the principals and faculty will use them in middle schools, just as in high schools, that will result in children actually scoring at grade level and above which is, after all, the whole purpose of public education and the constitutional requirement.

Anything you can do on this issue will be greatly appreciated, as usual. If we want our high school "graduates" better prepared to attend our great University system, we have got to do better downstream, especially in middle school mathematics.

6/19/2007

Cc: Governor Mike Easley c/o Franklin Freeman at 715-4239
Senator Marc Basnight, Speaker Joe Hackney & Lt. Governor Perdue c/o Tonya Williams at 733-8740
Chairman Howard Lee & Superintendent Atkinson at 807-[redacted] 807-3198

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 AUG 31 PM 3:12
WAKE COUNTY, C.S.C.
By ...

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, September 26 ,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education and The Department of Public Instruction ("DPI") the opportunity to report to the Court concerning the progress of the remedial efforts to be implemented for the 2007-2008 school year with respect to low performing high schools and middle schools in North Carolina, including, but not limited to the 98 "regular" high schools whose performance composites (preliminary) were 55.4% or less for the 2006-2007 school year and the 66 middle schools whose performance composites (preliminary) were 60% or less for the 2006-2007 school year. And further, to provide to the Court and for the record in this

action, the expense and costs to operate each of these individual schools for the 2006-2007 school year.

B. To place on the record, the final 2006-2007 academic performance results for each of the foregoing high schools include the total performance composite data, disaggregated data (number of students tested in each school in each subject on EOC, number of students proficient in each subject and percentage of students in each subject that are proficient) for each EOC subject tested for 2006-2007, which includes English I, Algebra I, Algebra II, Geometry, Civics, United States History, Writing, and Biology.

C. A report from DPI on what constitutes an educationally sound and appropriate protocol/template for a personal education plan ("PEP") for middle and high school students placed at-risk of academic failure as required by law pursuant to G.S. 115C-105.41. This presentation should include, but is not limited to, the use and effective administration of available diagnostic assessments to determine where in the particular subject the student has not mastered the particular concept or material required for grade level performance and above and how those assessments should be utilized for focused intervention and academic improvement during the upcoming school year for that individual student.

D. To put on the record, the performance composites for the 2006-2007 school year for all public elementary, middle and high schools in North Carolina by LEA.

E. To receive a report (executive summary) from Eric Hirsch regarding the Governor's Teacher Working Conditions Initiative report of Teacher Working Conditions in Lower-Performing North Carolina High Schools.

E. To set a schedule date for hearing on the Plaintiffs' motion for attorney's fees filed in December, 2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 31st day of August, 2007.

Howard E. Manning, Jr.

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2008 JUL -2 P 12:55
WAKE CO. C.S.C.
BY

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, August 20, 2008 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

Subject Matter of the Hearing:

A. Math instruction in elementary, middle and high schools – children not being required to learn the multiplication tables by heart, long division and fractions leads to their failure to become proficient in middle school math and algebra.

Without re-inventing the wheel, the Court has spent the last year delving into what first appeared to be a major problem in High School mathematics but which later devolved into both a major problem in Middle School and Elementary school mathematics which, of course, feeds the High School mathematics problem.

The Court learned early in 2008 that the State of North Carolina Standard Course of Study (SCOS) has **not been requiring teachers** to require elementary students to learn (memorize into their dna) multiplication tables, long division, or to multiply and divide fractions since 2000 when the State of North Carolina and DPI followed the recommendations of the National Council of Teachers of

Mathematics ("NCTM") setting out math standards that did proposed a math instruction curriculum that would "allow" all students to do high-level math without mastering "low level" problem solving skills. In short, the SCOS was changed to delete the requirement that our children were required to memorize and solidly learn their multiplication tables, algorithm long division or fractions. See ***University of North Carolina Education Schools: Helping or Hindering Potential Teachers? – Pope Center Series on Higher Education Policy, January, 2008 George K. Cunningham ("Pope Center Report, January, 2008").***

The ***Pope Center Report*** revealed that while the teachers were required to teach the math, the children were not required to really learn the basics. " Develop fluency with multiplication and division," which includes: "two-digit by two-digit multiplication [larger numbers by calculator] and "up to three-digit by two-digit division [larger number by calculator] ***Math Instruction in North Carolina, pages 4,5,6 & 10, Pope Center Report, January, 2008.***

The Court has learned that not all school systems dropped the requirement, despite the change in SCOS. Excellent school systems and schools with excellent leadership and excellent classroom teachers still taught the basics. Unfortunately teachers who were not so excellent and who had principal leadership that was not excellent did not require the "learning" of the basic math facts in multiplication, long division and fractions. In 2006, the **NCTM, reversed its recommendations and recognized that children in grade 4 need to know how to divide using the standard division algorithm, NOT BY CALCULATORS. *Pope Center Report, p 10.*** Yet, despite the reversal by the NCTM in 2006, it appears that DPI and the SBOE have not changed the SCOS to require children to memorize their multiplication tables and conform to the NCTM's "revised" recommendations from 2006.

This failure of too many of our elementary school children to learn the basics of multiplication, fractions and long division in lower performing schools and school districts has a direct link on their failure to be successful in high school algebra. One algebra teacher told the Court on a visit to Bertie County High last fall that her children who were ***not successful in algebra were unable to multiply in their heads. Instead, they were counting on their fingers under their desks when they were unable to use their calculators.*** This information was disturbing and it was corroborated by the ***Pope Center Report.***

In short, these children never achieved the necessary basic proficiency in multiplication, long division and fractions in elementary school. The disastrous result of this lack of proficiency is proven by the math test data. All you have to do is look at the 2007 math data in Halifax County for EOG and EOC in 2006-2007 and elsewhere around the State. See the UNC System's September 2007 report entitled ***Addressing Teacher Quality and Student Achievement in***

Middle Grades Mathematics- A Summary Report of Input from UNC Constituent Institutions.

North Carolina is not alone in having a math instruction problem. Mathematics instruction is a national educational problem which has been documented in a recently released federal report [March, 2008] on the deficiencies of mathematical instruction in the United States.

This federal panel of "experts" – the National Mathematics Advisory Council – found that "American students' math achievement is 'at a mediocre level' compared with that of their peers worldwide, according to a new report by a federal panel, which recommended that schools focus on key skills that prepare students to learn algebra.

A New York Times Article published after the release of the report indicated that the panel's unanimous report "said that pre-kindergarten- to – eighth grade math curriculums should be streamlined and put focused attention on skills like the handling of whole numbers and fractions and certain aspects of geometry and measurement." The panel suggested specific goals that students should master in order to be prepared for algebra. **By the end of grade 3 students should be proficient in addition and subtraction of whole numbers and by the end of grade 5 students should be proficient in multiplication and division of whole numbers.**

It appears that the bottom line --- knowing the basic math facts such as multiplication tables, long division and fractions --- is the linchpin to a child obtaining, in elementary school, a sound basic education in mathematics. Without this foundation in math, the child cannot have the equal opportunity to obtain a sound basic education in middle school math and thereafter high school algebra and thus, will ***lose out on the Leandro required opportunity to obtain a sound basic education in mathematics all the way through high school. To further exacerbate the problem in mathematics [and in other core subjects] instruction, we have learned that in far too many classrooms, the teachers are overlooking, or ineffectively employing, an essential element of instruction – the formative assessment.***

B. Lack of Effective Use [or the non-utilization] of the Formative Assessment as part of classroom instruction in mathematics and other subjects.

While it appears that there is a problem with the children being taught the basics of mathematics in elementary school, it also appears to the Court, after spending a year focusing on mathematics instruction problems, that there are too many classrooms in which an essential element in classroom instruction – the formative assessment – is either missing, or being ineffectively utilized. As a result there is a ***serious gap*** in the instructional process which, when combined

Mr. Spearman reported on the number of classrooms staffed by Long-term Substitutes in each of the plaintiff school districts: Cumberland - 32; Halifax - 16; Hoke - 17; Robeson - 21; and Vance - 35.

There is no dispute that there exists a serious problem in hiring, training and retaining certified teachers in North Carolina, especially in the low wealth plaintiff LEAs, and other low wealth LEAs. The existence of this problem has been identified and acknowledged by the Department of Public Instruction, the State Board of Education, and the Governor of the State of North Carolina.

This problem is not just a "minor" problem that the State of North Carolina can ignore or take its own good time to remedy. ***This problem is a constitutional problem that is not going to disappear. This is because it is the constitutional right of each and every child in the public schools of North Carolina to be provided with the equal opportunity to obtain a sound basic education whether they are at-risk or not.***

That opportunity, as defined in this case by this Court and affirmed by the North Carolina Supreme Court requires that (1) "every classroom be staffed with a competent, certified, well-trained teacher;" (2) "that every school be led by a well-trained competent principal;" and (3)"that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." [Leandro II and previous Orders of this Court]

The existence of the problem with classrooms staffed by teachers that are not certified or well-trained, including Long-term substitutes without college degrees, has been made known to the General Assembly of North Carolina as well as the DPI and State Board of Education.

To its credit, the DPI and the State Board of Education acknowledged the constitutional deficiency and the lack of compliance under *Leandro* in the classroom teacher area and sought $22,000,000 from the General Assembly to fund the DSSF pilot program for sixteen (16) LEAs in which there was

demonstrated need to remedy the constitutional deficiency of the presence of a competent, certified and well trained teacher in individual classrooms.

Despite knowing of this deficiency and being repeatedly advised of demonstrated need for assistance in these low-wealth school districts and despite being advised of the constitutional requirements in *Leandro* concerning the requirement for competent certified, well trained teachers in each classroom, the General Assembly of North Carolina passed its budget and adjourned without funding the DSSF program for any LEA, including HCSS.

In the interim the Supreme Court of North Carolina has spoken and this case has been remanded to this Court for further proceedings, if necessary.

This Court has determined that further proceedings are necessary, initially at least, on two different subjects.

First, this Court, following the dictates of the Supreme Court, will provide the General Assembly of North Carolina with the opportunity, "*initially at least*" to take such action as it may deem appropriate to address its failure to fund the pilot $22,000,000 16 LEA DSSF program as requested by the State Board of Education and DPI.

On this subject, the Court gives NOTICE that it will resume the hearing begun on July 23, 2004, on Thursday, October 7, 2004, at 3:30 P.m. in Courtroom 10A, Wake County Courthouse. The Court directs counsel for the State of North Carolina to be prepared to report to the Court on behalf of the Legislative Branch of Government (the General Assembly) what action the General Assembly has taken, to address its failure to fund the pilot $22,000,000 DSSF program, including, but not limited to, acting in cooperation with Governor Easley to fund the balance of the $22,000,000 (the sum of $10,000,000) requested by the DPI and The State Board of Education for the DSSF program will be made available to the DPI for the benefit of the five school districts originally included in the DSSF for school year 2004-05.

