

NO. COA11-1545

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

HOKE COUNTY BOARD OF)
EDUCATION; HALIFAX COUNTY)
BOARD OF EDUCATION;)
ROBESON COUNTY BOARD OF)
EDUCATION; CUMBERLAND)
COUNTY BOARD OF)
EDUCATION; VANCE COUNTY)
BOARD OF EDUCATION; RANDY)
L. HASTY, individually and as)
guardian *ad litem* of RANDELL B.)
HASTY; STEVEN R. SUNKEL,)
individually and as guardian *ad litem*)
of ANDREW J. SUNKEL; LIONEL)
WHIDBEE, individually and as)
guardian *ad litem* of JEREMY L.)
WHIDBEE; TYRONE T.)
WILLIAMS, individually and as)
guardian *ad litem* of TREVELYN L.)
WILLIAMS; D.E. LOCKLEAR, JR.,)
individually and as guardian *ad litem*)
of JASON E. LOCKLEAR; ANGUS)
B. THOMPSON II, individually and)
as guardian *ad litem* of)
VANDALIAH J. THOMPSON;)
MARY ELIZABETH LOWERY,)
individually and as guardian *ad litem*)
of LANNIE RAE LOWERY,)
JENNIE G. PEARSON, individually)
and as guardian *ad litem* of)
SHARESE D. PEARSON; BENITA)
B. TIPTON, individually and as)
guardian *ad litem* of WHITNEY B.)
TIPTON; DANA HOLTON)
JENKINS, individually and as)
guardian *ad litem* of RACHEL M.)
JENKINS; LEON R. ROBINSON,)
individually and as guardian *ad litem*)
of JUSTIN A. ROBINSON,)

Plaintiffs,)

CLERK COURT OF APPEALS
OF NORTH CAROLINA

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B. Educational Inadequacies in the Urban School Districts

35. Defendants have failed to provide sufficient resources to enable the urban school boards to provide all of their students with an adequate education.

36. Some students, because of the environments in which they live or other individual circumstances, require educational resources and services greater than or different from those required by other students to receive an adequate education. This fact does not alter the State's constitutional duty to ensure that all students receive an adequate education; instead, it requires the State to provide different resources and services as necessary to meet the needs of all students.

37. The State system of funding public education fails to account sufficiently for the substantial extra educational needs of many students. The State's failure to fund school boards in a manner that allows them to address sufficiently those students' needs impairs the students' ability to receive, and the schools' ability to provide, an adequate education. The urban school boards serve a large number of students with extra educational needs.

38. The educational resources available in the urban school districts are in many respects seriously inadequate.

39. Attending school in a physical environment conducive to learning and teaching is an essential component of an adequate education. Many students in the urban school districts attend school in trailers or buildings that are old, overcrowded, or in

other respects inadequate to meet their educational needs. Because the State has shifted virtually the entire burden of capital funding to local authorities that are unable to meet the urban school districts' capital needs, the State has failed to ensure that students in the urban school districts are educated in facilities adequate to meet their educational needs.

40. Deficiencies in physical facilities and overcrowding in the urban school districts are particularly significant in light of the fact that a disproportionate share of the growth in student population in North Carolina has in recent years taken place in the urban school districts, and will continue to do so.

41. Many of the urban school boards also lack sufficient State funding to provide all of their students with appropriate educational materials and supplies, particularly in science and foreign language instructional programs. Student population growth in the urban school districts will exacerbate these inadequacies.

42. Test scores achieved by many students in the urban school districts, and in particular students whose economic or other circumstances put them at risk, also evidence the inadequate education they are receiving.

43. The State Board has determined, based on the collective judgments of teachers who administer State tests, what level of performance on North Carolina end-of-grade tests qualifies a student to progress to the next grade level. These tests measure the progress of 3rd through 8th grade students toward meeting

minimum competencies described in the North Carolina standard course of study.

44. According to the State Board, students performing below "grade level" on end-of-grade tests "do not have sufficient mastery of knowledge and skills in this subject area [tested] to be successful at the next grade level." See, e.g., State Board of Education, 1993 Report Card, Administrative Supplement, Buncombe County, at 5 (1994).

45. Many students in the urban school districts -- and in particular, many students who attend schools with high concentrations of students who live in or near poverty -- fail to perform at "grade level" on State end-of-grade tests in reading and math.

46. The State Board also has determined, based on the collective judgments of teachers who administer State tests, what level of performance on North Carolina end-of-course tests is considered to be "proficient." These tests measure high school students' progress toward meeting minimum competencies described in the North Carolina standard course of study.

47. Many high school students in the urban school districts -- and in particular, many students who attend schools with high concentrations of students who live in or near poverty -- fail to perform at a "proficient level" on North Carolina core subject end-of-course achievement tests.

48. More than 40 percent of the high school graduates from the urban school districts fail to complete the minimum courses

required for admission to the University of North Carolina system.

49. Inadequate and inequitably distributed State funding prevents the urban school districts from providing all of their students with the educational resources and opportunities that would allow those students to achieve at adequate levels.

C. Factors Affecting Education in the Urban School Districts

50. A large number of students in the urban school districts come to school with extra educational needs. The urban school boards must meet the greater needs of such students if those students are to receive an adequate education; yet, the urban school boards lack sufficient resources to serve both their high-needs and regular student populations.

51. Nearly 70,000 students in the six urban school districts live in or near poverty, as measured by their eligibility for free or reduced-price lunches under the National School Lunch Act.

52. Despite their hardships, students living in or near poverty are fully capable of learning and achieving at or above levels deemed adequate by the State Board. State law proclaims that "all children can learn." N.C. Gen. Stat. § 115C-81(a).

53. Students who live in or near poverty, however, require educational programs tailored to meet their particular needs in order for them to achieve at or above adequate levels.

54. Many of the urban school boards have attempted to address the educational needs of disadvantaged students through

targeted educational programs and other means, relying to a large extent on local funds to do so.

55. Also significant are the large numbers of schools in the urban school districts with high concentrations of poor children in attendance. In the most recent year for which data are available, approximately 64 schools in the urban school districts had greater than 50% of their students eligible for free or reduced-price lunches. In approximately 22 of those 64 schools, the percentage of such poor students is at least 80%.

56. Providing an adequate education in schools with significant numbers of students living in or near poverty requires a greater commitment of resources than in other schools. The urban school boards generally cannot afford such a disproportionate commitment of resources to high-poverty-concentration schools, and as a result, students in these schools generally perform very poorly on state-wide achievement tests.

57. Nearly 30,000 students in the urban school districts require special education services.

58. Providing an adequate education to students in need of special education services generally requires a greater commitment of resources than for other students. Students in need of special education services in the urban school districts are entitled to certain services pursuant to federal law, and an even greater level of services pursuant to State law.

59. Many of the urban school boards serve a disproportionately high number of special education students who are severely handicapped or have other high-cost handicapping

conditions. Such students require special education services that cost far more than the amounts provided by State and federal sources. Similarly, there is a significant gap between the cost of State-mandated services for academically gifted students and the State funding allocated for those services. The gap between the funding provided by the State and federal governments and the actual cost of providing required services to high-cost special education students drains the urban school boards' local funds. As a result, the urban school boards must divert resources to special education that otherwise could be used for their regular education programs.

60. Some of the intervenor districts also must incur substantial costs associated with court-ordered and voluntary desegregation efforts. The State provides insufficient funding to local districts to support such efforts.

61. As a result of other demographic and environmental conditions in the urban school districts, students in these districts have extra educational needs in addition to those mentioned above that place substantial demands upon the urban school boards. The urban school boards thus must commit additional resources in order to provide an adequate education to all of their students.

62. The cost of educating students in the urban school districts is disproportionately high. The urban school boards, for example, often must incur high security costs in order to ensure the safety of students and faculty. In addition, the urban school boards generally pay higher salaries than other

local boards of education due to the higher cost of living in the urban school districts. Thus, the urban school boards must spend more than other local boards to provide comparable educational programs. The State's educational financing system fails adequately to take into account the higher costs incurred by the urban school boards.

63. The counties in which the urban school districts are located face many serious problems that urgently require high-cost government assistance in areas other than public education. Many of these problems are typically associated with urban environments, such as high levels of poverty, homelessness, crime, unmet health care needs, and unemployment.

64. As a result of the above factors, the counties in which the urban school districts are located experience what is commonly referred to as "municipal overburden." Those counties cannot allocate as large a portion of their tax revenues to public education as they could if they did not experience such "municipal overburden."

65. The urban school boards lack the State funding necessary to conform their programs and performance to the level of adequacy required by the North Carolina Constitution and affirmed by State law.

D. The Lack of Adequate and Equitably Distributed State Funding

66. The General Assembly has established a system for financing public education from a combination of State and local appropriations.

67. The State's financing system recognizes that certain districts have different needs that may require additional funding. For example, the General Assembly has provided supplemental funding for "small" school systems and "low-wealth" school systems since 1991.

68. The State has failed, however, to address sufficiently the additional resource needs of school districts, such as the urban school districts, that serve large numbers of students living in or near poverty, or students requiring special education, English-as-a-second-language, or academically gifted services. Similarly, the State has failed to address sufficiently the high costs and "municipal overburden" that characterize the urban school districts. As a result, the State's educational financing system fails to provide the necessary funding to the urban school boards.

69. In light of the student needs and constraints on local funding described above, the State is not providing sufficient funding for the maintenance of an adequate education system in the urban school districts.

70. The State's failure to implement an educational funding system that takes into account the high cost of educating all students in the urban districts, the additional cost of providing an adequate education to the many students with extra educational needs in the urban districts, and the limitations arising from "municipal overburden" in the counties where the urban school districts are located, is inequitable, irrational, arbitrary and capricious, in violation of the North Carolina Constitution and

State law. In addition, the State's singling out of certain districts to receive supplemental funds, while failing to recognize comparable if not greater needs in the urban school districts, is inequitable, irrational, arbitrary and capricious, in violation of the North Carolina Constitution and State law.

CLAIMS FOR RELIEF

Count I

Right to an Adequate Education

71. Plaintiff-Intervenors adopt and incorporate herein the above paragraphs 1 through 70.

72. Articles I and IX of the North Carolina Constitution impose upon the defendants a duty to provide an adequate education to all students in North Carolina.

73. Defendants have failed to fulfill their duty to provide an adequate education to all students in the urban school districts.

74. Defendants have failed to provide the urban school boards with the resources necessary to provide all of their students with an adequate education.

75. As a result of defendants' violations of their constitutional duty, the individual intervenors have been denied access to an adequate public school education and have otherwise been injured as alleged above.

76. As a further result of defendants' violations of their constitutional duty, the urban school boards also have been injured. The State has delegated to the urban school boards the responsibility to provide all of their students with a constitutionally adequate education, yet the State has not provided the urban school boards with the resources necessary to fulfill that responsibility.

Count II

Right to a General and Uniform Public School System
With Equal Educational Opportunities

77. Plaintiffs-Intervenors adopt and incorporate herein the above paragraphs 1 through 76.

78. Articles I and IX of the North Carolina Constitution mandate that the State establish a general and uniform system of public schools wherein equal opportunities are provided for all students.

79. The State's education system does not meet this constitutional mandate, inasmuch as a student's ability to receive an adequate education depends on capricious circumstances, including where the student lives.

80. The State's educational financing system fails properly to take account of the significant differences in the educational and resource needs of students and school districts throughout the State.

81. The State's supplemental funding scheme irrationally discriminates against school districts not defined as "low

wealth" or "small" and against the students and communities served by those districts.

82. The State's public education system, including its educational funding system, is inadequate, inequitable, irrational, arbitrary and capricious, and not general and uniform, in violation of the North Carolina Constitution.

83. As a result of defendants' violations of their constitutional duty, the individual intervenors have been denied access to a general and uniform system of public education in which equal opportunities are provided.

84. As a further result of defendants' violations of their constitutional duty, the urban school boards also have been injured. The State has delegated to the urban school boards the responsibility to provide all of their students with equal educational opportunities in compliance with the Constitution, yet the State has not established a general and uniform system nor provided the urban school boards with the resources necessary to fulfill their delegated responsibility.