Second, the State of North Carolina has been making commendable overall progress statewide as evidenced by the ABC data submitted for 2003-04 by the State Board of Education in terms of overall student performance in grades

3-8. However, the data reflecting high school academic performance shows that much improvement remain to be made once children leave the eighth grade and enter high school and that in many areas low wealth systems are still struggling to reach grade level for the majority of students.

Much progress notwithstanding, the State of North Carolina has the on-going task of assessing (1) its problem LEAs and schools therein, or elsewhere, that are not providing the children of North Carolina with the opportunity of a sound basic education; (2) examining the allocation of educational resources and (3) if necessary, reallocate resources in order to provide cost-effective, targeted solutions to constitutional educational deficiencies so that the children affected will be provided with their constitutional right to the opportunity to obtain a sound basic education.

It has been more than two and one-half years since this Court entered its Final Judgment on April 2, 2002. During that time, the DPI and State Board of Instruction have, as seen through the 90-Day Reports, made progress in identifying problems in HCSS and taking targeted steps to correct those problems utilizing accountability for resources spent in that endeavor. To its credit, DPI and the State Board of Public Instruction have expanded assistance teams to LEAs other than HCSS on their own initiative and because there is a demonstrated need for their help and assistance.

This Court believes that DPI and the State Board of Public Instruction are heading down the right track towards assessing problems, developing common sense solutions and providing LEAS with guidance and assistance in developing cost-effective, targeted solutions that can be measured for success and accountability.

Now that the appeal is over and *Leandro II* is in full force and effect, it is time for the DPI and State Board to outline and present its plans as to how it will continue to proceed to ensure that the children of North Carolina will be afforded the opportunity to a sound basic education.

On this subject, the Court gives NOTICE that it will hold a hearing at a Special Session of Superior Court to begin on

Monday, October 25 2004, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina the opportunity to present its plan and outline as to how the State of North Carolina, acting through the Executive and Legislative branches, will address the constitutional educational deficiencies and how it plans to remedy them under the guidelines set forth in this case.

To provide the plaintiff LEAs and the plaintiff-intervenor LEAs with an opportunity to be heard with regard to the State of North Carolina's plan and outline to address any constitutional educational deficiencies that are required to be remedied under the Leandro decision.

To address issues relating to future proceedings in this case or matters that may remain as a result of the October 7, 2004 hearing, or such other matters that may be necessary.

To address any motions or other formal requests which may be submitted to the Court in the interim. However, no such matters will be addressed if not filed prior to October 8, 2004 by 5:00 p.m.

The Court is prepared to take evidence during this term of Court, if it is required.

SO ORDERED this 9th day of September, 2004.

Howard E. Manning, Jr.
Superior Court Judge

PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, *State Superintendent*

October 25, 2004

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351

Dear Judge Manning:

The State of North Carolina is committed to ensuring that all children receive an education that prepares them for the future. Our priority is to make sure that every child, in every community, has access to a quality education with competent teachers, effective principals, and adequate resources.

To that end, it has been a priority of the state to ensure that children begin school ready to learn, that they enter a school that has class sizes low enough to provide individual attention, are taught by qualified teachers, and are expected to meet high standards of excellence. In the last few years, the state has made major gains in each of these areas. However, there is more that can be done to ensure that all students, and in particular, at-risk students, are afforded the educational resources and opportunities for a high quality education.

Over the last few weeks and months the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions with education leaders and interested parties about the development of a long-range plan based on the progress of the Disadvantaged Student Supplemental Fund pilots in sixteen counties. With the Governor's charge and collaboration, we have developed the attached action plan. The components of this plan are grounded in research and proven practices.

Sincerely,

Howard N. Lee

Patricia N. Willoughby

HNL/PNW/gnd

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EXECUTIVE SUMMARY

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

The State has demonstrated a commitment to target resources to meet the needs of at-risk students. Among other programs, the Governor, the State Board of Education and the General Assembly have recently created and funded the following:

- The More at Four Pre-kindergarten Program for at-risk four-year-olds
- A K-3 class size reduction initiative
- The High Priority Schools Act
- The Local Education Agency Assistance Program to provide assistance to poorly performing districts
- The New Schools Project to reform high schools

Most recently, the Governor identified $22 million for use by the State Board of Education to implement the Disadvantaged Students Supplemental Fund (DSSF). The DSSF Program provides targeted resources to assist at-risk students in 16 school districts marked by low student performance, low teacher experience, high poverty, high teacher turnover.

The State remains committed to these important efforts. Nevertheless, State education leaders understand that more remains to be done to improve the achievement of at-risk students and ensure that every student has the opportunity to obtain a high quality education. Towards that end, the State is committed to 1) expanding and enhancing existing initiatives and 2) developing select new initiatives targeted to meet the needs of at-risk students.

Consistent with that commitment, the State intends to construct, prior to the start of the 2005 Legislative session, a detailed plan. The State recognizes that legislative appropriations will be needed to implement elements of this plan. The plan includes the following components:

EXPAND EXISTING PROVEN PROGRAMS

- **Ensure every at-risk four-year-old has access to a quality prekindergarten program.** The State intends to continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to ensure schools and districts implement proven strategies.** Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

- **Strengthen and Expand LEAAP into a new unit under the State Board to improve struggling school, districts.** Building on its pilot experience with the Local Education Agency Assistance Program, the State intends to create a full-time unit under the State Board of Education that works with a set of especially needy school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

- **Continue the Teacher Working Conditions Survey and provide actionable data for problem schools and districts.** Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to attract and retain teachers and principals and increase their effectiveness.

- **Expand the New Schools Project and Learn and Earn.** To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.** The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

- **Provide high quality professional development for teachers and principals.** The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

- **Connect school, social service and delinquency prevention resources.** The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments, these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

PLAN FOR IMMEDIATE ACTION

The State is committed to immediate action to develop these initiatives and implement them to improve the educational opportunities available to at-risk students. The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

Over the course of the last few weeks and months, the Office of the Governor, the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions about the development of a long-range plan to meet the needs of at-risk students. In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The following steps will take place in the coming weeks and months in anticipation of taking a detailed package to the General Assembly for the 2005 session:

October 26, 2004 – January 26, 2005

- **November 5.** The Office of the Governor, Department of Public Instruction (DPI) and State Board of Education (SBE) representatives will hold initial meeting with Amicus groups and teacher groups.

- **November 19.** The Office of the Governor, DPI and SBE representatives will reconvene a group of superintendents and other representatives, including individuals from plaintiff and plaintiff-intervenor districts.

- **November 30.** The Governor will convene the Education Cabinet to meet and take up relevant items from this plan. The Education Cabinet will determine those items needing action by education governing boards.

- **December 1-2.** The State Board of Education will evaluate and approve plans for the five remaining districts under the Disadvantaged Students Supplemental Fund at its monthly meeting in December.

- Representatives from the Governor's Office, DPI, SBE, the Legislature, the Education Cabinet, K-12 school leaders, and other key stakeholders will continue meetings to construct the details of the plan.

- The Office of the Governor, DPI, and SBE will work with legislative representatives on development of a legislative package for the 2005 session of the General Assembly, which opens on Wednesday, January 26, 2005.

Beyond the 2005 Legislative session, the State is committed to continuing the development and implementation of proven strategies for meeting the needs of at-risk students.

BACKGROUND

Over the past two decades, the State has put into place a series of policies that have helped North Carolina make especially significant progress in the academic achievement of its young people.

In the late 1980s, the state began a focus on testing and accountability with the introduction of statewide curriculum standards, testing and public accountability. In the 1990s, the State refined its accountability system and placed a major emphasis on teacher quality. In the mid-nineties, the State implemented the ABCS of Public Education and school level testing and accountability. The testing and accountability system helped to focus attention and resources on the needs of students and schools throughout the state, especially those students not performing at or above grade level on state assessments. In addition to providing information on the achievement of schools and students, the ABCs program also assigned assistance teams to low-performing schools and instituted Gateways in grades three, five and eight to stem social promotion. The ABCs Program has allowed the state to understand which students and which schools are most in need of additional assistance and support.

Also in the 1990s, the State made significant investments in its teaching workforce, including raising teacher pay to near the national average and in the top half of the nation—where it remains today. The Excellent Schools Act of 1997 raised teacher pay, increased teacher standards, created accountability measures for schools of education, and improved the support of new teachers in the profession.

Improvement on national assessments, including the National Assessment of Educational Progress in reading, writing and mathematics and the SAT, demonstrates that North Carolina's approach is yielding results. In addition, reports from the RAND Corporation and the National Education Goals Panel and, most recently, from the Education Trust in October 2004, found that the steps that the state had been taking were increasing achievement scores and reducing achievement gaps on national assessments in reading and math.

The 2000 RAND report, *Improving Student Achievement: What NAEP Test Scores Tell Us* laid out a clear path for moving forward to improve achievement, especially among its at-risk students. The RAND report found that the most cost-effective approach to improving reading and math achievement on the National Assessment of Educational Progress was to lower teacher-student ratios in the early grades, expand public Prekindergarten, and provide additional resources to teachers. The report found that "investing in better working conditions for teachers to make them more productive (lower pupil-teacher ratios, more discretionary resources, and improved readiness for school from Prekindergarten) could produce significant gains in achievement scores" (pp. xxvii-xxviii).

In accordance with that report and other significant education research, Governor Mike Easley, the State Board of Education and the Legislature have worked together to ground the state's school improvement efforts in a research-backed approach for raising achievement of all students, with a particular focus on improving achievement for at-risk students. The State has focused on pre-kindergarten programs, smaller classes in the early grades, and supporting the needs of teachers.

Beginning in 2001, the State began to put these research-backed policies into place:

- **The More at Four Prekindergarten Program** was implemented in 2001 and served 1,500 at-risk four-year-olds in 34 counties. In 2004, it is reaching 12,000 at-risk four-

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.

- **The High Priority Schools** initiative reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program,** which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.

- **The Teacher Working Conditions Initiative,** which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.

- **The New Schools Project to reform high school.** Supported initially by an $11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

  The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

  In addition to the $11 million granted by the Gates Foundation, the state is investing $2.2 million on a recurring basis to begin the Learn and Earn high schools.

These investments and approaches represent research-backed practices to improve teacher retention and effectiveness and boost student achievement. The State believes they represent an important set of building blocks for addressing the needs of at-risk students. Nevertheless, the State believes that more must be done for at-risk students in North Carolina.

ADDITIONAL FUNDING TARGETED TO MEET THE NEEDS OF AT-RISK STUDENTS

In July of this past year, the State began its most recent effort to address the needs of at-risk students with the creation of the Disadvantaged Students Supplemental Fund (DSSF) pilot program. The DSSF pilot is now working in select districts to allocate additional resources for proven strategies to boost the achievement of at-risk students. Governor Easley has identified and made available up to $22 million for use by the State Board of Education to support 16 school districts. The pilot is operating as follows:

- Districts were identified based on levels of student achievement, student poverty, and teacher attrition. Based on a formula, specific funding levels were set for each district.

- The State Board assigned assistance teams to each district to help in the creation of their plans for using the DSSF resources.

- Plans from local districts are based on a "menu of proven strategies" developed by the State Board of Education. Districts have the flexibility to decide which options best meet their needs, but they must use the options provided by the State Board. The options include bonuses for recruiting and retaining teachers; additional personnel for such strategies as reducing class size, hiring reading coaches, and supporting new teachers; professional development for teachers and principals; supporting afterschool and other extended day programs; and implementing personal education plans.

- Funding for districts is contingent upon the approval of the State Board of Education.

- The Board will evaluate the results from the DSSF pilot, including the effectiveness of additional resources, the targeted options, and the DPI assistance on improving student achievement and teacher attrition.

MOVING FORWARD: BUILDING ON THE STATE'S COMMITMENT TO ADDRESS THE NEEDS OF AT-RISK STUDENTS

The aforementioned strategies for improving student achievement—especially the achievement for students below grade level—are yielding results. The State intends for these strategies to serve as the foundation of its continuing effort to construct a system of K-12 public education that provides superior education for all students and, more specifically, meets the needs of at-risk students.

In order to ensure that all students are receiving a high quality education and that they have access to caring, competent teachers in their classrooms, effective principals in their schools, and the instruction they need to meet high standards, the State is committed to taking the following steps to maintain and expand proven strategies for school improvement. Additionally, it is

recognized that the Legislature will need to appropriate additional resources to allow the State to expand a number of these proven strategies for increasing the achievement of at-risk students.

1. **Ensure that every at-risk four-year-old has access to a quality prekindergarten program.**

   Recognizing that students who do not start school ready to learn remain at-risk of school failure and dropping out throughout their career, the State intends to expand the More at Four Prekindergarten Program for at-risk four-year-olds towards its goal of access for the estimated 40,000 at-risk four-year-olds in the state. Quality pre-kindergarten programs are the fundamental building block for the State's effort to meet the needs of at-risk students across the state. Without access to quality pre-kindergarten programs, at-risk students start school behind and remain at-risk of school failure throughout their school careers.

   In expanding More at Four, the State will identify high-need areas with respect to educational performance, families in poverty, and other key indicators to determine priority sites for funding expansion.

2. **Evaluate, refine and expand the Disadvantaged Students Supplemental Fund pilot approach to ensure that districts and schools implement proven strategies for meeting the needs of at-risk students**

   The Governor and State Board of Education have implemented the Disadvantaged Students Supplemental Fund in 16 school districts for the 2004-05 school year. The pilot requires that assistance teams, assembled by the Department of Public Instruction, work with eligible districts to determine plans for using additional resources based on a menu of proven strategies. The Governor, State Board and General Assembly will carefully analyze the success of the different strategies chosen by the 16 districts in order to determine which approaches best met the goals of attracting and retaining teachers, ensuring an effective principal, and providing individualized instruction that increases the achievement of students at-risk of school failure.

   As part of this critical effort, the State Board of Education will evaluate the performance of students, the supply and retention of teachers, the appropriateness of the current menu of options provided, and the efficacy of DPI assistance. In addition, the State will examine the appropriate state and local fiscal responsibilities for additional investments, and the differences in working with urban versus rural school districts.

   Based on evaluation findings, the State will modify the menu of options and expand this effort to additional schools and school districts. The current pilot is a first step and the State recognizes that additional investments are needed for the next school year and beyond.

3. **Strengthen and expand LEAAP into a new unit under the State Board to improve struggling school districts**

   Building on its experience with the Local Education Agency Assistance Program, the State is committed to create a unit under the State Board of Education that works with a set of school districts most in need to analyze the challenges, provide intensive support on resource and policy decision-making, and build the capacity of these districts.

This new unit would work with districts that need immediate and intensive support to improve education for its students. The State will develop criteria to determine which districts are most in need of assistance from this unit.

The unit would provide the following types of assistance: 1) a detailed diagnostic analysis and audit of student performance trends, teacher working conditions, and resource allocation; 2) work with the district to develop a plan for resource reallocation and strategies for deploying additional funding; and 3) brokering relationships/assistance for the districts with higher education partners, the programs of the UNC Center for School Leadership Development, and other appropriate entities. This effort would provide intensive and targeted assistance and guidance on resource allocation and the use of strategies to guide improvement.

The State Board of Education would approve plans for the district's use of state funds based on the unit's work with the district. The unit would be comprised of new personnel assigned solely to this function.

4. **Improve teacher retention and effectiveness by using the Teacher Working Conditions Survey to provide actionable data to schools and districts**

   With data that demonstrates a correlation between working conditions and teacher turnover rates and student achievement, the Teacher Working Conditions survey is an important tool for assisting school and district efforts to attract and retain caring, competent teachers and to develop effective principals. In addition to the statewide administration of the data, the State will look to require administration of the survey in targeted schools and districts. This will ensure a full set of data to use as an assessment tool to determine needed strategies in those locations.

   The survey data has found that improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students. Targeted use of additional resources for this purpose will be considered as a part of state assistance for at-risk students.

5. **Expand the New Schools Project and Learn and Earn Schools to improve the preparation of high school students to access further education and compete for skilled jobs**

   The State is committed to an ambitious effort to improve high schools, especially for those students whom the traditional high school model does not serve well and who are at-risk of dropping out. The State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. The State Board of Education, working with the New Schools Project, will create a priority list of districts to receive funding and assistance under this project based largely on the needs of at-risk students. All new schools have goals and outcome measures that include improving student achievement, graduation rates and the college-going rates of their students.

The State believes that these efforts will target resources and assistance effectively to provide caring, competent teachers, effective principals, and the individualized instruction needed to help

students at-risk of school failure meet high standards and be well prepared for further education and a skilled workforce.

The State will develop an accountability mechanism to evaluate the impact of these investments to improve the achievement of at-risk students. The mechanism will, at a minimum, use student performance from the ABCs program and the teacher working conditions data. The accountability mechanism should also hold the State accountable for its assistance to districts and schools.

ADDITIONAL EFFORTS TO SUPPORT THE STATE'S COMMITMENT TO AT-RISK STUDENTS

In addition to its commitment to expand and maintain existing initiatives to meet the needs of at-risk students, the State also believes that there are additional efforts needed to support schools and districts to help all students achieve.

Expand teacher supply by increasing partnerships between community colleges and schools of education

The State understands that there is a critical need to boost both the supply and retention of teachers in hard-to-staff schools. The shortage of qualified teachers for hard-to-staff schools is a problem that afflicts every state in the nation. While North Carolina has been recognized for its leadership in this area nationally, the State realizes that more remains to be done.

Hard-to-staff schools in the state have a significant number of lateral entry and first-year teachers. While more needs to be done to induct, support and retain these individuals, the fact remains that there is a shortage in the supply of highly qualified teachers for hard-to-staff schools.

This, however, will not be accomplished by merely increasing the supply at schools of education. Existing patterns show that preparation in the state's schools of education generally leads to employment in the surrounding environs of those universities. Unfortunately, many of the schools and districts with the greatest need for qualified teachers are not in close proximity to school of education. In addition to providing targeted incentives to bring teachers to hard-to-staff schools, the State believes that it must look to boost the supply of qualified teachers in the areas where they are needed most.

To do so, the State sees an expansion of "2+2" partnerships between schools of education at four-year institutions and community colleges, which are located in critical regions throughout the state. Existing "2+2" programs have shown great promise in increasing the supply of qualified teachers prepared to teach and remain in areas where teachers are needed. In examining the prospects for expanding this approach, the State will identify regions of the state with high teacher attrition, low levels of teacher candidate supply, and underperforming schools as priorities for "2+2" program expansion.

The state is also committed to examining additional avenues for increasing the supply of teacher candidates from schools of education, resources and approaches to prepare qualified lateral entry candidates, and other strategies to increase the availability of qualified teachers in hard-to-staff schools.

The State recognizes that in working to increase the supply of qualified teachers for hard-to-staff schools it must also remain vigilant to improve the retention of qualified teachers in these schools.

Provide high quality professional development for teachers and principals

Any effort to ensure effective teachers and principals in classrooms and schools must include providing them with high quality professional development that supports their ability to help students reach high standards. The State has invested in a number of important and effective professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals Executive Program. The State has also vested the lion's share of responsibility for providing professional development in schools and school districts. Unfortunately, many teachers and principals report that they lack access to high quality professional development.

The State will explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers. This includes identifying the content areas and skills where teachers and principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers and principals.

Connect School, Social Service and Juvenile Justice Resources

The State recognizes that schools and schools systems alone cannot meet the challenges of educating all students for the challenges of higher education, the workplace, and participating in the democratic life of their communities. It is critical that children and families receive the support they need to be healthy and actively involved in their children's education.

The State intends to bring together the State Board of Education and the Departments of Public Instruction, Health and Human Services, and Juvenile Justice and Delinquency Prevention to jointly develop strategies for connecting school, social service, and juvenile justice resources.

Efforts would aim to target schools and counties with high need of support across the state. Such efforts might provide for the coordination of parent involvement, mental health services, health services, and delinquency prevention and other juvenile justice-related services for youth and families in participating schools.

PLAN FOR IMMEDIATE ACTION

The State has already demonstrated its commitment to pre-kindergarten for at-risk four-year-olds, class size reduction, additional resources to support at-risk students in targeted school, district assistance, high school reform and improving teacher working conditions has been demonstrated. That commitment will continue.