Count III

Right to Equal Protection of the Laws

85. Plaintiff-Intervenors adopt and incorporate herein the above paragraphs 1 through 84.

86. The individual intervenors have a fundamental right to an adequate education.

87. Article I, section 19 of the North Carolina Constitution entitles the individual intervenors to equal protection of the laws.

88. Because all North Carolina students have a fundamental right to an adequate education, the State cannot deny an adequate education to some students, or fail to provide for an adequate educational system in one or more subdivisions of the State.

89. Under the State's public education system, including the system for financing public education, whether a student receives an adequate education depends on capricious circumstances, including where the student lives.

90. Students who live in or near poverty, as well as students with other extra educational needs, are as entitled to receive and are as capable of benefiting from an adequate education as other students in the State.

91. The State's supplemental funding scheme irrationally discriminates against school districts not defined as "low wealth" or "small" and against the students and communities served by those districts.

92. No compelling or even rational reason exists to justify defendants' failure to provide an adequate education to all students in the urban school districts.

93. The State has denied equal protection of the laws to the individual intervenors by operating a public education system, including a system for financing public education, that does not provide, and does not ensure that the urban school

boards can provide, an adequate education to all students in the urban school districts.

94. As a result of defendants' violations of their constitutional duty, the individual intervenors have been denied access to an adequate public school education and to equal protection of the laws, and have otherwise been injured as alleged above.

Count IV

Right to Due Process of Law

95. Plaintiff-Intervenors adopt and incorporate herein the above paragraphs 1 through 94.

96. The individual intervenors have a fundamental right to an adequate education.

97. The individual intervenors are entitled to due process of law under the law of the land clause of Article I, section 19 of the North Carolina Constitution.

98. The individual intervenors have a justifiable expectation, protected by the law of the land clause, that they will have access to an adequate public school education.

99. The State has denied due process of law to the individual intervenors by operating a public education system, including a system for financing public education, that does not provide, and does not ensure that the urban school boards can provide, an adequate education to all students in the urban school districts.

100. As a result of defendants' actions, the individual intervenors have been denied access to an adequate public school education and to due process of law, and have otherwise been injured as alleged above.

Count V

Rights Under the North Carolina General Statutes, Chapter 115C

101. Plaintiffs-Intervenors adopt and incorporate herein the above paragraphs 1 through 100.

102. Chapter 115C of the General Statutes affirms the right of the individual intervenors to have access to an adequate education.

103. North Carolina General Statutes section 115C-1 mandates that the State provide all students with a "general and uniform system of free public schools ... throughout the State, wherein equal opportunities shall be provided for all students."

104. Section 115C-81(a1) mandates that the State establish and operate a system that "provide[s] every student in the State equal access to a Basic Education Program."

105. Section 115C-408(b) mandates that the State "assure that the necessary resources are provided ... from State revenue sources [for] the instructional expenses for current operations of the public school system as defined in the standard course of study."

106. The State has delegated to local boards of education the responsibility, among others, "to provide adequate school

systems within their respective local school administrative units as directed by law." N.C. Gen. Stat. § 115C-47(1).

107. By failing to provide the resources necessary to allow the individual intervenors to have access to "adequate school systems" that provide them with a "Basic Education Program" and "equal educational opportunities," the defendants have violated the above statutory provisions.

108. As a result of defendants' violations of their statutory obligations, the individual intervenors have been denied access to an adequate public school education and to equal educational opportunities, and have otherwise been injured as alleged above.

109. As a further result of defendants' violations of their statutory obligations, the urban school boards also have been injured. The State has delegated to the urban school boards the responsibility to provide all of their students with constitutionally adequate educations that meet the requirements of the BEP and other State standards, yet the State has not provided the urban school boards with sufficient resources to fulfill that responsibility.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors respectfully request that the Court:

1. Declare that all public school students throughout North Carolina have a right, pursuant to Articles I and IX of the North Carolina Constitution and the various State statutes and regulations regarding public education, to an adequate education;

2. Declare that Articles I and IX of the North Carolina Constitution and the various State statutes and regulations regarding public education require the State to provide for an adequate system of public schools in every area and subdivision of the State;

3. Declare that the State has failed to fulfill its duty to establish a general and uniform system of free public schools wherein all students are provided with equal educational opportunities;

4. Declare that the State has failed to fulfill its duty to provide an adequate system of public schools in the urban school districts;

5. Declare that the State has violated and is violating the individual intervenors' right to an adequate public school education, right to equal protection of the laws, and right to due process of law as guaranteed by the North Carolina Constitution;


6. Order defendants to take all steps necessary to provide to the urban school boards funds necessary to provide their students with an adequate education;

7. Retain jurisdiction over this case to monitor and ensure full compliance with the injunctive provisions of the Court's decree;

8. Award Plaintiff-Intervenors their attorneys' fees and reasonable costs to the extent permitted by law; and

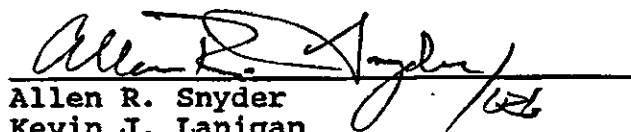
9. Grant other relief to the Plaintiff-Intervenors as this Court may deem proper.

Respectfully submitted, this the 14TH day of OCTOBER,
1994.



Richard W. Ellis
Gary R. Covert
Matthew W. Sawchak
Paul K. Sun, Jr.

SMITH HELMS MULLISS & MOORE, L.L.P.
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Allen R. Snyder
Kevin J. Lanigan
Paul A. Minorini

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Washington, D.C. 20004
Telephone: (202) 637-5600

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Intervening Complaint was served this date on the parties to this action by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to the following:

Robert W. Spearman
Parker, Poe, Adams & Bernstein, L.L.P.
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Post Office Box 389
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Attorneys for Plaintiffs

Edwin W. Speas, Jr.
Senior Deputy Attorney General
2 East Morgan Street
Post Office Box 629
Raleigh, North Carolina 27602-0629

This the 14th day of October, 1994.



Gary R. Govert

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

FILED

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HALIFAX COUNTY, C.S.C.

KATHLEEN M. LEANDRO, *et al.*;

Plaintiffs,

and

CASSANDRA INGRAM, *et al.*;

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA, *et al.*;

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

94 CVS 520

MOTION TO DISMISS
AMENDED COMPLAINT AND
INTERVENING COMPLAINT
[N.C.R. CIV. P., Rule 12(b)]

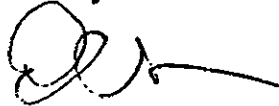
Defendants move the Court pursuant to Rule 12(b)(1), (2) and (6) of the Rules of Civil Procedure to dismiss this action on the grounds:

1. The Court lacks jurisdiction over the subject matter of the Amended Complaint and Intervening Complaint in that the issues raised are not justiciable, there is no existing controversy and plaintiffs and plaintiff-intervenors lack standing to assert the claims presented;
2. The Court lacks jurisdiction over the person of the defendants, or over the subject matter, or both, as to any claim for relief stated in the Amended Complaint or Intervening Complaint, and specifically, with respect to any claim for relief under the North Carolina Constitution or under the General Statutes of North Carolina on the grounds of sovereign immunity; and
3. The plaintiffs and plaintiff-intervenors have failed to state a claim upon which relief can be granted.

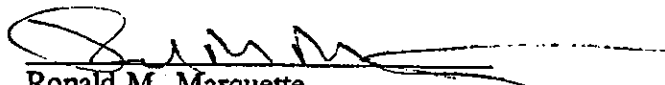
Additionally, defendant State Board of Education moves the Court pursuant to Rule 12(b)(3) of the Rules of Civil Procedure for the removal of this action for improper venue, in that the Board is made up of public officers, that this action arises from official acts done or to be done by the State Board, and that the State Board maintains its principal office in Raleigh, North Carolina. Therefore, pursuant to N.C.G.S. § 1-77(2), the only county of proper venue is Wake County.

Respectfully submitted, this the 15th day of November, 1994.

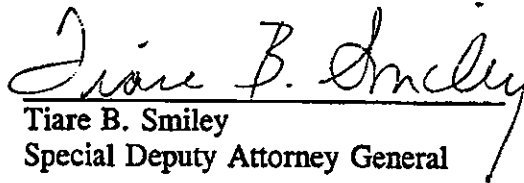
MICHAEL F. EASLEY
Attorney General



Edwin M. Speas, Jr.
Senior Deputy Attorney General



Ronald M. Marquette
Special Deputy Attorney General



Tiare B. Smiley
Special Deputy Attorney General

N. C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
(919) 733-3786

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day served copies of the foregoing Motion to Dismiss Amended Complaint and Intervening Complaint upon counsel for the plaintiffs and intervenors as indicated below by depositing said copies in the United States mail, postage prepaid, addressed as follows:

COUNSEL FOR PLAINTIFFS:

Robert W. Spearman
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COUNSEL FOR INTERVENORS:

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Allen R. Snyder
Kevin J. Lanigan
Paul A. Minorini
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, DC 20004

This the 13th day of November, 1994.


Ronald M. Marquette
Special Deputy Attorney General

OFFICE OF THE
CHIEF JUSTICE OF THE SUPREME COURT
OF THE
STATE OF NORTH CAROLINA

ORDER

Re: **Kathleen M. Leandro, etc., et als, Plaintiffs
and Cassandra Ingram, etc., et als, Plaintiff-Intervenors**
V.
**State of North Carolina
and The State Board of Education, Defendants**

Halifax County File Number: 94-CVS-520

To The Honorable **Richard B. Allsbrook**, one of the Senior Regular Resident Judges of the Superior Court of North Carolina, Greeting:

As Chief Justice of the Supreme Court of North Carolina, by virtue of authority vested in me by the Constitution of North Carolina, and in accordance with the laws of North Carolina, the rules of the Supreme Court and, specifically, Rule 2.1 of the General Rules of Practice for the Superior and District Courts, I hereby designate the above-styled case(s) as exceptional. Therefore, I hereby assign The Honorable **E. Maurice Braswell**, one of the Recalled Emergency Special Judges of the Superior Court of North Carolina, to hold such sessions of court as may be set and to attend to such in-chambers matters and other business as may be necessary and proper for the orderly disposition of the case(s) until otherwise ordered.

In Witness Whereof, I have hereunto signed my name as Chief Justice of the Supreme Court of North Carolina, on this day, January 5, 1995.


Benjamin B. Mitchell
Chief Justice of the Supreme
Court of North Carolina


John H. Cameron
John H. Cameron, Associate to the Chief Justice
of the Supreme Court of North Carolina

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

95 JAN 19 AM 9:34

SUPERIOR COURT DIVISION

COUNTY OF HALIFAX

94 CVS 520

IN RE: KATHLEEN M. LEANDRO, et al.

KATHLEEN M. LEANDRO, *et al.*;

Plaintiffs,

and

CASSANDRA INGRAM, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA, *et al.*;

Defendants.

ORDER TO
TRANSFER VENUE

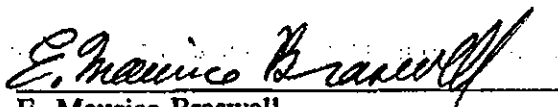
(4)

This cause was heard by the undersigned on motion of defendants State of North Carolina and State Board of Education to remove for improper venue as a matter of right pursuant to N.C. Gen. Stat. § 1-77. Upon review of the record and arguments of counsel, it appears to the Court that the State Board of Education is entitled to have this case moved to Wake County and that the motion should be allowed.

IT IS THEREFORE ORDERED that this action be transferred to Wake County.

THE CLERK IS HEREBY DIRECTED to forward all suit papers to the Clerk of Wake County.

This the 17 day of January, 1995.


E. Maurice Braswell
Superior Court Judge Presiding

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

FILED IN THE GENERAL COURT OF JUSTICE

95 JAN 19 AM 9:35 SUPERIOR COURT DIVISION
94 CVS 520

KATHLEEN M. LEANDRO, *et al.*; BY) f/d

Plaintiffs,)

and)

CASSANDRA INGRAM, *et al.*,)

Plaintiff-Intervenors,)

v.)