In addition, the State is committed to expanding a number of these proven strategies, targeting them to meet the needs of at-risk students and finding solutions for other important educational problems, such as increasing the supply of teachers and connecting social services with schools and other areas.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

November 23, 2004

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, December 7, 2004, in this matter. The hearing will be in Courtroom 10-C (where the previous hearings have been) at 2:30 P.M. on Tuesday, December 7. I hope that everyone has a safe and pleasant Thanksgiving this year.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)

11-23-04 P12:45 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

January 6, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, January 11, 2005, in this matter. The hearing will be in Courtroom 10-B (same floor but not where the previous hearings have been) at 2:30 P.M. on Tuesday, January 11, 2005. I hope that all of you had a pleasant holiday season and that the "wrinkles" will have been worked out of the Disadvantaged Student Supplemental Fund Formula by Tuesday so we can proceed on other fronts, including, but not limited to, the pressing problem with regard high school student performance referred to in my November 10, 2004 memo, and solutions for that problem. With regard to the DSSF formula issue, I am in receipt of the N.C. School Superintendents' Association Response to the DSSF formula which was issued in mid-December, 2004.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

01-06-04-06-05-P01:35 OUT

Feb-10-2005 11:19 From- T-518 P.001/002 F-020

02-10-05 A10:19 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

February 10, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, February 15, 2005, in this matter. The hearing will be in Courtroom 10-C at 2:30 P.M. on Tuesday, February 15, 2005. While I requested a report from the State on the progress made on the "plan" at this meeting, I have learned that Governor Easley has not put the final touches on the budget and that his budget will not be ready to go to the General Assembly until after the Governor's "State of the State" address several days after next week's hearing. Accordingly, I will not expect any progress report from the State at next week's hearing. However, there are several items that we will need to take up.

First, there is a motion to intervene which has been filed and we will take that matter up.

Second, in anticipation of the March 7 special session regarding the high school problem, I have asked Susan K. Lamar, NC AVID Director, to make a presentation to the Court and the parties about the AVID program, its purpose, and the progress AVID is making in helping North Carolina children realize their Leandro opportunity. The AVID program assists middle and high schools prepare children who are underachievers, with the potential to do college level work, to have the opportunity to become academically prepared and eligible for college work. It is my

understanding that AVID is now present, in one or more schools, in Durham, Nash-Rocky Mount, New Hanover, Onslow, Pitt, Wilson, Cumberland, Catawba, Charlotte-Mecklenburg as well as starting in Wake, among others.

Third, discussion of schedule and presentation for March 7 hearings and any other matters that the parties have been working on with respect to DSSF, etc.

Cc: Governor Michael F. Easley c/o Franklin Freeman (919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams (919-733-8740)
Chairman Lee and Superintendent Willoughby (919-807-3445)

2/10/05

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

FILED
2003 FEB 10 PM 4:49
WAKE COUNTY, C.S.C.
BY

HOKE COUNTY BOARD OF EDUCATION, et al.,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF EDUCATION, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendants.

MOTION FOR ORDER TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN

Plaintiffs move the Court for an order directing Defendants to show cause why they should not adopt an initial Leandro compliance plan that includes the elements set out below ("Plaintiffs' Plan") and seek funding from the General Assembly to implement such Plan. Alternatively, Plaintiffs ask the Court to approve Plaintiffs' Plan described herein. In support of this motion, Plaintiffs show the Court:

1. The Plaintiffs' Plan is based largely upon proposals submitted previously to this Court by Defendants as to proposed steps to be taken by them to comply with the orders of this Court and the North Carolina Supreme Court in this case. With most of those proposals, Plaintiffs are in agreement with Defendants. However, unlike Defendants' prior submissions, Plaintiffs' Plan identifies specific amounts of additional resources and a concrete timetable to begin to meet the educational needs of North Carolina schoolchildren so that they can enjoy and

exercise the right to the opportunity for a sound basic education. This motion is also supported by the affidavits of Superintendents Colin Armstrong (Robeson), Norman Shearin (Vance), Allen Strickland (Hoke) and Willie Gilchrist (Halifax).

2. The Plaintiffs suggest to the Court that our Supreme Court has already upheld this Court's determination that Defendants must both identify and provide for the needs of at-risk children. Hoke County Board of Education v. State, 358 N.C. 605 at 641-642. Defendants may not permissibly proceed with "all deliberate speed" because our Supreme Court has already recognized that a solution is needed that "... will prevent existing circumstances from remaining static or spiraling further ..." Id at 643.

3. Plaintiffs' Plan has the following five components.

a. Expansion of the Disadvantaged Student Supplemental Fund ("DSSF").

This program was initially proposed by Defendants in June, 2004 in response to the decisions and orders of this Court, to begin to meet the need of at-risk students for a sound basic education and to satisfy constitutional requirements. Defendants proposed the creation of a new education annual allotment of approximately $223 million. Defendants' June 7, 2004 90 Day Report, Attachment 8.

Under Plaintiffs' Plan, the DSSF would operate with the same formula for identification of at-risk students that was proposed by DPI and the State Board of Education and approved by this Court at the hearing in this case on January 11, 2005. All North Carolina LEAs could seek State Board approval for funding from the DSSF to support recommended intervention programs for at-risk students which have been approved by the Defendant State Board. Many such approved intervention programs have been identified in Defendants' October 25, 2004 filing with this Court, and Defendants' filings themselves state those programs are "grounded in

research and proven practices" and constitute a "menu of proven strategies." October 25, 2004 Letter from Howard Lee and Patricia Willoughby to Judge Howard Manning, Jr., and Defendants' accompanying outline of compliance plan, at p.6.

LEAs would be eligible for distributions from the DSSF, for implementing intervention programs approved by the State Board, with the distributions based upon the LEAs' total ADM eligible for disadvantaged student funding, as determined under Defendants' approved formula for the identification of at-risk students, at a level of $1,000 per eligible at-risk student. (The total statewide ADM eligible for DSSF funding is approximately 300,000 students according to Defendants' prior filings with the Court.)

The fact that at-risk students need additional resources and programs to exercise their constitutionally entitled opportunity for a sound basic education was found as a fact by this Court in its several prior decisions in this case, including its Judgment of April 4, 2002. See also, Memorandum of Decision Part III at 71 (March 26, 2001) (at-risk students typically require services, resources and programs not necessary for those students who are not at-risk, to have an opportunity to obtain a sound basic education.) That proposition was not seriously contested by Defendants at the 1999 trial nor at the additional hearings in September, 2001. This Court's holding that at-risk students need additional resources to obtain a sound education was not appealed by Defendants, and the holding was approved by the North Carolina Supreme Court in its opinion issued on July 30, 2004. Hoke County Board of Education v. State, 358 N.C. 605 at 641-643.

The amount of at least $1,000 per at-risk student is reasonable, and probably conservative, in view of evidence previously of record in this case as well as more recent studies and reports.

The amount is supported by evidence from North Carolina educators, including the results of a North Carolina Public School Forum study in the 1990s, The Things That Matter, participated in by members of the General Assembly, business leaders, State Board of Education representatives and other educators. (The group that created that study included State Superintendent Mike Ward, State Senator Howard Lee, former State Board of Education Chair Philip Kirk Jr. and then-superintendent of Johnston County schools, Dr. James Causby.) That study was the subject of testimony and was introduced in evidence in the 1999 trial. See Trial Transcript, October 1, 1999, Testimony of John Dornan, pp. 160-176, and PX 183, The Things That Matter (concluding that additional funding of at least 20% more than the usual per ADM funding is needed to educate adequately an at-risk student.)

At present, the DPI website lists North Carolina per pupil expenditure (for current expense) as $6741 in school year 2002-03. Twenty percent of $6741 is $1348, which is substantially higher than the $1,000 number here suggested. An amount of at least $1,000 per each at-risk student is also supported by more recent studies made by the North Carolina Public School Forum.

The Defendants' June, 2004 original DSSF proposal filed with this Court called for an annual DSSF allocation of $223 million, which equates to approximately $743 per at-risk student. Defendants have represented to the Court that if their $223 million DSSF program were fully implemented it would "begin to address the needs of disadvantaged students across the State." Defendants' August 10, 2004 90 Day Report at 1.

Under the current DSSF program in effect for FY '04-05, where the amounts for each participating LEA were determined by Defendants, Hoke County is receiving just under $1,000 per eligible child in DSSF funding.

Allocation of at least $1,000 per at-risk student appears conservative, particularly in view of many other studies concerning the incremental costs of adequately educating at risk children in other States' public school systems. See, e.g., Mathis, William J., Costs and Benefits (May 2003), summarizing numerous "costing out" studies and noting that recent such studies for public schools in Indiana, Maryland and Montana have all concluded that the costs of providing sufficient educational services to at-risk students for them to meet state and federal test standards very substantially exceeds $1,000 per student. William J. Mathias, Costs and Benefits, at http://course1.winona.edu/lgray/el626/Articlesonline/NCLB_Mathis.html.

Under Plaintiffs' Plan, full funding of the DSSF would be phased in over three years, $100,000,000 in FY '05-06, $200,000,000 in FY '06-07 and full funding of $300,000,000 in FY '07-08. As Defendants have suggested in some conferences they have held with Plaintiff Parties, the 16 districts receiving DSSF funding in '04-05 would be held harmless so that the annual amount of such funding to each would not be reduced as full funding of the DSSF is phased in over the next three fiscal years.

Under Plaintiffs' Plan, DSSF funds would be used to make available intervention programs of proven value for at-risk students. They would not be primarily used for the recruitment and retention of teachers generally, except where such teacher hiring is needed to implement a particular intervention program for at-risk students. Other approaches, discussed in subparagraph (e) below, are required to assure the presence of qualified teachers in every classroom.

b. Full Funding of the Low Wealth Schools Fund This Year.

This would require an annual increase of approximately $66 million from the present annual appropriation of $103.8 million. Full funding of the Low Wealth Schools Fund in the current legislative session was recommended recently by the North Carolina General Assembly's

Joint Legislative Education Oversight Committee. This is necessary in part because neither the State's basic education finance system nor the approved State Board DSSF formula takes into account an LEA's local capacity or ability to support minimal education services for all children, from local funds. The low wealth systems, by definition, lack average capacity to raise such funds locally. The low wealth schools funds, by law, must be used for instructional purposes and they are the best short-term partial remedy for the shortage of qualified teachers in those systems.

c. Continued Expansion of the More at Four Program so that it Makes Pre-Kindergarten Education Services Available to all North Carolina At-Risk Four Year Olds.

Such expansion of the More at Four program was been proposed to this Court by Defendants in their outline compliance plan presented to the Court on October 25, 2004 as a way to help provide an opportunity for a sound basic education for at-risk children.

d. Expansion of the Local Education Agency Assistance Program ("LEAAP") into a New Unit under the State Board of Education to Assist School Districts Most in Need.

Expansion of the LEAAP was proposed by Defendants in their outline of a Leandro compliance plan presented to the Court on October 25, 2004 but as of January, 2005, the State Board's proposed expansion budget contained no funding request to provide for its operation.

e. Specific Steps by Defendants to Ensure the Provision of Competent, Certified, Well-Trained Teachers in Schools Led by Well-Trained, Competent Principals.

The constitutional mandate to provide competent, certified, well-trained teachers in schools led by well-trained, competent principals is clear. Hoke County Board of Education v. State, 358 N.C. 605 at 636. It is also abundantly clear from the trial record and many subsequent submissions to the Court from the parties, that this mandate is not being met.