STATE OF NORTH CAROLINA, *et al.*;)

Defendants.)

CERTIFICATE OF SERVICE

Rule 58 N.C. R. Civ. P.

I hereby certify that I have this day served a copy of this Certificate of Service and of the Order to Transfer Venue signed by E. Maurice Braswell, Superior Court Judge Presiding, on 17 January 1995 in the above-captioned case upon all parties by depositing copies in the United States mail, first-class postage prepaid, addressed as follows:

Robert W. Spearman
Robert H. Tiller
Jim Wade Goodman
Parker, Poe, Adams & Bernstein L.L.P.
One Exchange Plaza
Post Office Box 389
Raleigh, North Carolina 27602

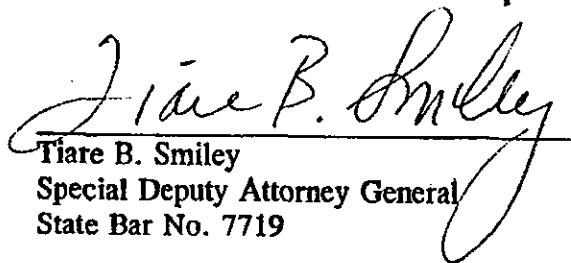
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555 13th Street, N.W.
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This the 18th day of January, 1995.

MICHAEL F. EASLEY
Attorney General


Tiare B. Smiley
Special Deputy Attorney General
State Bar No. 7719

North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
(919) 733-3786

FILED

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

NOTED -1 PM 9:51
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
94 CVS 520

KATHLEEN M. LEANDRO, *et al.*,
Plaintiffs,

and
CASSANDRA INGRAM, *et al.*,
Plaintiff-Intervenors,

v.

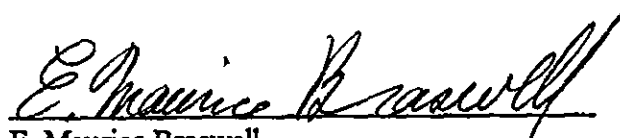
STATE OF NORTH CAROLINA and STATE BOARD
OF EDUCATION,
Defendants.

ORDER DENYING
MOTIONS TO DISMISS

This cause was heard before the undersigned Judge presiding in special session on January 9 and 10, 1995 in Halifax County Superior Court on motions of defendants State of North Carolina and State Board of Education pursuant to G.S. § 1A-1, Rule 12 (b) (1), (2) and (6), to dismiss this action on the grounds that the Court lacks jurisdiction in that the issues raised are not justiciable and that the plaintiffs and the plaintiff-intervenors lack standing; that the Court lacks jurisdiction over the subject matter of the Amended Complaint and the Intervening Complaint as well as over the person of the defendants; and that the plaintiffs and the plaintiff-intervenors have failed to state a claim upon which relief can be granted. After considering the briefs and arguments of counsel, it appears to the Court that the motions should be denied.

IT IS THEREFORE ORDERED that the motions to dismiss, pursuant to Rule 12 (b) (1), (2) and (6), are hereby denied and that the defendants shall have up to and including the 9th day of February, 1995 to serve and file answers and other responsive pleadings.

This the 26 day of January, 1995.


E. Maurice Braswell
Superior Court Judge Presiding

CERTIFICATE OF SERVICE


The undersigned certifies that a copy of the foregoing Order Denying Motions to Dismiss has been served this day upon counsel for the defendants by depositing said copy in the United States mail, postage prepaid, addressed as follows:

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Senior Deputy Attorney General
North Carolina Department of Justice
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Richard W. Ellis
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This the 1st day of February, 1995.

BY:


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Attorney for Plaintiffs

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95 CVS 1158

KATHLEEN M. LEANDRO, *et al.*,

Plaintiffs,

and

CASSANDRA INGRAM, *et al.*,

Plaintiff-Intervenors,

V.

STATE OF NORTH CAROLINA, *et al.*,

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants, for their Answer to the Amended Complaint, allege:

FIRST DEFENSE

The Amended Complaint contains statutory claims over which the court lacks subject matter jurisdiction because they are barred by sovereign immunity.

SECOND DEFENSE

In the alternative, the court lacks personal jurisdiction over the defendants as to the statutory claims because of sovereign immunity.

THIRD DEFENSE

The claims relating to a right to educational adequacy are nonjusticiable.

FOURTH DEFENSE

The plaintiff school boards lack the power to sue the defendants.

FIFTH DEFENSE.

The plaintiffs lack standing to pursue the claims asserted in the Amended Complaint.

SIXTH DEFENSE

Plaintiffs statutory claims are not ripe for adjudication, there being a failure of the condition precedent explicit in the Basic Education Program that it not be fully funded yet.

SEVENTH DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

EIGHTH DEFENSE

Responding to the factual averments of the Amended Complaint, except for any contained in the matters attached thereto as Exhibits, to which no response is required, defendants say:

1. Paragraph 1 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 1 are not admitted herein, they are denied.
2. The averments of paragraph 2 of the Amended Complaint are admitted on information and belief.
3. The averments of paragraph 3 of the Amended Complaint are admitted on information and belief.
4. The averments of paragraph 4 of the Amended Complaint are admitted on information and belief.
5. The averments of paragraph 5 of the Amended Complaint are admitted on information and belief.
6. The averments of paragraph 6 of the Amended Complaint are admitted on information and belief.
7. The averments of paragraph 7 of the Amended Complaint are admitted on information and belief.
8. The averments of paragraph 8 of the Amended Complaint are admitted on information and belief.
9. The averments of paragraph 9 of the Amended Complaint are admitted on information and belief.

10. The averments of paragraph 10 of the Amended Complaint are admitted on information and belief.

11. The averments of paragraph 11 of the Amended Complaint are admitted on information and belief.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Paragraph 17 of the Amended Complaint does not contain averments of fact to which a response is required. However, defendants deny that plaintiff school boards have authority to bring this action. To the extent any further response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 17 are not admitted herein, they are denied.

18. Paragraph 18 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 18 are not admitted herein, they are denied.

19. Paragraph 19 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 19 are not admitted herein, they are denied.

20. Paragraph 20 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 20 are not admitted herein, they are denied.

21. Denied.

22. Denied as to Halifax County.

23. Paragraph 23 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the

Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 23 are not admitted herein, they are denied.

24. Paragraph 24 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 24 are not admitted herein, they are denied.

25. Paragraph 25 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 25 are not admitted herein, they are denied.

26. Paragraph 26 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 26 are not admitted herein, they are denied.

27. Admitted.

28. Paragraph 28 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 28 are not admitted herein, they are denied.

29. Paragraph 29 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 29 are not admitted herein, they are denied.

30. Paragraph 30 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 30 are not admitted herein, they are denied.

31. Paragraph 31 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 31 are not admitted herein, they are denied.

32. Paragraph 32 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 32 are not admitted herein, they are denied.

33. Paragraph 33 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 33 are not admitted herein, they are denied.

34. Paragraph 34 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 34 are not admitted herein, they are denied.

35. Paragraph 35 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 35 are not admitted herein, they are denied.

36. Paragraph 36 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 36 are not admitted herein, they are denied.

37. Paragraph 37 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 37 are not admitted herein, they are denied.

38. Paragraph 38 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 38 are not admitted herein, they are denied.

39. The document referenced in paragraph 39 of the Amended Complaint speaks for itself. To the extent the averments of paragraph 39 are not admitted herein, they are denied.

40. Denied.

41. Except for the third sentence, the averments of paragraph 41 of the Amended Complaint are admitted. As to that sentence, defendants admit that boards of county commissioners in North Carolina function as instrumentalities of the State. To the extent the averments of paragraph 41 are not admitted herein, they are denied.

42. Defendants admit that since the 1930s the General Assembly has funded a large part of the cost of the instructional programs in the public schools from the State's treasury. Except for the first sentence, paragraph 42 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any further response is

required, defendants state that the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 42 are not admitted herein, they are denied.

43. Defendants admit that the General Assembly's goal for State funding for the BEP has been extended from 1993 to 1995 and that a portion of the BEP is currently not funded by State appropriations. To the extent the averments of paragraph 43 of the Amended Complaint are not admitted herein, they are denied.

44. Defendants admit that the General Assembly's goal for State funding for the BEP has been extended to 1995 and that a portion of the BEP is currently not funded by State appropriations. Defendants also state that Selected Financial Data 1992-93 speaks for itself. To the extent the averments of paragraph 44 of the Amended Complaint are not admitted herein, they are denied.

45. Defendants admit that, pursuant to Article IX, Section 2(2) of the North Carolina Constitution, the General Assembly has assigned to units of local government some responsibility for the financial support of the public schools. Defendants also state that the General Statutes speak for themselves. To the extent the averments of paragraph 45 of the Amended Complaint are not admitted herein, they are denied.

46. Defendants admit that the counties of North Carolina have different property tax bases and that property taxes constitute a source of county revenues, which, in conjunction with other revenues, are spent on the public schools and other things. Defendants also state that Department of Revenue figures speak for themselves. To the extent the averments of paragraph 46 of the Amended Complaint are not admitted herein, they are denied.

47. Defendants admit that the counties of North Carolina have different per capita incomes and that the per capita incomes of the counties in which plaintiffs reside were below the state average according to 1990 census figures. To the extent the averments of paragraph 47 of the Amended Complaint are not admitted herein, they are denied.

48. Defendants admit that the revenue available to local governments is used to provide education and other services, and that counties are required to pay a part of the non-federal share of AFDC. To the extent the averments of paragraph 48 of the Amended Complaint are not admitted herein, they are denied.

49. Defendants admit that the boards of county commissioners responsible for providing funding for plaintiff school boards do not provide as much local funding per student as do some other boards. To the extent the averments of paragraph 49 of the Amended Complaint are not admitted herein, they are denied.

50. Defendants admit that the boards of county commissioners responsible for providing funding for plaintiff school boards do not provide as much local funding per student as do some other boards. Defendants also state that Selected Financial Data 1992-93 speaks for

itself. To the extent the averments of paragraph 50 of the Amended Complaint are not admitted herein, they are denied.

51. Defendants admit that local school systems in North Carolina are not provided identical funds by their boards of county commissioners, and that as defined in paragraph 51 of the Amended Complaint the tax effort of the counties in which plaintiffs reside exceeds the effort of some other counties. To the extent the averments of paragraph 51 of the Amended Complaint are not admitted herein, they are denied.

52. Defendants admit that most education funds appropriated by the General Assembly are distributed according to allotment formulas that are typically based on the number of pupils and not on variations in wealth, and that this practice differs from that used by some other states. To the extent the averments of paragraph 52 of the Amended Complaint are not admitted herein, they are denied.

53. Defendants admit that beginning in 1991 the General Assembly enacted the low-wealth supplemental funding program to provide additional funds for certain low-wealth counties. Defendants also state that the statutes of North Carolina speak for themselves. To the extent the averments of paragraph 53 of the Amended Complaint are not admitted herein, they are denied.

54. Defendants admit that Robeson, Halifax, Hoke, Vance and Cumberland Counties receive funds under the low-wealth supplemental funding program, that the formula used for funding was revised in 1992 and that the supplemental funds provided are not sufficient to bring all school districts up to the state average for local support. Defendants also state that the statutes of North Carolina speak for themselves. To the extent the averments of paragraph 54 of the Amended Complaint are not admitted herein, they are denied.

55. Defendants admit that the amount of low-wealth supplemental funds provided to plaintiff school boards does not eliminate the gap between their spending per student and that of some other school boards, and that a fully-funded low-wealth supplemental funding program would not necessarily eliminate all funding differences among local school systems. Defendants also state that Selected Financial Data 1992-93 speaks for itself. To the extent the averments of paragraph 55 of the Amended Complaint are not admitted herein, they are denied.

56. Defendants admit that local governments provide much of the funding for school facilities and other capital expenses. Defendants also admit that Superintendent Etheridge announced that local school districts reported in 1993 that they were in need of \$5.6 billion for school facilities and that he has expressed his opinion about school facilities needs on a number of occasions. However, defendants are without knowledge or information sufficient to form a belief as to the accuracy of remarks attributed to Superintendent Etheridge that are alleged in conclusory and incomplete form; therefore, the last two sentences of paragraph 56 are denied. Defendants also state that the General Statutes and Selected Financial Data 1992-93 speak for

themselves. To the extent the averments of paragraph 56 of the Amended Complaint are not admitted herein, they are denied.

57. Defendants admit the averments of the first two sentences of paragraph 57 of the Amended Complaint. Defendants also admit that in 1993 the plaintiff districts reported to the State Department of Public Instruction that the estimated cost of facilities said to be needed by plaintiff districts was more than \$280 million. To the extent the averments of paragraph 57 of the Amended Complaint are not admitted herein, they are denied.

58. Denied.

59. Defendants state that the BEP speaks for itself. To the extent the averments of paragraph 59 of the Amended Complaint are not admitted herein, they are denied.

60. Defendants admit that the BEP is not yet either fully funded or implemented. To the extent the averments of paragraph 60 of the Amended Complaint are not admitted herein, they are denied.

61. Defendants state that the BEP speaks for itself. Defendants admit on information and belief that some of the courses listed in paragraph 61 of the Amended Complaint are available to some students in North Carolina public schools and that some of those courses are important to some students who seek to attend college. To the extent the averments of paragraph 61 of the Amended Complaint are not admitted herein, they are denied.

62. Denied.

63. Defendants admit on information and belief that plaintiff districts have facility needs and that some teachers in some schools in plaintiff districts from time to time conduct some classes in places other than traditional classrooms. To the extent the averments of paragraph 63 of the Amended Complaint are not admitted herein, they are denied.

64. Defendants admit on information and belief that some schools in plaintiff districts are old, that schools from time to time are in need of maintenance to deal with things such as peeling paint, cracked plaster and rusting exposed pipes, and that some schools are dimmer and noisier than they would be with better lighting and acoustics. To the extent the averments of paragraph 64 of the Amended Complaint are not admitted herein, they are denied.

65. Defendants admit on information and belief that some older schools have imperfect heating and air conditioning systems, waste disposal problems and leaking roofs, and that it is expensive to operate schools because of the cost of maintenance and utilities, among other things. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 65 of the Amended Complaint, and therefore they are denied.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 66 of the Amended Complaint, and therefore they are denied.

67. Defendants state that the BEP speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 67 of the Amended Complaint, and therefore they are denied.

68. Defendants admit that some older schools have infrastructure problems related to electrical and other support systems which pose obstacles to improving the availability of computer technology. Defendants state that the BEP speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 68 of the Amended Complaint, and therefore they are denied.

69. Defendants state that the BEP speaks for itself. To the extent the averments of paragraph 69 of the Amended Complaint are not admitted herein, they are denied.

70. Defendants admit that teachers are important in providing schoolchildren with educational opportunities and that school districts sometimes are in competition with each other for teachers seeking employment. To the extent the averments of paragraph 70 of the Amended Complaint are not admitted herein, they are denied.

71. Defendants admit that school districts offer monetary supplements to teachers and that the amount of the supplements varies among districts. To the extent the averments of paragraph 71 of the Amended Complaint are not admitted herein, they are denied.

72. Defendants admit the averments of the first sentence of paragraph 72 of the Amended Complaint. Defendants also state that the Statistical Profile 1993 speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 72 of the Amended Complaint, and therefore they are denied.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 73 of the Amended Complaint, and therefore they are denied.

74. Defendants admit that some children in plaintiff districts live in poverty. Defendants admit that some children, including some who live in poverty, have "special needs." To the extent the averments of paragraph 74 of the Amended Complaint are not admitted herein, they are denied.

75. Defendants admit that the Halifax, Hoke, Robeson and Vance County school systems were on either low performing or warning status for 1991, 1992 and 1993 based on State accreditation standards, student performance and dropout rates. Defendants also state that

the General Statutes speak for themselves. To the extent the averments of paragraph 75 of the Amended Complaint are not admitted herein, they are denied.

76. Defendants state that the 1993 Report Card Administrative Supplement speaks for itself. To the extent the averments of paragraph 76 of the Amended Complaint are not admitted herein, they are denied.

77. Defendants state that the 1993 Report Card speaks for itself. To the extent the averments of paragraph 77 of the Amended Complaint are not admitted herein, they are denied.

78. Defendants state that studies by the University of North Carolina speak for themselves. To the extent the averments of paragraph 78 of the Amended Complaint are not admitted herein, they are denied.

79. Defendants state that U.N.C. reports speak for themselves. To the extent the averments of paragraph 79 of the Amended Complaint are not admitted herein, they are denied.

80. Defendants state that U.N.C. reports speak for themselves. To the extent the averments of paragraph 80 of the Amended Complaint are not admitted herein, they are denied.

81. Defendants admit that the cycle of poverty entails enormous losses in dollars and human potential to the State and its citizens, and that some students in plaintiff districts have a prospect for higher education, for obtaining satisfying employment and for providing well for themselves and their families less than that of some other students in their districts. Defendants also admit that some students in plaintiff districts face the risks of unemployment, welfare dependency, drug and alcohol addiction, violence and imprisonment more so than others. To the extent the averments of paragraph 81 of the Amended Complaint are not admitted herein, they are denied.

82. Defendants incorporate by reference their responses to paragraphs 1 through 81 of the Amended Complaint.

83. Denied.

84. Denied.

85. Defendants admit that the General Assembly has not reached its goal of having the BEP fully funded and that the time for meeting that goal has not passed. To the extent the averments of paragraph 84 of the Amended Complaint are not admitted herein, they are denied.

86. Denied.

87. Denied.

88. Defendants incorporate by reference their responses to paragraphs 1 through 87 of the Amended Complaint.

89. Paragraph 89 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution of North Carolina speaks for itself, and to the extent the averments of paragraph 89 are not admitted herein, they are denied.

90. Admitted.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Defendants incorporate by reference their responses to paragraphs 1 through 94 of the Amended Complaint.

96. Paragraph 96 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution of North Carolina speaks for itself, and to the extent the averments of paragraph 96 are not admitted herein, they are denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Defendants incorporate by reference their responses to paragraphs 1 through 100 of the Amended Complaint.

102. Admitted.

103. Denied.

104. Denied.

105. Denied.

106. Defendants incorporate by reference their responses to paragraphs 1 through 105 of the Amended Complaint.

107. Paragraph 107 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 107 are not admitted herein, they are denied.

108. Paragraph 108 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 108 are not admitted herein, they are denied.

109. Paragraph 109 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 109 are not admitted herein, they are denied.

110. Paragraph 110 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 110 are not admitted herein, they are denied.

111. Paragraph 111 of the Amended Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 111 are not admitted herein, they are denied.

112. Denied.

Wherefore, defendants respectfully urge the court to dismiss the plaintiffs' Amended Complaint, or in the alternative, to:

1. Declare that neither the North Carolina Constitution nor any State statute creates a right to an adequate education in the public schools, greater than the right to attend a free public school for nine months a year in which equal opportunities are afforded as provided by Article IX of the Constitution.

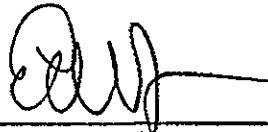
2. Declare that the General Assembly has created a general and uniform system of free public schools wherein students are provided with equal opportunities as provided by Article IX of the Constitution.

3. Declare that neither the State nor the State Board of Education has deprived any plaintiff of any right under the North Carolina Constitution or any State statute.

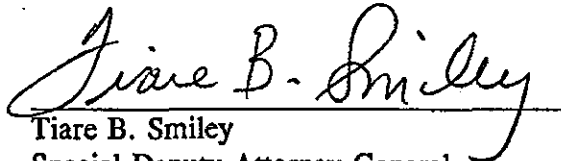
4. Provide such other and further relief as to the court seems just and proper.

This the 9th day of February, 1995.

MICHAEL F. EASLEY
Attorney General



Edwin M. Speas, Jr.
Senior Deputy Attorney General
State Bar No. 4112



Tiare B. Smiley
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Answer To Amended Complaint in the above-captioned matter upon all parties by depositing a copy in the United States mail, postage prepaid, addressed as follows:

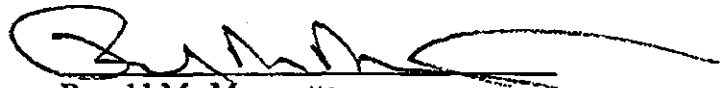
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555 13th Street, N.W.
Washington, D.C. 20004

This the 9th day of February, 1995.



Ronald M. Marquette
Special Deputy Attorney General

The intervening school boards lack standing to pursue the claims asserted in the Intervening Complaint.

SIXTH DEFENSE

The plaintiff-intervenors' statutory claims are not ripe for adjudication, there being a failure of the condition precedent explicit in the Basic Education Program that it not be fully funded yet.

SEVENTH DEFENSE

The plaintiff-intervenors fail to state a claim upon which relief can be granted.

EIGHTH DEFENSE

Responding to the factual averments of the Intervening Complaint, defendants say:

1. Paragraph 1 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 1 are not admitted herein, they are denied.

2. Defendants admit that educating children is among the most important functions of a state government, that education facilitates a child in reaching his or her potential, and that an educated citizenry facilitates the development of a state's economy and political institutions. To the extent the averments of paragraph 2 of the Intervening Complaint are not admitted herein, they are denied.

3. Denied.

4. Denied.

5. Defendants admit that the intervenor school boards have students who receive special education services, English-as-a-second-language services and academically gifted services. To the extent the averments of paragraph 5 of the Intervening Complaint are not admitted herein, they are denied.

6. Denied.

7. Paragraph 7 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that State law speaks for itself, and to the extent the averments of paragraph 7 are not admitted herein, they are denied.

8. The averments of paragraph 8 of the Intervening Complaint are admitted on information and belief.

9. The averments of paragraph 9 of the Intervening Complaint are admitted on information and belief.

10. The averments of paragraph 10 of the Intervening Complaint are admitted on information and belief.

11. The averments of paragraph 11 of the Intervening Complaint are admitted on information and belief.

12. The averments of paragraph 12 of the Intervening Complaint are admitted on information and belief.

13. The averments of paragraph 13 of the Intervening Complaint are admitted on information and belief.

14. Denied.

15. Defendants admit the averments of the first sentence of paragraph 15 of the Intervening Complaint, except the averment that the boards are "corporate bodies." To the extent the averments of paragraph 15 are not admitted herein, they are denied.

16. Paragraph 16 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 16 are not admitted herein, they are denied.

17. Paragraph 17 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 17 are not admitted herein, they are denied.

18. Paragraph 18 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 18 are not admitted herein, they are denied.

19. Paragraph 19 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 19 are not admitted herein, they are denied.

20. Paragraph 20 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the

Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 20 are not admitted herein, they are denied.

21. Paragraph 21 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 21 are not admitted herein, they are denied.

22. Paragraph 22 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 22 are not admitted herein, they are denied.

23. Paragraph 23 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 23 are not admitted herein, they are denied.

24. Paragraph 24 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 24 are not admitted herein, they are denied.

25. Admitted.

26. Defendants admit that the General Assembly has imposed duties on and granted authority to various State and local agencies and officials to implement a public education system in North Carolina, and that among them are the Superintendent of Public Instruction and local boards of education, including the plaintiff-intervenor school boards. To the extent the averments of paragraph 26 of the Intervening Complaint are not admitted herein, they are denied.

27. Paragraph 27 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that State law and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 27 are not admitted herein, they are denied.

28. Paragraph 28 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Basic Education Program ("BEP") and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 28 are not admitted herein, they are denied.

29. Defendants admit the averments of the first sentence of paragraph 29 of the Intervening Complaint. To the extent the averments of paragraph 29 are not admitted herein, they are denied.

30. Paragraph 30 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that State law speaks for itself, and to the extent the averments of paragraph 30 are not admitted herein, they are denied.