In the last several years, State agencies, the UNC Board of Governors and North Carolina nonprofit institutions have all performed and published studies concerning programs to supply competent, certified teachers to North Carolina schools. These studies include:

i. Report and Recommendations From the State Board of Education Teacher Retention Task Force (February, 2005).

ii. The Shortage of Teachers in North Carolina: Can We Attract and Retain Enough? and Recommendations To Address the Teacher Shortage in North Carolina, North Carolina Insight (August, 2004) (published by North Carolina Center for Public Policy Research).

iii. Report From the UNC Board of Governors Task Force on Meeting Teacher Supply and Demand, University of North Carolina Board of Governors, March, 2004.

iv. State Board of Education, Teacher Working Conditions Survey (2004).

v. A Profession in Jeopardy: Why Teachers Leave and What We Can Do About It, Public School Forum of North Carolina, December, 1996.

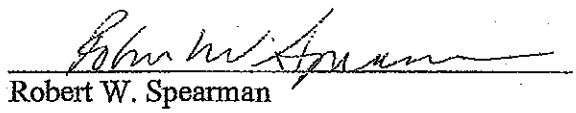
These various reports detail numerous suggestions and policy prescriptions including: increasing teacher compensation; improving teacher working conditions; special incentives to attract teachers to counties with the greatest teacher needs; more teacher training programs run jointly by the University system and the state community college system; expanded and improved professional development programs for teachers and administrators focused on the needs of at-risk children; changes in lateral entry and out-of-state recruitment programs to address the teacher shortage; retirement law changes to increase utilization of retired teachers; and many others.

At this point, the need is not for Defendants to undertake further studies but for them to take concrete action.

Plaintiffs suggest that the Court should require Defendants, within 90 days, to inform the Court specifically as to what they propose to do, and when, to insure that each North Carolina school child is taught in a classroom with a competent, certified, well-trained teacher in a school led by a well-trained, competent principal. That submission can then be tested by the requirements of the Constitution.

This the 10 day of February, 2005.

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFFS MOTION TO SHOW CAUSE OR FOR COURT APPROVAL OF PLAINTIFFS' COMPLIANCE PLAN was served on the parties in this action on this day by e-mail and by depositing copies thereof in the United States mail, postage prepaid, addressed as follows:

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This the 10 day of February, 2005.

Robert W. Spearman

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2005 MAR -3 P 11:57
C.S.C.

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA and ORDER RE: MOTION EXPEDITED DISCOVERY BY UNC CENTER [illegible]

THIS MATTER is before the Court with regard to the evidentiary hearing scheduled for the week of March 7, 2005, for the Court to hear evidence relating to the "high school problem" which exists in a great number of high schools throughout North Carolina relating to poor academic performance in those schools.

The driving force behind the Court scheduling a hearing on the "high school problem" is that way too many of North Carolina's high schools had composite scores **below** 80 for 2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79. (107/326) = 33%

Even more troubling were the number of high schools with composite scores that were below 70% for the past year (102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. **A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.**

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendent of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84,89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84,83,88,83,82,83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are **not** for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are **not**, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005

Howard E. Manning, Jr.
Superior Court Judge

General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
P. O. BOX 351
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TELEPHONE: (919) 755-4100
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FAX ONLY MEMO

July 11, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: Notice of August 9, 2005 special civil session re: hearing on the "high school problem (with emphasis on CMS) and other matters"

Lady and Gentlemen:

On May 24, 2005, this Court filed "Report from the Court: The High School Problem."

Last Friday, I reviewed the N&O's article on the Wake County Public Schools 2004-2005 Composite Scores. I subsequently went on line and took a look at CMS's High School 2004-2005 Composite Scores and their disaggregated data. A copy of the composite scores for CMS for 2002,2003,2004 & 2005 by school is attached.

The CMS results remain dismal. Out of 17 high schools, 10 remain with composite scores below 60 and 5 out of those 10 continue to have composites below 50. While there was some improvement in the scores of the bottom 10, 5 of the CMS high schools, East Mecklenburg, Garinger, Harding, Hopewell and West Mecklenburg went backwards. Olympic made a .01 gain from 53.5 to 53.6. South Mecklenburg made a .01 gain from 71.9 to 72.0, which is basically no gain at all.

The bottom line is that despite the so-called internal plans and improvements and programs for improving CMS's high schools'

academic performance that we heard about at the hearing in March, it appears that the poor academic performance remains business as usual in the majority of those high schools, despite being placed on notice that the poor academic performance cannot be permitted to continue. This sorry state of affairs cannot be permitted to continue.

On the more affluent side of the ledger, Myers Park scored a composite of 81.2% up from 73.4% and Providence increased to 86.0% from 83.5%.

Accordingly, I have made the necessary arrangements to schedule a special civil session beginning Tuesday, August 9,2005 at 10:00 in Courtroom 10-C (the usual courtroom). At that time, the Court will expect to hear a report from CMS as to what, if anything, CMS is doing with regards to the specific substantive, effective, and academically proven corrective measures CMS will be in place in its bottom 10 high schools as of the start of the 2005-2006 school year to ensure those schools are *Leandro* compliant in terms of qualified, competent principals, qualified, competent teachers and resources so that the constitutionally required educational opportunity is provided to in those schools and each and every child.

The Court will also expect a report from the State of North Carolina on the issue of the overall *Leandro* compliance statewide at that time.

In connection with the "high school problem" and the high schools, including CMS' high schools, that have composites below 60, the Court will expect a report from the State of North Carolina as to what action it is taking to provide these high schools with substantive, effective and academically proven corrective measures to be in place as of the start of the 2005-2006 school year so as to ensure that these bottom high schools are providing their students with a *Leandro* compliant learning environment as required by the Constitution of this State.

The Court will also hear the CMS students' motion to intervene relative to the CMS assignment plan during this session of Court.

The Court would also like to hear from the plaintiffs' counsel on the progress, or lack thereof, being made with respect to the ensuring that the schools in those districts, including the high schools, are meeting the constitutional requirement of being *Leandro* compliant.

7/11/05

In the event there are other relevant matters that the parties believe should be on the agenda for the hearing, please write and let me know and I will consider putting them on the agenda. Thank you.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight and Speaker Jim Black, et al. c/o Tonya Williams
(919-733-8740)
Chairman Howard Lee, State Board of Education and DPI
(919-807-3445)

Attached: CMS HIGH SCHOOLS-COMPOSITE SCORES-2002,2003,2004 & 2005 (ONE PAGE)

HEY
7/11/05

CMS HIGH SCHOOLS - COMPOSITE SCORES - 2002,2003,2004 & 2005

	2002	2003	2004	2005
BUTLER	64.1%	70.9%	72.7%	75.5%
MYERS PARK	69.9%	72.0%	73.4%	81.2%
N. MECKL.	65.5%	69.5%	70.3%	71.9%
PROVIDENCE	78.4%	82.7%	83.5%	86.0%
S. MECKL.	66.6%	70.6%	71.9%	72.0%
WADDELL	39.2%	41.5%	39.4%	47.6%
E. MECKL.	64.2%	61.2%	61.2%	58.1%
GARINGER	36.2%	38.6%	43.7%	42.1%
HARDING U.	63.8%	60.2%	58.4%	56.5%
HOPEWELL	65.8%	67.6%	66.0%	64.6%
INDEPENDENCE	59.2%	56.2%	49.3%	56.2%
NW ARTS	60.1%	57.0%	58.6%	63.0%
OLYMPIC	49.8%	55.9%	53.5%	53.6%
OBERRY	xx	50.4%	41.4%	46.6%
VANCE	57.0%	49.3%	48.0%	54.0%
W.CHARLOTTE	30.6%	24.8%	30.1%	35.7%
W. MECKL.	47.8%	43.9%	47.5%	46.7%

It should be noted that EOC tests in U.S.History and ELPS were not administered in 2004 and 2005.

7/11/05

PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman* WWW.NCPUBLICSCHOOLS.ORG
DEPARTMENT OF PUBLIC INSTRUCTION :: Janice O. Davis, *Interim Officer*

August 9, 2005

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Hand Delivery

Re: *Hoke Co. et al. v. State*

Dear Judge Manning:

On July 11, 2005, you sent a Notice to the parties to this action that you would hold a hearing on specified subjects in the Wake County Courthouse on August 9, 2005. Among other things, your Notice stated that you expected a report from the State on "the issue of overall Leandro compliance."

In response to that request, and on behalf of the Governor, the State Board of Education, and the Department of Public Instruction, I am submitting two documents. The first describes the Governor's and the State Board of Education's strategic focus for Leandro compliance. The second documents some of the actions we have recently taken to implement the Plan which we submitted to the Court on October 25, 2004, along with some additional commitments and actions that were not included in the Plan.

I trust that you will agree that the actions described in these documents prove that the State is making substantial and steady progress toward improving educational opportunities for all its students. The Governor and the State Board of Education intend to continue to aggressively implement the Plan to assure all North Carolina children have the educational opportunity to reach their full potential.

With kindest regards and best wishes, I am

Respectfully,

Howard N. Lee

c: The Honorable Michael F. Easley, Governor of North Carolina
State Board of Education Members

STATE BOARD OF EDUCATION
6302 Mail Service Center :: Raleigh, North Carolina 27699-6302 :: 919.807.3430 :: Fax 919.807.3198
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GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION'S STRATEGIC FOCUS ON *LEANDRO*

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

Governor Mike Easley and the State Board of Education have put in place a comprehensive strategy to achieve these ends. This plan is built on the following strategic objectives:

1. **Provide significant new resources to low wealth districts and schools** by fully funding the Low Wealth Supplemental Funding formula in order to attract and retain quality teachers and principals and improve educational opportunities for all students.

2. **Make the Disadvantaged Students Supplemental Fund (DSSF) permanent,** implement a rigorous evaluation of the DSSF program in the 16 pilot districts, and identify the appropriate funding levels for the DSSF formula.

3. **Provide new, targeted investments in education** including funding for the More at Four Pre-Kindergarten Program; high school reform (New Schools Project and Learn and Earn); teacher recruitment scholarship programs; teacher production in high need areas; teacher retention; principal effectiveness; and connecting schools and social services to support the achievement of at-risk students.

4. **Institute greater accountability for existing funds** targeted to at-risk students and ensure greater financial accountability for the use of state and local resources to increase student performance in districts across the state.

5. **Strengthen the State's assistance to low-performing schools and their districts,** beginning with high schools. The State needs to assist districts and schools to examine spending patterns, reallocate existing resources, effectively target new resources, and implement proven strategies to increase student performance.

In October 2004, Governor Easley and the State Board of Education submitted a comprehensive Plan to meet these objectives and improve educational opportunities in North Carolina public schools. Since that time, the Governor, the

General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan. They have also taken many additional steps toward addressing the need for qualified teachers and principals and the resources needed to help students meet high academic standards and be prepared for higher education, work and citizenship in the 21st Century.

GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION HAVE TAKEN ACTION TO IMPLEMENT THE STATE'S PLAN FOR *LEANDRO*

The October 2004 Plan submitted to the Court outlined efforts the State would take to:

(1) Expand Existing Proven Programs and

(2) Invest in New Commitments.

The State's efforts in each of these areas are detailed below. Some of the additional commitments and action the State has taken since the Plan was submitted are also noted.

I. EXPAND EXISTING PROVEN PROGRAMS

- **Ensure Every At-Risk Four-Year-Old Has Access to a Quality Pre-Kindergarten Program.**

  - The State intends to continue to expand the More-at-Four Pre-Kindergarten Program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.

    1. The Governor's budget proposed $16.6 million in the first year and $29.1 million over the biennium to fund an additional 6,400 at-risk four-year-olds across the state.

    2. Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for the 2005-06 school year to support an additional 3,200 slots, which will bring the total of at-risk four-year-olds served to 15,200.

    3. The Office of School Readiness was created on July 1, 2005, through an Interagency Agreement signed by the Office of the Governor and Departments of Public Instruction and Health and Human Services. The Office will allow the state to align, coordinate and leverage the multiple public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.

- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to Ensure Schools and Districts Implement Proven Strategies.**

  - Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

    1 Governor Easley's July 20, 2005, Executive Order No. 80 set aside $22.5 million for DSSF for the 16 pilot districts.

    2 House and Senate conferees have tentatively agreed to include $22.5 million for DSSF in the budget.

    3 The Governor's budget also proposed continuing the funding in 2006-07, but distributing the funds based on the formula submitted to the Court in October 2004.

    4 The Governor's budget recommendations are not intended to cap the DSSF program at $22.5 million.

    5 The Governor's budget also requested $1.6 million for a thorough evaluation of the DSSF approach. The Senate included $1 million for the evaluation and the House included $100,000. The evaluation will focus on the effectiveness of the funds to increase student achievement and the efficacy of the State's assistance to the districts.

    6 DPI has an agreement with the Education Research Council to conduct a study of performance in the 16 DSSF pilot school systems.

    7 The Governor's budget calls on the State Board of Education to provide recommendations for an appropriate DSSF funding level by February 15, 2006, so that it may be implemented for the 2006-07 school year.

8 When the policies and resources outlined above are in place and the required evaluations are completed, the State will be better positioned to consider increases in DSSF in the second year of this biennium and beyond.

- **Strengthen and Expand LEAAP into a new unit under the State Board of Education to improve struggling school districts.**

  - Building on its pilot experience with the Local Education Agency Assistance Program (LEAAP), the State intends to create a full-time unit under the State Board of Education that works with a set of select school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.

    1 The LEAAP program was used to provide assistance to the 16 pilot districts in DSSF. They worked with the districts to analyze their challenges and develop their plans for DSSF monies.

    2 Two years ago, the Governor and State Board of Education worked with the General Assembly to secure $500,000 to begin LEAAP, which worked to improve the capacity and achievement in poorly performing school systems. That $500,000 is now part of the continuation budget.

    3 The Governor's budget proposed transferring $6.5 million from within DPI to LEAAP to develop the full-time assistance program.

    4 The authorization for ABCs funding now permits expenditure of ABC funding for LEAAP teams.

- **Continue the N.C. Teacher Working Conditions Survey and Provide Actionable Data for Problem Schools and Districts.**

  - Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to

attract and retain teachers and principals and increase their effectiveness.

1 The Governor's budget requested $215,000 in 2005-06 and $290,000 in 2006-07 to continue the Teacher Working Conditions Survey and to provide customized action plans and resources for grants for DSSF districts, improve teacher working conditions, retain qualified teachers, and boost students achievement. The House included $215,000 and the Senate $115,000 for this effort.

2 The Teacher Working Conditions Initiative surveys teachers and produces school-level, district-level, and state-level reports on the conditions of work for teachers. School-level reports are provided for all schools where at least 40% of teachers return the survey.

3 The Southeast Center for Teaching Quality, in conjunction with the N.C. Teacher Academy, has used these results to work with select DSSF districts to improve their teacher retention efforts.

- A report from the Southeast Center for Teaching Quality is being provided to the Court.

- **Expand the New Schools Project and Learn and Earn to Improve High School Student Performance.**

  - To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

    1 The Governor's budget and his Executive Order No. 80 provided $4.2 million in 2005-06 to open 15 Learn and Earn high schools

    2 The Governor's budget and his Executive Order No. 80 provided $1.44 million to open 11 new economic development-themed high schools.

3 Next year, the State plans to open 11 more economic development-themed, smaller high schools and another 20 Learn and Earn high schools.

4 The State Board of Education, DPI and LEAs are partnering with the Gates Foundation New Schools Project to restructuring or reform of North Carolina high schools

5 The State is supporting the New Schools Project with funding for additional local administrators, *e.g.*, principals, and DPI staff

6 The Governor's budget included $500,000 for Communities in Schools for dropout prevention work in approximately 35 counties and the Senate budget also included $500,000 for this purpose.

II. INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.**

  - The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.

    1 The Governor's budget and his Executive Order No. 80 provided $1.5 million to fund the 2+2 UNC-NC Community College System Teacher Education Partnerships. These funds support on-line courses and state positions to increase the numbers of community college students continuing their education and receive degrees that will allow them to teach. The purpose of the 2+2 Initiative is to link UNC schools of education with local community colleges and teach courses at the community college locations so as to develop teaching candidates in the very area where the State needs them most.

2 The Governor proposed $1 million in new scholarship money for participants in the 2+2 program described above. The money was to be part of the Prospective Teacher Scholarship program. The Governor also proposed $330,000 on 2006-07 for 100 scholarships for a new Two-Year Teaching Fellows Program for middle and high school math and science—two areas of major shortage in the State.

3 The Legislature did not support these proposals, but the Senate and House have agreed to provide $650,000 in 2005-06 and $1.3 million in 2006-07 for 100 new Teaching Fellows Scholarships and the same amount for 100 new Future Teachers of North Carolina Scholarships in math, science, special education, and ESL at any NC institution of higher education.

4 The Governor proposed $200,000 for the Teach For America-NC, which operates in 9 counties in northeastern NC with high teacher turnover rates. The House included funding for TFA-NC; the Senate did not.

5 The Governor's budget proposed new restrictions on Low Wealth funding that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers. The Governor is working with the Legislature to include those restrictions in the budget.

6 The State Board of Education revised teacher licensing policies to remove obstacles to hiring teachers from out-of-state, while safeguarding licensing standards and teacher quality.

7 The Governor's budget included two special provisions focused on improving principal attention and effectiveness on retaining qualified teachers. The Senate and House have agreed to these provisions.

- One calls for the study and overhaul of the Master's in School Administration programs at UNC schools of education to include greater focus on teacher working conditions and retention.

- The other mandates the inclusion of teacher working conditions and retention as components of principal evaluations.

- **Provide High Quality Professional Development for Teachers and Principals.**

  - The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.

    1 The Governor's budget and Executive Order No. 80 provides $125,000 for the Principals Executive Program for a new professional development for new principals.

      - PEP will use the new funding to expand opportunities for high quality professional development to principals and assistant principals teacher support, teacher retention, instructional leadership, data-driven decision making, and teacher empowerment.

      - A report on Principals Executive Program activities is being provided to the Court.

    2 The Governor's budget proposed $100,000 for an On-line Professional Development Resource Center, which would provide access to teachers, school leaders and district leaders on high-quality professional development for teachers and principals. The Senate included the $100,000 in its budget; the House did not.

    3 Over the past year, the N.C. Teacher Academy, supported by a $2 million dollars appropriation from the State last year, worked in the 16 DSSF districts to provide professional development that responded to critical challenges in the districts.

      - A report on the N.C. Teacher Academy activities in the 16 DSSF LEAs is being provided to the Court.

- **Connect School, Social Service and Delinquency Prevention Resources.**

  - The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments.

these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

1 The Governor's budget and his Executive Order No. 80 provides $11.2 million to fund Child and Family Support Teams in 100 needy schools.

- In the schools, State will fund teams consisting of a school nurse and a school social worker to identify, provide services, and coordinate with mental health and social service professionals.

- In the community, the State will provide new regional mental health facilitators and county social service care coordinators to work directly with the school-based teams.

2 Teams are expected to be in place by the spring of 2006. A cross-agency group from the Office of the Governor, DPI, and DHHS is working to develop the program specifics and select the program sites.

3 The Governor's budget also provided funding for 65 additional school (separate from Child and Family Support Teams) nurses in low wealth school districts. The Senate's budget includes money to fund 50 additional nurses; the House budget did not include these funds.

III. ADDITIONAL COMMITMENTS AND ACTIONS

- **Fully Fund Low Wealth Supplemental Funding.**

  - Low Wealth funding is an important source for improving the capacity of low wealth schools and districts to attract and retain teachers.

    1 In addition to funding for DSSF, the Governor's budget proposed fully funding Low Wealth over the next two years. To accomplish this objective, the Governor's budget proposed $16.6 million for Low Wealth Supplemental Funding in 2005-06 and $58.5 million for 2006-07.

2 Governor Easley's July 20, 2005 Executive Order No. 80 set aside $16.6 million for Low Wealth which is 75% of full Low Wealth funding. The House and Senate budget conferees have tentatively agreed to provide $20 million for Low Wealth for 2005-06.

3 The Governor's budget also proposed a new restriction that at least 15% of Low Wealth funds in 2005-06 and at least 25% in 2006-07 must be spent on recruiting and retaining teachers because the Governor believes it is imperative that school districts direct new resources to finding and keeping qualified teachers.

- **Impose New Accountability on $220 Million in Funding for At-risk Students.**

  - The Governor believes we need to ensure greater accountability and impose tighter spending controls on the At-Risk Student Services Allotment (which provides funding for all districts based on U.S. Census poverty data) and the Improving Student Accountability allotment (which provides funding for students performing below grade level).

    1 At-Risk Student Services provides $220 million dollars to all 115 school districts.

    2 The Governor's budget and Executive Order No. 80 included provisions ordering new accountability for these two funding streams. The Governor is working with the Legislature to restrict funding for at-risk students to proven strategies for increasing achievement.

    3 If approved, the Governor's request will assure that these funds support proven educational strategies to improve the achievement of At-Risk students.

    4 The Governor has insisted that the "turnaround teams" for improving high school performance include examination of LEA spending to ensure that available funds are being effectively and efficiently allocated to support proven strategies for improving student performance.

- **"Turnaround Teams" to Improve Performance in North Carolina High Schools.**

  - On August 3, 2005, the Governor announced that the State Board of Education and DPI, using the resources of DPI, state assistance teams and LEAAP, will organize and send "turnaround teams" to work with all high schools performing below 60% on composite scores of End-of-Course tests.

    1. Based on the 2004-05 ABC results, there are 44 "traditional" high schools (10 in Charlotte/Mecklenburg) with Performance Composites below 60%.

    2. The State Board of Education and DPI are developing strategies for providing assistance to these high schools within existing resources.

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005, and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT:**

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

NORTH CAROLINA:

WAKE COUNTY:

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a regularly scheduled session of the Wake County Superior Court to begin on Friday, August 18, on 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this hearing will be:

To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court the specifics of (1) the leadership changes and (2) remedial efforts ("turnaround plans") that are being implemented at the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006.

The remedial efforts ("turnaround plans") referred to by the Court in this Notice of Hearing and Order are those efforts and turnaround plans announced by Governor Easley on June 13, 2006 and referred to by the Superintendent of

Public Instruction in the correspondence and other materials attached as Exhibit A for reference.

Due to the fact that there are some (17) high schools that presently fall into this category when the preliminary 2006 composite scores are taken into account [without backing out civics, U.S. History and 10th Grade Writing], there will be no other matters taken up at this hearing.

SO ORDERED this 18th day of July, 2006.

Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 MAR 29 AM 11:11
WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Thursday, April 19,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education, The Department of Public Instruction ("DPI") and The New Schools Project, the opportunity to report to the Court concerning the progress of the remedial efforts ("turnaround progress") that were reported to the Court on August 18, 2006 and are in the process of being implemented since the start of the 2006-2007 school year in each of the poor performing high schools whose performance composite scores were below 55% or below for the last five (5) consecutive years, including 2005-2006 and those high schools whose performance composite was 60% or below for the past two years (Priority High Schools) and subject to turnaround efforts as directed

by Governor Easely on June 13. 2006. This should also include a brief report on the combined efforts of the Principal's Executive Program and the Kenan Flagler School of Business to assist principals at priority high schools.

B. A report on the progress being made by the State of North Carolina to recruit and retain more highly qualified teachers in low wealth school districts and low performing schools, including priority high schools and other schools with performance composites below 60% for the preceding (2) two years.

C. A report on the progress being made by the State of North Carolina to increase the numbers of nationally board certified teachers assigned to priority schools and low wealth schools.

D. A report on the status of proposed funding for DSSF and More at Four for the next budget cycle.

E. A report on the North Carolina Virtual High School and the timetable for its availability to all high school students of North Carolina.

F. A report on the progress of the New Schools Project: First, the status of the Learn and Earn High Schools and Second, the status of the number of high schools being converted into "21st Century High Schools".

G. A status conference on the scheduling of Plaintiffs' Motion for Attorneys Fees and Costs pending since December,2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 29th day of March, 2007.

Howard E. Manning, Jr.
Superior Court Judge

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
835-3448

FAX ONLY MEMO

June 28, 2007

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-934-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)
JACK BOGER/JULIUS CHAMBERS (919-962-1277)
At UNC Center for Civil Rights

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING focusing on Poor Academic Performance in Middle Schools - August 1 & 2, 2007

Lady and Gentlemen:

As I have gone through the past year dealing with the 17 low performing high school, talking with principals and others and looking as middle school scores for 2005-2006, especially math, it has become obvious that we not only have a high school problem, but one with middle schools as well. For 2005-2006, there were 117 out of 389 middle schools with performance composites of 65% or below. Out of this group there were 84 middle schools with performance composites of 60% and below. With the increased rigor required in math tests, many of these middle schools are sending children into the 9th grade with math skills below proficiency. I sent President Bowles a memo (copy enclosed) on June 19, 2007 outlining the problem and asking for assistance from UNC. Simply put, we need to find out why we are doing so poorly, what best practices are in place in the middle schools that are doing the best and why are we failing in those that are doing so poorly so we can do better. I have secured Courtroom 10-C and we can discuss the format if necessary. We would start at 10:00 a.m. I would appreciate it if Tom Ziko would see that a copy of this goes to Chairman Lee and Superintendent Atkinson. Thanks. Bowles Memo attached at 9 pages.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
919)755-4100/835-3448 (direct)
(919)715-4064 (f)

FAX ONLY MEMO

June 19, 2007

FROM: Howard E. Manning, Jr.

TO: President Erskine Bowles at UNC at 843-9695 c/o Janie/Jan

Subject: The Middle School Problem

Erv,

At the start of this memo on June 5, 2007, I find myself sitting in Courtroom 10-A during jury selection in a medical malpractice case which is anticipated to take from 4 to 6 weeks depending on whether or not the jury answers the first issue on liability yes or no. If no, the trial will end. If yes, the case will have a damages mini trial that will go on for a week or so. We have been in jury selection for three days and no end is in sight at this point.

As you know, I have been focusing on poor performing high schools for the last couple of years and in 2006 threatened to prohibit some 17 high schools from opening unless they were under new "management" based on their sorry performance composites over the previous 5 years.

Fortunately, the State of North Carolina, through its executive branch, responded. Although some principals in these schools retired, resigned or got moved to the central office, the State required the principals in those 17 high schools to go to your "day camp" at PEP/Kenan Flagler for additional training. I hope that these efforts and the scrutiny will lead to educational improvement among the students attending those schools this year.

Governor Easley has also required principals in high schools whose performance composite were 60 or below for two years in a row to start your PEP/Kenan Flagler program which has been attended by the 17 principals under my microscope since last summer.

During the past nine (9) months, I have managed to scratch out the time to go and personally visit all of "my" 17 high schools. I have toured all of the high schools and some more than once. I have also met with all of the 17 principals at their high schools as well as meeting with the group of principals in Chapel Hill on two occasions. I have also spoken to the second PEP cohort of principals of the twice 60 or below high schools which I will refer to as the "Easley" group.

One of the principals in the "Easley" group, a principal whose high school has been below 55% performance composite for 4 out of the past five years, advised me that if the "local politics" could be straightened out, that his high school might improve. Why this man remains in charge of any school year after year is unbelievable. His comment fails to reflect any perception of what is wrong under his watch.

In the course of these visits and discussions with the principals and some superintendents, the lack of quality of the academic preparation of too many of the children entering the ninth grades (9^{th}) in these and other high schools is a matter of grave concern to the high school principals as well as to me.

This is of particular concern at the high school level in connection with the ABC end of course tests given to ninth (9^{th}) grade students for many reasons, not the least being that an unprepared ninth grader has a higher probability of being unable to perform well on the ABC tests and most importantly, the child is not coming to the ninth grade in a sound position to obtain the opportunity to obtain a sound basic education in those courses because they are ill prepared coming from the middle schools.

I asked the LPHS principals to make suggestions for solutions about the influx of non-proficient 8^{th} graders coming to the ninth grade after we met in February, 2007. The LPHS principals wrote me a letter which contained several common sense recommendations, including but not limited to a recommendation that 8^{th} graders who are not

proficient in math and reading be required to attend a month long summer session at the HIGH SCHOOL to which they are assigned so that they receive intensive academic assistance before coming to the Ninth Grade Academy in the fall. A copy of that letter is attached for your information.

Keeping one ear open during jury selection, I have also been reviewing the ABC Performance Composites of Middle Schools and looking at selective schools' performance composites for 2005-2006 and previous years. The performance data was provided by DPI courtesy of Tonya Williams at Marc Basnight's office. Each middle school's performance composites for prior years are available on the NC School Report Cards which are found on line at www.ncpublicschools.org.

I was under the impression, prior to discussing the ninth (9^{th}) grade academic performance with the high school principals during the past nine months and prior to reviewing the 2005-2006 data, that the middle schools were on the upside of the scale overall. In short, I was under the impression that we had a problem with middle schools, but not a problem the size and scope of what is going on now.

For 2005-2006 there were 117 (30%) out of 389 middle schools with performance composites at 65% or below. There are 84 (21.5%) with performance composites of 60% and below in that group. These are designated as "priority" schools by the DPI according to the NC School Report Cards website.

Based on my review of several of the priority middle schools' past histories, it appears that the "drop" in scores for 2005-2006 was largely based on low end of grade (EOG) math scores. If I remember correctly, the State Board of Education increased the number of right answers in order for the math tests to meet better requirements for rigor in the subject matter.

A lot of the middle school math scores that I looked at were well below 50%. The reading scores seemed to remain somewhat stable but did not rise sufficiently to off set the drop in math scores. This is going to be another quagmire because the children are coming out of middle schools not proficient in math and that is a formula for disaster upstream in high school and Algebra I.

Some examples follow:

Broadview Middle School in CMS had a 56.5% composite for 2005-2006, a drop from 2004-2005. I looked at the eighth grade scores. Reading was 75.0 Math was 48.8 There were 213 math tests taken and 212 reading taken.

Assuming that the 8th grade Gateway (ie, the middle school principal passes them up to the high school despite their lack of proficiency in math - which will probably be the case based on what I have heard the past nine months visiting poor performing high schools) did not work for the 110 children in Broadview Middle School who were not proficient in 8th grade mathematics, the receiving high school would start out in the academic hole in mathematics with its 9th grade student population.

C G White Middle School in Bertie County had 2005-2006 percentage of eighth graders taking the EOG Reading test who scored at or above grade level was 84.8 and the percentage of eighth graders taking the EOG Math test who scored at or above grade level was 40.2. The previous year's math score (under the old, less rigorous EOG test scores) was 81.8%. Obviously, the increased rigor(more right answers on the EOG math test) on the EOG Math for the eighth grade caused a major decline in the performance composite for the eighth grade class. There were 92 tests given in 2005-2006. In the event that all of eighth graders were "passed" on to the ninth grade last fall, only 37 of 92 students had received a sound basic education in mathematics at the time they entered high school. 55 of the students were not proficient in mathematics at the end of 2006 and not ready to enter high school and take Algebra I successfully.

At Southwestern Middle in Bertie, a similar result occurred with the 8th grade mathematics EOG tests. In 2004-05, 77.1% of the 175 students taking the eighth grade EOG math tests scored at or above grade level. In 2005-06 only 53.8% of the 171 students taking the eighth grade EOG math tests scored at or above grade level. 78 out of 171 students, if they were "passed" to the ninth grade, were not proficient in mathematics when they started at Bertie high school last fall.

These examples serve to highlight the problem. These children are starting high school with a severe academic deficit in math that the ninth (9th) grade, in absence of extremely effective remediation, most likely cannot make up in terms of remediation in that year. Placed into algebra without a sound math basis, these children are in trouble. Likewise, the high school EOC testing will drop the performance composite for the high school in math for the ninth grade. It is a compounding problem as you can easily surmise.