31. Defendants admit that the State Board has established standards for educational performance in the BEP, and has established certain measures of student achievement as a tool for evaluating student performance. To the extent the averments of paragraph 31 are not admitted herein, they are denied.

32. Denied.

33. Defendants admit that the General Assembly has given local boards of education certain powers and duties with respect to the operation of the public schools. Defendants also state that State law and the statutes of North Carolina speak for themselves. To the extent the averments of paragraph 33 of the Intervening Complaint are not admitted herein, they are denied.

34. Paragraph 34 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that State law and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 34 are not admitted herein, they are denied.

35. Denied.

36. Paragraph 36 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution and the statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 36 are not admitted herein, they are denied.

37. Defendants admit that the intervenor school boards have students who receive special education services, English-as-a-second-language services and academically gifted services. To the extent the averments of paragraph 37 of the Intervening Complaint are not admitted herein, they are denied.

38. Denied.

39. Defendants admit on information and belief that some students in the urban school districts attend school in trailers or buildings that are old, and that some school facilities are

overcrowded. To the extent the averments of paragraph 39 of the Intervening Complaint are not admitted herein, they are denied.

40. Defendants admit that there has been growth in student population in recent years in the urban school districts. To the extent the averments of paragraph 40 of the Intervening Complaint are not admitted herein, they are denied.

41. Denied.

42. Denied.

43. Defendants admit that the State Board of Education, pursuant to G.S. 115C-174.11(c), has developed end-of-grade tests to be used by local school systems for the purposes of developing strategies and plans for assisting students in achieving satisfactory academic progress, that the 1993 standards for classifying student performance on those tests were based upon the collective judgment of teachers who administered the tests in 1993, and that the tests are taken by 3rd through 8th grade students in reading and mathematics. To the extent the averments of paragraph 43 of the Intervening Complaint are not admitted herein, they are denied.

44. Defendants state that the 1993 Report Card Administrative Supplement speaks for itself. To the extent the averments of paragraph 44 of the Intervening Complaint are not admitted herein, they are denied.

45. Defendants admit that the record of performance of students in the urban school districts on end-of-grade tests can be ascertained from the "Report Cards" for those districts. To the extent the averments of paragraph 45 of the Intervening Complaint are not admitted herein, they are denied.

46. Defendants admit that the State Board of Education, pursuant to G.S. 115C-174.11(c), has developed end-of-course tests to be used by local school systems for the purposes of developing strategies and plans for assisting students in achieving satisfactory academic progress, that the 1993 standards for classifying student performance on those tests were based upon the collective judgment of teachers who administered the tests in 1993, and that the tests are taken by high school students in science, mathematics, social science and English courses. To the extent the averments of paragraph 46 of the Intervening Complaint are not admitted herein, they are denied.

47. Defendants admit that the record of performance of students in the urban school districts on end-of-course tests can be ascertained from the "Report Cards" for those districts. To the extent the averments of paragraph 47 of the Intervening Complaint are not admitted herein, they are denied.

48. Defendants admit that the "Report Cards" state the percentage of graduates of school systems who have not completed the courses required for admission to the UNC system. To the extent the averments of paragraph 48 of the Intervening Complaint are not admitted herein, they are denied.

49. Denied.

50. Defendants admit that the student populations in the urban school systems are diverse and that students have different needs. Defendants also admit that the intervenor school boards have students who receive special education services, English-as-a-second-language services and academically gifted services. Defendants deny that the urban school boards lack sufficient resources to serve their student populations. Defendants are without knowledge or information sufficient to form a belief as to the level of diversity in the student populations of these systems as compared with other systems or as to their needs, and therefore deny the remaining averments of paragraph 50 of the Intervening Complaint.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 51 of the Intervening Complaint, and therefore they are denied.

52. Defendants admit that all students, including those living in or near poverty, are capable of learning. Defendants also state that State law speaks for itself. To the extent the averments of paragraph 52 of the Intervening Complaint are not admitted herein, they are denied.

53. Denied.

54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 54 of the Intervening Complaint, and therefore they are denied.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 55 of the Intervening Complaint, and therefore they are denied.

56. Denied.

57. Defendants are uncertain as to the meaning plaintiffs intend the phrase "special educational services" to have. Defendants therefore deny the allegations of paragraph 57 because of lack of knowledge and information. If the plaintiffs intend the phrase to refer to special education services for handicapped students, defendants state that the Report Card Administrative Supplements are documents which report the number of such students in the urban school systems, and the documents speak for themselves.

58. Defendants state that the provisions of federal and State law speak for themselves. Defendants are uncertain as to the meaning plaintiffs intend the phrase "special educational services" to have. Defendants therefore deny the factual averments of paragraph 58 because of lack of knowledge and information.

59. Defendants admit that the urban school boards serve a number of severely handicapped students and other students with high-cost handicapping conditions, but defendants do not have sufficient knowledge or information upon which to form a belief as to whether the number of such students they serve is disproportionate. Defendants also admit that there are instances where the cost of services for a student with a severe handicap may exceed the per-capita allocation of State and federal funds for that student. Defendants are without sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations of paragraph 59, and therefore they are denied.

60. Defendants deny that any of the urban school boards are currently under court-ordered desegregation plans. Defendants are without sufficient knowledge or information upon which to form a belief as to the extent to which the urban school boards incur costs in connection with efforts they would characterize as voluntary desegregation efforts, and therefore all remaining allegations in paragraph 60 are also denied.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 61 of the Intervening Complaint, and therefore they are denied.

62. Defendants deny that the State's educational financing system fails adequately to take into account the costs incurred by the urban school boards. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 62 of the Intervening Complaint, and therefore they are denied.

63. Defendants are without sufficient information and knowledge upon which to form a belief as to whether each of the counties in which the urban school systems is located faces "serious problems that urgently require high-cost government assistance" or as to whether the problems of "poverty" etc. are "typically associated with urban environments." The averments of paragraph 63 are therefore denied.

64. As regards the first sentence of paragraph 64 of the Intervening Complaint, defendants admit that the phrase "municipal overburden" is sometimes used in regard to the cost of municipal services in urban areas. The second sentence is denied, and to the extent the remaining averments of paragraph 64 are not admitted herein, they are also denied.

65. Denied.

66. Admitted.

67. Admitted.

68. Denied.

69. Denied.

70. Denied.

71. Defendants incorporate by reference their responses to paragraphs 1 through 70 of the Intervening Complaint.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Defendants incorporate by reference their responses to paragraphs 1 through 76 of the Intervening Complaint.

78. Paragraph 78 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution of North Carolina speaks for itself, and to the extent the averments of paragraph 78 are not admitted herein, they are denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Defendants incorporate by reference their responses to paragraphs 1 through 84 of the Intervening Complaint.

86. Denied.

87. Admitted

88. Denied.

89. Denied.

90. Defendants admit that students who live in or near poverty and students with extra educational needs are entitled to receive a free public education and are capable of benefitting from an adequate education, just as other students in the State. To the extent the averments of paragraph 90 of the Intervening Complaint are not admitted herein, they are denied.

91. Denied.

92. Defendants deny that they fail to offer an adequate education to all students; therefore, the averments of paragraph 92 of the Intervening Complaint are denied.

93. Denied.

94. Denied.

95. Defendants incorporate by reference their responses to paragraphs 1 through 94 of the Intervening Complaint.

96. Denied.

97. Admitted.

98. Paragraph 98 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the Constitution of North Carolina speaks for itself, and to the extent the averments of paragraph 98 are not admitted herein, they are denied.

99. Denied.

100. Denied.

101. Defendants incorporate by reference their responses to paragraphs 1 through 100 of the Intervening Complaint.

102. Paragraph 102 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that

the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 102 are not admitted herein, they are denied.

103. Paragraph 103 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 103 are not admitted herein, they are denied.

104. Paragraph 104 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 104 are not admitted herein, they are denied.

105. Paragraph 105 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 105 are not admitted herein, they are denied.

106. Paragraph 106 of the Intervening Complaint does not contain averments of fact to which a response is required. To the extent any response is required, defendants state that the General Statutes of North Carolina speak for themselves, and to the extent the averments of paragraph 106 are not admitted herein, they are denied.

107. Denied.

108. Denied.

109. Denied.

Wherefore, defendants respectfully urge the court to dismiss the plaintiff-intervenors' Intervening Complaint, or in the alternative, to:

1. Declare that neither the North Carolina Constitution nor any State statute creates a right to an adequate education in the public schools, greater than the right to attend a free public school for nine months a year in which equal opportunities are afforded as provided by Article IX of the Constitution.

2. Declare that the General Assembly has created a general and uniform system of free public schools wherein all students are provided with equal opportunities as provided by Article IX of the Constitution.

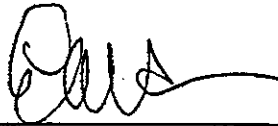
3. Declare that the State's supplemental funding system for "small" and for "low wealth" school systems is constitutional.

4. Declare that neither the State nor the State Board of Education has deprived any plaintiff-intervenor of any right under the North Carolina Constitution or any State statute.

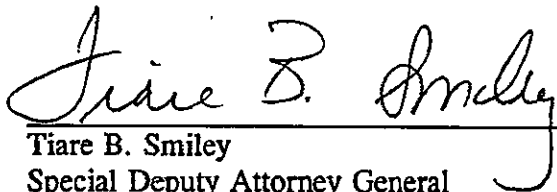
5. Provide such other and further relief as to the court seems just and proper.

This the 9th day of February, 1995.

MICHAEL F. EASLEY
Attorney General



Edwin M. Speas, Jr.
Senior Deputy Attorney General
State Bar No. 4112



Tiare B. Smiley
Special Deputy Attorney General
State Bar No. 7719



Ronald M. Marquette
Special Deputy Attorney General
State Bar No. 5739

North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
(919) 733-3786

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Answer to Intervening Complaint in the above-captioned matter upon all parties by depositing a copy of same in the United States mail, postage prepaid, addressed as follows:

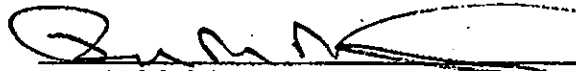
Robert W. Spearman
Robert H. Tiller
Jim Wade Goodman
Parker, Poe, Adams & Bernstein L.L.P.
One Exchange Plaza
Post Office Box 389
Raleigh, North Carolina 27602

H. Lawrence Armstrong, Jr.
Hux, Livermon & Armstrong
114 Whitfield Street
Post Office Box 217
Enfield, North Carolina 27823

Richard W. Ellis
Gary R. Govert
Smith, Helms, Mulliss & Moore, L.L.P.
316 West Edenton St.
P.O. Box 27525
Raleigh, North Carolina 27611

Allen R. Snyder
Kevin J. Lanigan
Paul A. Minorini
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004

This the 9th day of February, 1995.



Ronald M. Marquette
Special Deputy Attorney General

**OFFICE OF THE
CHIEF JUSTICE OF THE SUPREME COURT
OF THE
STATE OF NORTH CAROLINA**

ORDER

**Re: Kathleen M. Leandro, et al, Plaintiffs
and Cassandra Ingram, et al, Plaintiff-Intervenors**

V.

**State of North Carolina
and The State Board of Education, Defendants**

Halifax County File Number: 94-CVS-520

To The Honorable Richard B. Allsbrook, one of the Senior Regular Resident Judges of the Superior Court of North Carolina, Greeting:

As Chief Justice of the Supreme Court of North Carolina, by virtue of authority vested in me by the Constitution of North Carolina, and in accordance with the laws of North Carolina, the rules of the Supreme Court and, specifically, Rule 2.1 of the General Rules of Practice for the Superior and District Courts, I have previously designated the above-styled case(s) as exceptional. Therefore, I hereby assign The Honorable Howard E. Manning, Jr., one of the Special Judges of the Superior Court of North Carolina, in lieu of the Honorable E. Maurice Braswell, one of the one of the Regular Judges of the Superior Court of North Carolina, to hold such sessions of court as may be set and to attend to such in-chambers matters and other business as may be necessary and proper for the orderly disposition of the case(s) until otherwise ordered.

In Witness Whereof, I have hereunto signed my name as Chief Justice of the Supreme Court of North Carolina, on this day, October 30, 1997.


Barclay B. Mitchell
Chief Justice of the Supreme Court of North Carolina


Alan D. Biggs
Deputy Chief Justice of the Supreme Court of North Carolina

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

58 JAN 23 PM 4: 32

95-CVS-1158

HOKE COUNTY BOARD OF WAKE COUNTY, C.S.C.
EDUCATION; HALIFAX COUNTY)
BOARD OF EDUCATION; ROBESON)
COUNTY BOARD OF EDUCATION;)
CUMBERLAND COUNTY BOARD OF)
EDUCATION; VANCE COUNTY BOARD)
OF EDUCATION; RANDY L. HASTY,)
individually and as guardian *ad litem*)
of Randell B. Hasty; STEVEN R. SUNKEL,)
individually and as guardian *ad litem* for)
Andrew J. Sunkel; LIONEL WHIDBEE,)
individually and as guardian *ad litem*)
of Jeremy L. Whidbee; TYRONE T.)
WILLIAMS, individually and as guardian)
ad litem of Trevelyn L. Williams; D. E.)
LOCKLEAR, JR., individually and as)
guardian *ad litem* of Jason E. Locklear;)
ANGUS B. THOMPSON, II, individually)
and as guardian *ad litem* of Vandaliah J.)
Thompson; MARY ELIZABETH)
LOWERY, individually and as guardian)
ad litem of Lannie Rae Lowery;)
JENNIE G. PEARSON, individually and)
as guardian *ad litem* of Sharese D. Pearson;)
BENITA B. TIPTON, individually and as)
guardian *ad litem* of Whitney B. Tipton;)
DANA HOLTON JENKINS, individually)
and as guardian *ad litem* of Rachel M.)
Jenkins; LEON R. ROBINSON,)
individually and as guardian *ad litem* of)
Justin A. Robinson;)
Plaintiff-Appellants,)
and)
ASHEVILLE CITY BOARD OF)
EDUCATION; BUNCOMBE COUNTY)
BOARD OF EDUCATION; CHARLOTTE-)
MECKLENBURG BOARD OF)
EDUCATION; DURHAM PUBLIC)
SCHOOLS BOARD OF EDUCATION;)
WAKE COUNTY BOARD OF)

AMENDMENT TO PLAINTIFFS'
AMENDED COMPLAINT

EDUCATION; WINSTON-)
SALEM/FORSYTH COUNTY BOARD OF)
EDUCATION, CASSANDRA INGRAM,)
individually and as guardian *ad litem*)
of Darris Ingram; CAROL PENLAND,)
individually and as guardian *ad litem*)
of Jeremy Penland; DARLENE HARRIS,)
individually and as guardian *ad litem*)
of Shamek Harris; NETTIE THOMPSON,)
individually and as guardian *ad litem*)
of Annette Renee Thompson;)
HENRIETTE SORENSON,)
individually and as guardian *ad litem* of)
Magnus Sorenson; OPHELIA AIKEN,)
individually and as guardian *ad litem* of)
Brandon Bell;)
Plaintiff-Intervenors,)
v.)
STATE OF NORTH CAROLINA; STATE)
BOARD OF EDUCATION;)
Defendant-Appellees.)

Pursuant to the Order of the Honorable Howard J. Manning Jr. filed December 30, 1997, plaintiffs Amended Complaint is hereby amended as follows:

1. The following persons are removed from the caption of the Amended Complaint: Kathleen M. Leandro, individually and as guardian ad litem of Robert A. Leandro; Clarence L. Pender, individually and as guardian ad litem of Schnika N. Pender; Wayne Tew, individually and as guardian ad litem of Natosha L. Tew; Floyd Vick, individually and as guardian ad litem of Ervin D. Vick. In addition, the Amended Complaint adds the following persons to the caption: Randy L. Hasty, individually and as guardian ad litem of Randell B. Hasty; Lionel Whidbee, individually and as guardian ad litem of Jeremy L. Whidbee; Mary Elizabeth Lowery, individually and as guardian ad litem of Lannie Rae Lowery; Benita B. Tipton, individually and as guardian ad litem of Whitney

B. Tipton; and Leon R. Robinson, individually and as guardian ad litem of Justin A. Robinson.

2. The text of Paragraph 2 of the Amended Complaint is replaced with the following language: "Plaintiff Randy L. Hasty is a resident of Hoke County. Plaintiff Randell B. Hasty is a resident of Hoke County and a student at J.W. McLauchlin Elementary School in the Hoke County School System. He is a minor and is represented in this case by his father, Randy L. Hasty."

3. The text of Paragraph 4 of the Amended Complaint is replaced with the following language: "Plaintiff Lionel Whidbee is a resident of Halifax County. Plaintiff Jeremy L. Whidbee is a resident of Halifax County and a student at Bakers Elementary School in the Halifax County School System. He is a minor and is represented in this case by this father, Lionel Whidbee."

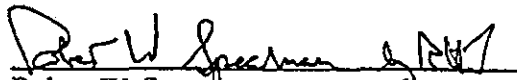
4. The following Paragraph 7(a) is added to the Amended Complaint: "Plaintiff Mary Elizabeth Lowery is a resident of Robeson County. Plaintiff Lannie Rae Lowery is a resident of Robeson County and a student at Piney Grove Elementary School in the Robeson County School System. She is a minor and represented in this case by her mother, Mary Elizabeth Lowery."


5. The text of Paragraph 9 of the Amended Complaint is replaced with the following language: "Benita B. Tipton is a resident of Cumberland County. Plaintiff Whitney B. Tipton is a resident of Cumberland County and is a student at Sherwood Park elementary School in the Cumberland County School System. She is a minor and is represented in this case by her mother, Benita B. Tipton."


6. The text of Paragraph 11 of the Amended Complaint is replaced with the following language: "Plaintiff Leon R. Robinson is a resident of Vance County. Plaintiff Justin A. Robinson is a resident of Vance County and is a student at Clark Street Elementary School in the Vance County School System. He is a minor and is represented in this case by his father, Leon R.

Robinson."

This the 23~~rd~~ day of January, 1998.


Robert W. Spearman
N.C. State Bar No. 4108


Robert H. Tiller
N.C. State Bar No. 17219
Parker, Poe, Adams & Bernstein, L.L.P.
150 Fayetteville Street Mall
Post Office Box 389
Raleigh, North Carolina 27602-0389
(919) 828-0564


H. Lawrence Armstrong, Jr.
N.C. State Bar No. 6485
Hux, Livermon & Armstrong
114 Whitfield Street
Post Office Box 217
Enfield, North Carolina 27823
(919) 445-5188

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing AMENDMENT TO PLAINTIFFS' AMENDED COMPLAINT was served on the defendants and plaintiff-intervenors by depositing same in the United States First Class Mail, postage paid, and properly addressed as follows:

Edwin M. Speas, Jr.
Senior Deputy Attorney General
N.C. Department of Justice
114 W. Edenton St.
P.O. Box 629
Raleigh, North Carolina 27602-0629

Gary R. Govert
Smith, Helms, Mulliss & Moore
2 Hannover Square, Ste 2800
Post Office Box 27525
Raleigh, N.C. 27611

This the 23^d day of January, 1998.


Robert H. Tiller

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

FILED
1990 OCT 15 PM 4:10 98
95-CVS-1038

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

WAKE COUNTY, C.S.C.

Plaintiff-Appellants,

and

ASHEVILLE CITY BOARD OF
EDUCATION, *et al.*,

PLAINTIFFS'
SECOND AMENDMENT TO
AMENDED COMPLAINT

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE
BOARD OF EDUCATION;

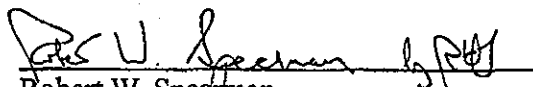
Defendant-Appellees.


Plaintiffs amend their amended complaint as follows:

A new paragraph following paragraph 74 is added reading as follows:

"74a. Many children living in poverty in plaintiff districts begin public school kindergarten at a severe disadvantage. They do not have the basic skills and knowledge needed for kindergarten and as a foundation for the remainder of elementary and secondary school. In view of the lack of prekindergarten services and programs in these districts, many children living in poverty as well as other children are not receiving an opportunity for a sound basic education. The plaintiff school districts do not have sufficient resources to provide the prekindergarten and other programs and services needed for a sound basic education."

This the 15th day of October, 1998


Robert W. Spearman
N.C. State Bar No. 4108


Robert H. Tiller
N.C. State Bar No. 17219
Parker, Poe, Adams & Bernstein, L.L.P.
150 Fayetteville Street Mall
Post Office Box 389
Raleigh, North Carolina 27602-0389
(919) 828-0564

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing SECOND AMENDMENT TO AMENDED COMPLAINT was served on the defendants and plaintiff-intervenors by depositing a copy of same in the United States first class mail and properly addressed as follows:

Edwin M. Speas, Jr., Esq.
Special Deputy Attorney General
N.C. Department of Justice
114 W. Edenton St.
P.O. Box 629
Raleigh, NC 27602-0629

Gary R. Govert, Esq.
Smith, Helms, Mulliss & Moore
2 Hannover Square, Suite 2800
P. O. Box 27525
Raleigh, NC 27611

This the 15th day of October, 1998.



Robert H. Tiller

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.*,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF
EDUCATION, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and
The STATE BOARD OF
EDUCATION,

Defendants.

AMENDMENT TO
INTERVENING COMPLAINT

FILED
1993 OCT 15 AM 10:21
WAKE COUNTY, C.S.C.

Plaintiff-intervenors Asheville City Board of Education, *et al.*, amend their
intervening complaint in this action as follows:

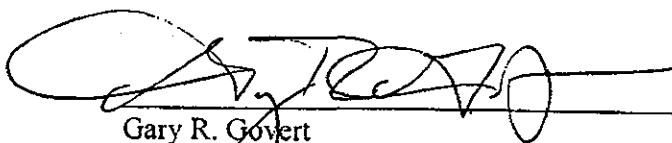
Paragraph 50 is amended to read as follows:

50. A large number of students in the urban school districts require
educational resources and services in addition to those currently funded and available to them if
they are to receive the sound basic education required by the North Carolina Constitution.
Examples of these additional educational needs include, but are not limited to, pre-kindergarten
programs and services; reduced class sizes; appropriate training for teachers serving students
who are mentally, physically, economically or otherwise disadvantaged; dropout prevention

programs; enhanced remediation and academic enrichment opportunities for "at risk" students; materials and services appropriate for students with limited proficiency in the English language; and increased counseling and guidance staff. The urban school boards must meet the greater needs of such students if they are to receive a sound basic education; yet, the urban school boards lack sufficient resources to serve both their high-needs and regular student populations.

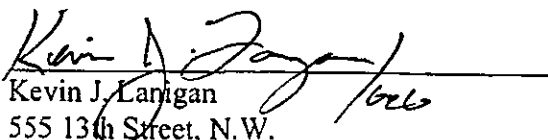
This the 15 day of October, 1998.

SMITH HELMS MULLISS & MOORE, L.L.P.

A handwritten signature in black ink, appearing to read "Gary R. Govert", written over a horizontal line.

Gary R. Govert
P.O. Box 27525
Raleigh, North Carolina 27611
Telephone: (919) 755-8718
Counsel for Plaintiff-Intervenors

HOGAN & HARTSON, L.L.P.

A handwritten signature in black ink, appearing to read "Kevin J. Lanigan", written over a horizontal line.

Kevin J. Lanigan
555 13th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 637-5823
Counsel for Plaintiff-Intervenors


CERTIFICATE OF SERVICE

This certifies that the foregoing Amendment to Intervening Complaint was served on the plaintiffs and defendants in this case by depositing a copy thereof in the United States Mail, first class, postage pre-paid, addressed to the following:

Ronald M. Marquette, Esquire
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

Robert H. Tiller, Esquire
Parker, Poe, Adams & Bernstein, L.L.P.
P.O. Box 389
Raleigh, North Carolina 27602-0389

This the 15 day of October, 1998.