There is no dispute that the influx of unprepared ninth graders into the high schools constitutes an educational drag on the high school's ABC scores. More importantly, there are way too many children coming into high school without having obtained a sound basic education in math and/or reading. Assuming that many eighth graders who are below grade level in reading are also below grade level in math, this is a untenable situation both for these children and for the high school that has to try to get them up to grade level academic performance and keep them from dropping out.

Suffice it to say, these children are at-risk of academic failure and further, that they have not obtained a sound basic education to this point in their educational journey. These children are also prime candidates for giving up, having little chance of success and dropping out of high school.

Why are these children tanking in mathematics? I had a long telephone discussion Friday afternoon week before last with a mathematics specialist at DPI about this. I asked for this discussion to confirm my general understanding that mathematic concepts are building blocks and that if a student fails to learn these math concepts as he or she goes through the math component of the standard course of study, the student will simply be unable to be successful in mathematics and algebra because of lack of proficiency in the building block concepts. This is in fact the case.

I asked the hard question. What's causing the problem? I was advised that many teachers are not very skilled (I would use the term not competent) at teaching elementary and middle school mathematics and this lack of teaching competence is compounded when the children are at-risk, low performing students. I do not know enough to put a

quantitative weight or number on how many weak math teachers are out there, but there must be a lot looking at the 2006 EOG scores in math once the baseline scores were raised by the State Board of Education.

Cutting to the chase, if the teacher is competent, as required by *Leandro*, the children in his/her class in elementary and middle school should not be scoring below grade level proficiency in spite of the increased rigor imposed on the EOG math tests by the State Board.

While there are some in the education community that would like to place a large part of the problem in the laps of the children and their parents, that's no excuse for a teacher's lack of competence in getting the children to understand the math concepts and become proficient as they move grade by grade towards high school.

What can the University do to help? I have given this question a lot of thought. Based on the lack of strength in middle school mathematics instruction, as evidenced by the 2006 EOG math scores, which had been "masked" by the "higher" math scores in previous years, I would look for help from the mathematics departments in the University system rather than the schools of "education."

Perhaps what the math departments could do is to look at the testing, look at results and devise an assessment system which would identify a student's "missing" math concepts and then devise a teaching protocol to fill in the missing concepts whether the child missed something in the 4th grade, 5th grade, or 6th grade math that is leading to the lack of proficiency.

If this could be done, then the next major obstacle is to get the professional development (ie, training) to principals and the teachers, who are not doing the job in the first place, so that the children are getting the quality of remediation and correct instruction necessary for them to be successful.

In the interim, I am considering dates and an order scheduling a hearing on the middle school problem which is compounding the high school problem so we can find out why these principals and teachers are not doing their jobs in the first place.

T-983 P.008/010 F-618

The bottom line is that I know that there are best practices that are well known in the field that, if the principals and faculty will use them in middle schools, just as in high schools, that will result in children actually scoring at grade level and above which is, after all, the whole purpose of public education and the constitutional requirement.

Anything you can do on this issue will be greatly appreciated, as usual. If we want our high school "graduates" better prepared to attend our great University system, we have got to do better downstream, especially in middle school mathematics.

6/19/2007

Cc: Governor Mike Easley c/o Franklin Freeman at 715-4239
Senator Marc Basnight, Speaker Joe Hackney & Lt. Governor Perdue c/o Tonya Williams at 733-8740
Chairman Howard Lee & Superintendent Atkinson at 807-[redacted] 807-3198

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2007 AUG 31 PM 3:12
WAKE COUNTY, C.S.C.
By ...

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, September 26 ,2007 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

The purpose of this non-adversarial hearing will be to provide information to the Court and the parties on the following specific subjects:

A. To provide the State of North Carolina, acting through its Executive Branch, including, but not limited to the State Board of Education and The Department of Public Instruction ("DPI") the opportunity to report to the Court concerning the progress of the remedial efforts to be implemented for the 2007-2008 school year with respect to low performing high schools and middle schools in North Carolina, including, but not limited to the 98 "regular" high schools whose performance composites (preliminary) were 55.4% or less for the 2006-2007 school year and the 66 middle schools whose performance composites (preliminary) were 60% or less for the 2006-2007 school year. And further, to provide to the Court and for the record in this

action, the expense and costs to operate each of these individual schools for the 2006-2007 school year.

B. To place on the record, the final 2006-2007 academic performance results for each of the foregoing high schools include the total performance composite data, disaggregated data (number of students tested in each school in each subject on EOC, number of students proficient in each subject and percentage of students in each subject that are proficient) for each EOC subject tested for 2006-2007, which includes English I, Algebra I, Algebra II, Geometry, Civics, United States History, Writing, and Biology.

C. A report from DPI on what constitutes an educationally sound and appropriate protocol/template for a personal education plan ("PEP") for middle and high school students placed at-risk of academic failure as required by law pursuant to G.S. 115C-105.41. This presentation should include, but is not limited to, the use and effective administration of available diagnostic assessments to determine where in the particular subject the student has not mastered the particular concept or material required for grade level performance and above and how those assessments should be utilized for focused intervention and academic improvement during the upcoming school year for that individual student.

D. To put on the record, the performance composites for the 2006-2007 school year for all public elementary, middle and high schools in North Carolina by LEA.

E. To receive a report (executive summary) from Eric Hirsch regarding the Governor's Teacher Working Conditions Initiative report of Teacher Working Conditions in Lower-Performing North Carolina High Schools.

E. To set a schedule date for hearing on the Plaintiffs' motion for attorney's fees filed in December, 2005.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 31st day of August, 2007.

Howard E. Manning, Jr.

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2008 JUL -2 P 12:55
WAKE CO. C.S.C.
BY

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, August 20, 2008 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

Subject Matter of the Hearing:

A. Math instruction in elementary, middle and high schools – children not being required to learn the multiplication tables by heart, long division and fractions leads to their failure to become proficient in middle school math and algebra.

Without re-inventing the wheel, the Court has spent the last year delving into what first appeared to be a major problem in High School mathematics but which later devolved into both a major problem in Middle School and Elementary school mathematics which, of course, feeds the High School mathematics problem.

The Court learned early in 2008 that the State of North Carolina Standard Course of Study (SCOS) has **not been requiring teachers** to require elementary students to learn (memorize into their dna) multiplication tables, long division, or to multiply and divide fractions since 2000 when the State of North Carolina and DPI followed the recommendations of the National Council of Teachers of

Mathematics ("NCTM") setting out math standards that did proposed a math instruction curriculum that would "allow" all students to do high-level math without mastering "low level" problem solving skills. In short, the SCOS was changed to delete the requirement that our children were required to memorize and solidly learn their multiplication tables, algorithm long division or fractions. See ***University of North Carolina Education Schools: Helping or Hindering Potential Teachers? – Pope Center Series on Higher Education Policy, January, 2008 George K. Cunningham ("Pope Center Report, January, 2008").***

The ***Pope Center Report*** revealed that while the teachers were required to teach the math, the children were not required to really learn the basics. " Develop fluency with multiplication and division," which includes: "two-digit by two-digit multiplication [larger numbers by calculator] and "up to three-digit by two-digit division [larger number by calculator] ***Math Instruction in North Carolina, pages 4,5,6 & 10, Pope Center Report, January, 2008.***

The Court has learned that not all school systems dropped the requirement, despite the change in SCOS. Excellent school systems and schools with excellent leadership and excellent classroom teachers still taught the basics. Unfortunately teachers who were not so excellent and who had principal leadership that was not excellent did not require the "learning" of the basic math facts in multiplication, long division and fractions. In 2006, the **NCTM, reversed its recommendations and recognized that children in grade 4 need to know how to divide using the standard division algorithm, NOT BY CALCULATORS. *Pope Center Report, p 10.*** Yet, despite the reversal by the NCTM in 2006, it appears that DPI and the SBOE have not changed the SCOS to require children to memorize their multiplication tables and conform to the NCTM's "revised" recommendations from 2006.

This failure of too many of our elementary school children to learn the basics of multiplication, fractions and long division in lower performing schools and school districts has a direct link on their failure to be successful in high school algebra. One algebra teacher told the Court on a visit to Bertie County High last fall that her children who were ***not successful in algebra were unable to multiply in their heads. Instead, they were counting on their fingers under their desks when they were unable to use their calculators.*** This information was disturbing and it was corroborated by the ***Pope Center Report.***

In short, these children never achieved the necessary basic proficiency in multiplication, long division and fractions in elementary school. The disastrous result of this lack of proficiency is proven by the math test data. All you have to do is look at the 2007 math data in Halifax County for EOG and EOC in 2006-2007 and elsewhere around the State. See the UNC System's September 2007 report entitled ***Addressing Teacher Quality and Student Achievement in***

Middle Grades Mathematics- A Summary Report of Input from UNC Constituent Institutions.

North Carolina is not alone in having a math instruction problem. Mathematics instruction is a national educational problem which has been documented in a recently released federal report [March, 2008] on the deficiencies of mathematical instruction in the United States.

This federal panel of "experts" – the National Mathematics Advisory Council – found that "American students' math achievement is 'at a mediocre level' compared with that of their peers worldwide, according to a new report by a federal panel, which recommended that schools focus on key skills that prepare students to learn algebra.

A New York Times Article published after the release of the report indicated that the panel's unanimous report "said that pre-kindergarten- to – eighth grade math curriculums should be streamlined and put focused attention on skills like the handling of whole numbers and fractions and certain aspects of geometry and measurement." The panel suggested specific goals that students should master in order to be prepared for algebra. **By the end of grade 3 students should be proficient in addition and subtraction of whole numbers and by the end of grade 5 students should be proficient in multiplication and division of whole numbers.**

It appears that the bottom line --- knowing the basic math facts such as multiplication tables, long division and fractions --- is the linchpin to a child obtaining, in elementary school, a sound basic education in mathematics. Without this foundation in math, the child cannot have the equal opportunity to obtain a sound basic education in middle school math and thereafter high school algebra and thus, will ***lose out on the Leandro required opportunity to obtain a sound basic education in mathematics all the way through high school. To further exacerbate the problem in mathematics [and in other core subjects] instruction, we have learned that in far too many classrooms, the teachers are overlooking, or ineffectively employing, an essential element of instruction – the formative assessment.***

B. Lack of Effective Use [or the non-utilization] of the Formative Assessment as part of classroom instruction in mathematics and other subjects.

While it appears that there is a problem with the children being taught the basics of mathematics in elementary school, it also appears to the Court, after spending a year focusing on mathematics instruction problems, that there are too many classrooms in which an essential element in classroom instruction – the formative assessment – is either missing, or being ineffectively utilized. As a result there is a ***serious gap*** in the instructional process which, when combined