Gary R. Govert

NORTH CAROLINA: FILED IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY: 1998 OCT 27 PM 4:37 SUPERIOR COURT DIVISION
95 CVS 1158
HOKE COUNTY BOARD WAKE COUNTY, C.S.C.
OF EDUCATION, et al., BY _____
Plaintiffs,)
and)
ASHEVILLE CITY BOARD)
OF EDUCATION, et al.,)
Plaintiff-Intervenors)
vs.)
STATE OF NORTH CAROLINA;)
STATE BOARD OF EDUCATION)
Defendants.)

ORDER

THIS MATTER is before the Court for the entry of an Order establishing a schedule for the purpose of bringing to trial before the Court a portion of this dispute related to the Hoke County Schools and the legal issue of whether or not pre-kindergarten (children below age 5) have educational rights under the North Carolina Constitution as those rights have been declared by the North Carolina Supreme Court in this case.

By way of background, this is a Rule 2.1 Exceptional Case. Since being assigned this case in August, 1997, the Court and the parties have engaged in a series of informal, monthly conferences with a view towards moving the case to trial in a logical and orderly fashion. In the course of the past year, the Court has 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 trial on the merits related to the large, urban school district plaintiff-intervenors.

The Court suggested that the small school district plaintiffs select one county system for the small school district trial and that the plaintiff-intervenors select on large school district for the large, urban school district trial. The parties agreed on Hoke County as the small school district and the Court agreed. The plaintiff-intervenors are permitted to participate fully in the first trial with respect to the small school district, Hoke County. Discovery has been on going and a discovery scheduling order will be entered shortly with a trial date for Hoke County to begin in August, 1999. The plaintiff-intervenor school district trial will not be set until after the Hoke County segment is tried.

The issue of the rights of pre-kindergarten age children to educational opportunities was raised by the Court on its own motion, and the Court has discussed with counsel for all parties the necessity for a determination at an early stage of these proceedings the question of whether or not the constitutional rights enumerated by the Supreme Court in its opinion of July 24, 1998 ("Leandro") extend to children before they reach the age of five (5), the beginning of state supported kindergarten which is now provided. In determining that this question is one which should be decided as soon as practicable, the Court has carefully examined the Leandro decision of our Supreme Court and considers the following points from that decision as instructive:

1. "***The right to a free public education is explicitly guaranteed by the North Carolina Constitution.***" (Slip opinion p. 10)

2. "***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 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 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.***" (Slip opinion pp. 14-15, emphasis added)

3. "***.....we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic educational opportunities mandated by the Constitution must be available in all districts.***" (Slip opinion p. 19, emphasis added)

4. "***..... 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 opinion p. 22, emphasis added)

In addition, the Court notes that the N.C. Constitution, Article IX, section 3 provides that "***The General Assembly shall provide that every child of***

appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means." (emphasis added).

Based on the foregoing, the Court believes that the question of 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 setting, are entitled to educational rights under the North Carolina Constitution sufficient to prepare them for entry level into the five (5) year old kindergarten should be determined as soon as practicable in this action.

After consulting with counsel for all parties, the most expedient way to frame this question and have the issue decided sooner rather than later, is by way of an amendment to the plaintiffs and/or plaintiff-intervenors' complaints, pursuant to Rule 15, North Carolina Rules of Civil Procedure. The Court, in its discretion, will allow such amendments in order to have the issue properly framed. Thereafter, the defendants may move to dismiss any such amendments and the Court can thereafter rule on the claims by means of motions to dismiss.

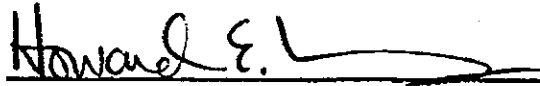
Should the Court determine, after hearing from all parties in this matter on the question, that such educational rights exist in favor of pre-kindergarten children under the North Carolina Constitution, then and in such event, the Court, in the course of the Hoke County segment of this case, can determine whether or not the State of North Carolina is meeting its constitutional obligations with regard to pre-kindergarten children "at risk" through such programs as Smart Start, or whether such programs should be expanded and broadened to meet those needs. There is certainly no need to wait to determine this issue or to put it off until a year or two down the road. Should the Constitution require such programs be expanded or offered to all children entitled thereto, time is of the essence.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the plaintiffs and plaintiff/intervenors may amend their complaints to assert claims on behalf of children of pre-kindergarten age to educational rights under the North Carolina Constitution.
2. That the plaintiffs and plaintiff/ intervenors shall file and serve such amendments no later than October 15, 1998.
3. That the defendants, not later than October 30, 1998, shall move to dismiss such amendments to the complaints as permitted by Rule 12 of the North Carolina Rules of Civil Procedure.
4. That the defendants shall have until December 1, 1998, to file and serve a brief or memorandum in support of any motion(s) to dismiss the claims covered by the amendments.
5. That Plaintiffs' and plaintiff-intervenors shall have until December 15, 1998, in which to file and serve briefs in response to said motions to dismiss and in support of their amendments.

6. That a hearing on the motions regarding this issue will be set by the Court as soon thereafter as practicable. It is the Court's present intention to determine this issue no later than the end of January, 1999.

This 27th day of October, 1998.

A handwritten signature in cursive script, appearing to read "Howard E. Manning, Jr.", written over a horizontal line.

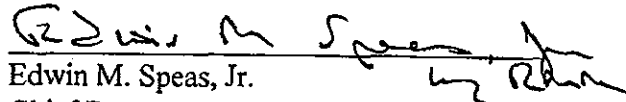
Howard E. Manning, Jr.
Superior Court Judge

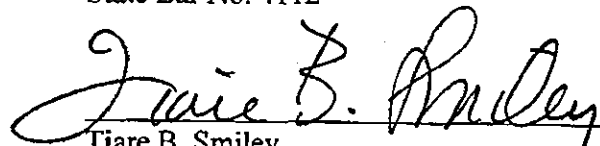
Defendants.


To the extent the allegations of paragraph 74a of the amended complaint can be construed to support a cause of action against defendants based upon a lack of pre-school programs and services, the claims of the original plaintiffs are barred by the statute of limitations.

Respectfully submitted, this the 11th of March, 1999.

MICHAEL F. EASLEY
ATTORNEY GENERAL


Edwin M. Speas, Jr.
Chief Deputy Attorney General
State Bar No. 4112


Tiare B. Smiley
Special Deputy Attorney General
State Bar No. 7719


Ronald M. Marquette
Special Deputy Attorney General
State Bar No. 5739

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(919) 716-6900

Attorneys for Defendants

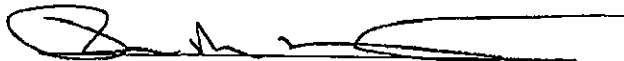
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing in the above-captioned matter upon all parties by hand delivering a copy of same addressed as follows:

Robert W. Spearman, Esq.
Robert H. Tiller, Esq.
Parker, Poe, Adams & Bernstein L.L.P.
150 Fayetteville Street Mall, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602-0389

Gary R. Govert, Esq.
Thomas D. Blue, Jr., Esq.
Smith, Helms, Mulliss & Moore, L.L.P.
2800 Two Hannover Square
P.O. Box 27525
Raleigh, North Carolina 27611

This the 11th day of March, 1999.



Ronald M. Marquette
Special Deputy Attorney General

COUNTY OF WAKE

Plaintiffs,

and

Plaintiff-Intervenors,

Y:

Defendants.

Defendants, for their answer to plaintiffs-intervenors' Amendment to Intervening Complaint, incorporate by reference herein their answers and defenses previously raised to plaintiffs-intervenors' Intervening Complaint in this Court.

In addition, defendants answer the allegations of paragraph 50 as follows:

50. Denied.

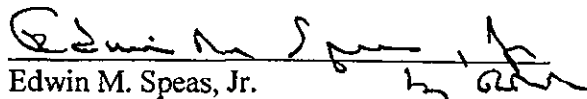
and interpose a new defense, as follows:

NINTH DEFENSE

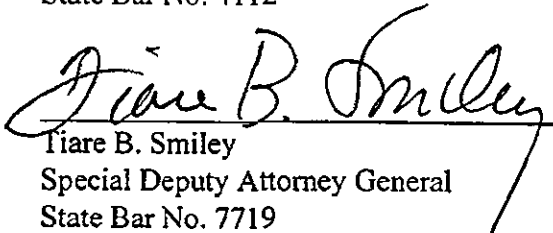
To the extent the allegations of paragraph 50 of the intervening complaint can be construed to support a cause of action against defendants based upon a lack of pre-school programs and services, the claims of the original plaintiff-intervenors are barred by the statute of limitations.

Respectfully submitted, this the 11th of March, 1999.

MICHAEL F. EASLEY
ATTORNEY GENERAL



Edwin M. Speas, Jr.
Chief Deputy Attorney General
State Bar No. 4112



Tiare B. Smiley
Special Deputy Attorney General
State Bar No. 7719



Ronald M. Marquette
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Attorneys for Defendants

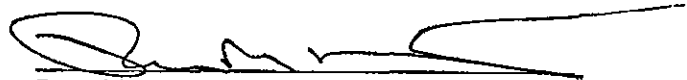
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2800 Two Hannover Square
P.O. Box 27525
Raleigh, North Carolina 27611

This the 11th day of March, 1999.



Ronald M. Marquette
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

95 CVS 1158

HOKE COUNTY BOARD OF EDUCATION;)
HALIFAX COUNTY BOARD OF EDUCATION;)
ROBESON COUNTY BOARD OF EDUCATION;)
CUMBERLAND COUNTY BOARD OF)
EDUCATION; VANCE COUNTY BOARD OF)
EDUCATION; RANDY L. HASTY, individually)
and as guardian *ad litem* of Randell B. Hasty;)
STEVEN R. SUNKEL, individually and as)
guardian *ad litem* of Andrew J. Sunkel; LIONEL)
WHIDBEE, individually and as guardian *ad litem*)
of Jeremy L. Whidbee; TYRONE T. WILLIAMS,)
individually and as guardian *ad litem* of Trevelyn)
L. Williams; D.E. LOCKLEAR, JR., individually)
and as guardian *ad litem* of Jason E. Locklear;)
ANGUS B. THOMPSON II, individually and as)
guardian *ad litem* of Vandaliah J. Thompson;)
MARY ELIZABETH LOWERY, individually)
and as guardian *ad litem* of Lannie Rae Lowery;)
JENNIE G. PEARSON, individually and as)
guardian *ad litem* of Sharese D. Pearson;)
BENITA B. TIPTON, individually and as)
guardian *ad litem* of Whitney B. Tipton; DANA)
HOLTON JENKINS, individually and as guardian)
ad litem of Rachel M. Jenkins; LEON R.)
ROBINSON, individually and as guardian *ad*)
litem of Justin A. Robinson,)

Plaintiffs,

CASSANDRA INGRAM, individually and as)
guardian *ad litem* of Darrie Ingram; CAROL)
PENLAND, individually and as guardian *ad litem*)
of Jeremy Penland; DARLENE HARRIS,)
individually and as guardian *ad litem* of Shamek)
Harris; NETTIE THOMPSON, individually and)
as guardian *ad litem* of Annette Renee Thompson;)
OPHELIA AIKEN, individually and as guardian)
ad litem of Brandon Bell; ASHEVILLE CITY)
BOARD OF EDUCATION; BUNCOMBE)

INTERVENING COMPLAINT

COUNTY BOARD OF EDUCATION;
DURHAM PUBLIC SCHOOLS BOARD OF
EDUCATION; WAKE COUNTY BOARD OF
EDUCATION; WINSTON-SALEM/FORSYTH
COUNTY BOARD OF EDUCATION,

Plaintiff-Intervenors,

and

RAFAEL PENN; CLIFTON JONES, individually
and as guardian *ad litem* of CLIFTON
MATTHEW JONES; DONNA JENKINS
DAWSON, individually and as guardian *ad litem*
of NEISHA SHEMAY DAWSON and TYLER
ANTHONY HOUGH-JENKINS,

Plaintiff-Intervenors,

vs.

CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION,

Plaintiff-Intervenor and Realigned
Defendant,

and

STATE OF NORTH CAROLINA and the
STATE BOARD OF EDUCATION,

Defendants.

Plaintiff-Intervenors Rafael Penn, Clifton Jones, Clifton Matthew Jones, Donna
Jenkins Dawson, Neisha Shemay Dawson and Tyler Anthony Hough-Jenkins allege and
state the following against the defendants:

NATURE OF THIS ACTION

1. Plaintiffs are public school students in the Charlotte-Mecklenburg school district (hereafter, "the Charlotte district") some of whom who are represented by their parents and next friends. They seek a limited intervention in this lawsuit to enforce their constitutional rights to a sound basic education—which is guaranteed by North Carolina Constitution, art. I, § 15 and art. IX, § 2 (1), as clarified by the North Carolina Supreme Court in *Leandro v. State*, 346 N.C. 336 (1997), by *Hoke County Board of Education v. State*, 358 N.C. 605 (2004), and by the various prior orders and decisions of this Court—and to guarantee their right under the North Carolina Constitution art. I, § 19 to the equal protection of the laws.

2. Plaintiffs attend, or expect to attend, high schools within the Charlotte system that have undergone profound changes in their student assignment patterns during the past five years because of a series of resolutions adopted by defendant Charlotte-Mecklenburg Board of Education (hereafter, "the Charlotte Board"). These resolutions have created and implemented a new system of student assignments (hereafter, "the 2000 assignment plan").

3. The 2000 assignment plan succeeded 28 years of federal-court supervised assignment plans that were designed to bring about racial desegregation under the three-decades-long *Swann v. Charlotte-Mecklenburg Board of Education* lawsuit. The 2000 plan is built upon a policy foundation purportedly emphasizing parental choice. It announces as its highest priorities a "home school guarantee"—that all students can attend a school in proximity to their residences—and the maximization of stability—

assuring that these home school guarantees and other choices will be stable "to the fullest extent feasible."

4. The defendant Charlotte Board knows, and was cautioned by educational consultants, that the Charlotte-Mecklenburg district is characterized by residential neighborhoods that vary widely in their average socioeconomic circumstances. Some neighborhoods, especially in central city and west Charlotte, are predominantly lower-income. Others, especially in the northern and southern suburbs of Charlotte, are predominantly higher-income. The defendant Charlotte Board knew, therefore, that its adoption of the 2000 assignment plan with its "home school guarantee" would necessarily create public schools whose student populations would vary greatly in their overall average socioeconomic circumstances.

5. The 2000 plan has created many "high poverty" schools within the Charlotte system. These "high poverty" schools enroll disproportionately large concentrations of students who stand at risk of educational failure assessed by every known measure—poverty, parental unemployment or underemployment, low parental educational levels, single parent family status, inadequate or unstable housing, poor health, racial minority status, limited English proficiency, and status as exceptional children.

6. Recognizing the adverse educational impact of its chosen priorities, the Charlotte Board created special student assignment rules that purportedly would permit lower income students (calculated by the percentage of free and reduced price lunches (hereafter "FRPL," a common measure of lower-income status), and low-performing students, to transfer out of high poverty schools to higher-income schools. However,

Charlotte's home school guarantee remains the Charlotte system's first priority, and the effective use of transfer rights depends upon the availability of open seats in higher-income schools. Since many parents in the Charlotte system's higher income neighborhoods, including Charlotte's northern and southern suburbs, select a nearby home school, many higher income schools in these neighborhoods have student occupancy rates of well over 100% of capacity and few empty seats for would-be transfer students from high poverty schools. Transfer opportunities are further limited by a systemwide rule that provides bus transportation only to students who transfer to other schools within their defined "zones."

7. The Charlotte Board acknowledges that "some greater concentrations of low socioeconomic status . . . may not be reasonably avoidable under the Plan." To compensate for this educational disadvantage, it has declared that "schools with higher concentrations of low socioeconomic status and schools which qualify as Equity Plus II schools under the applicable criteria of the Board shall receive additional resources under the Equity Plan, including, but not limited to, family support services, teacher and administrator incentives to create and maintain stable balances of experience and qualification, reduced class sizes and curriculum enhancements to elevate and meet expectations of excellence." In effect, the 2000 plan accepts the certainty that Charlotte's central city schools will be economically and racially isolated, but with the promise that, in compensation, these "Equity Plus II" schools will receive sufficient additional inputs and resources to bring equity and high performance to every school.

8. These compensating inputs and resources have not been sufficient to offset the severe, crippling learning environments created within Charlotte's high poverty high

schools. Schools such as West Charlotte High School, E.E. Waddell High School, Garinger High School, West Mecklenburg High School, Zebulon B. Vance High School, and Olympic High School, suffer from levels of student achievement, graduation rates, and other measures of student and school performance that are far lower (and disciplinary rates and dropout rates that are far higher) than those in higher income schools throughout the Charlotte district. Similarly disappointing results have characterized Charlotte's high poverty middle and elementary schools.

9. The Charlotte Board has failed to assure a stable balance of experienced and qualified teachers in its high poverty schools. For example, 38% of all teachers who taught in Charlotte's Equity Plus II schools in 2003-04 have left these schools or transferred, as compared with only 16% of current teachers system wide. Although there are many remarkable and dedicated teachers in these Equity Plus II schools, the average levels of experience, retention, teachers who teach-in-field, and other recognized measures of teaching excellence are significantly lower in high poverty schools than in other schools within the Charlotte system. Although the Superintendent of the Charlotte System, Dr. James Pughsley, proposed a number of major steps in January of 2005 that might redirect experienced teachers toward Equity Plus II schools, none of those steps has yet become Charlotte Board policy. On information and belief, these efforts, even if fully implemented, cannot suffice to redress the difficult working conditions, the demoralization of staff and students, and other features that prompt teachers to resign from teaching altogether or to transfer from these schools.

10. Moreover, among principals, assistant principals, and other administrators in Charlotte's high poverty schools, experience levels are significantly lower and turnover rates significantly higher than in other schools within the Charlotte system.

11. These consequences were not unforeseen. Nearly 40 years of social scientific studies have found repeatedly that a school's socioeconomic composition has a strong impact on the quality of the education delivered inside their walls. These studies have demonstrated that the average socioeconomic background of fellow students is one of the most influential "inputs" affecting a student's own education, apart from his or her own family background, and that high poverty schools create significantly more difficult learning environments for all students who attend them.

12. Consistent with those findings, 82 percent of Charlotte lower-income students who attended low-poverty schools in 2003-04 performed at grade level on State ABC tests, while only 64 percent of similar lower-income students who attended Charlotte's high-poverty schools achieved at grade level – an 18 percentage point "poverty gap" among children, all from lower income families, that varies by whether they attended high-poverty or low-poverty schools in Charlotte.

13. Charlotte's present 2000 student assignment system, which consigns plaintiffs and fellow students to high poverty elementary, middle, and high schools, therefore deprives the plaintiffs of the opportunity for a sound basic education guaranteed by *Leandro*. These plaintiffs stand at grave risk of suffering permanent and irreparable injury to their prospects for post-secondary educational or vocational training, for competing on an equal basis with others in further formal education or gainful employment, and for functioning in a complex and rapidly changing society. Plaintiffs

seek limited intervention in this lawsuit to demonstrate these facts, and to obtain declaratory relief that the Charlotte Board's adoption and present maintenance of its 2000 student assignment system—

- (a) despite clear evidence that this system would create many high poverty schools within the Charlotte system;
- (b) despite clear evidence that most high poverty schools create significantly more adverse learning environments for their students;
- (c) despite feasible, educationally sound alternative assignment plans that could significantly reduce disparities in the socioeconomic composition of Charlotte schools, and thereby reduce the attendant educational injuries to students such as the plaintiffs, who attend high poverty schools; and
- (d) despite the actual experience under this system, which has not vindicated the Charlotte Board's crucial educational assumption that it could steer sufficient compensating resources to high poverty schools to overcome their social and educational disadvantages— therefore violates the North Carolina Constitution.

14. Plaintiffs also seek injunctive relief requiring the defendant Charlotte Board to develop forthwith, and the defendants State and State Board to oversee, a revised, systemwide student assignment plan that will end the large socioeconomic divisions that currently characterize the Charlotte system

15. Assuring a sound basic education to all Charlotte students will require many other improvements in Charlotte's current fiscal, administrative, and educational policies and practices. Unless Charlotte's school system is set on an equitable student assignment foundation, however, none of the other changes will suffice to redress the

educational deficiencies, inequities, and long-term instabilities created by the present assignment plan.

PARTIES

PLAINTIFFS

16. Plaintiff Rafael Penn is a resident of Mecklenburg County and is a student at Zebulon B. Vance High School in the Charlotte-Mecklenburg school system.

17. Plaintiff Clifton Jones is a resident of Mecklenburg County. Plaintiff Clifton M. Jones is a resident of Mecklenburg County and is a student at Phillip D. Berry Academy in the Charlotte-Mecklenburg school system. He is a minor and is represented in this case by his father, Clifton Jones.

18. Plaintiff Donna Jenkins Dawson is a resident of Mecklenburg County. Plaintiff Neisha Shemay Dawson is a resident of Mecklenburg County and is a student at Olympic High School in the Charlotte-Mecklenburg system. She is a minor and is represented in this case by her mother, Donna Jenkins Dawson.

19. Plaintiff Tyler Anthony Hough-Kenkins is a resident of Mecklenburg County and is a student at Southwest Middle School in the Charlotte-Mecklenburg system. He is a minor and is represented in this case by his mother, Donna Jenkins Dawson.

DEFENDANTS

20. Defendant Charlotte-Mecklenburg Board of Education is a corporate body granted powers pursuant to state law. It has the authority to sue or be sued under N.C. Gen. Stat. § 115C-40. The State has delegated to the Charlotte Board the "general control and supervision of all matters pertaining to the public schools in [its] respective local

school administrative unit[],” and the Board is charged with “execut[ing] the school laws in” its district, N.C. Gen. Stat. § 115C-40, so as “to provide adequate school systems within [its] respective local school administrative unit[], as directed by law.” N.C. Gen. Stat. § 115C-47(1).

21. Defendant State of North Carolina (herein, “the State”) is responsible under the North Carolina Constitution for public education. Art. I, § 15. It is the State’s constitutional duty to guard and maintain the fundamental right to an adequate education. Consistent with this duty, the State must provide, through legislation enacted by the General Assembly, for a general and uniform system of free public schools wherein equal opportunities are provided for all students. Art. IX, § 2(1). The North Carolina Supreme Court has held that the State is ultimately responsible for the provision of a constitutionally adequate educational system, even when it delegates operational authority to local school boards. *Hoke County Board of Education v. State*, 358 N.C. 605, 635-36 (2004).

22. Defendant State Board of Education (herein, “the State Board”) is an agency of the State of North Carolina, charged with the “general supervision and administration of the free public school system” of the State of North Carolina. N.C. Gen. Stat. § 115C.12 (1). Among its statutory powers is the “authority, in its discretion, to alter the boundaries of city school administrative units.” N.C. Gen. Stat. § 115C-12 (7).

JURISDICTION AND VENUE

23. This Court has jurisdiction over the subject matter of this action under N.C. Gen. Stat. §§ 7A-245 (1), (3), & (4).

24. This Court has jurisdiction over the person of the defendants under N.C. Gen. Stat. § 1-75.4.

FACTUAL ALLEGATIONS

Background

25. For nearly 15 years, from the late 1970s until 1992, the Charlotte system operated under a federal desegregation plan approved by a federal district court, which formally oversaw student assignment policy as part of the *Swann v. Charlotte-Mecklenburg Board of Education* case. The assignment plan, based on the remedial needs under the Equal Protection Clause of the Fourteenth Amendment, required racial balance in virtually every elementary, middle, and high school. Because of the lower average incomes of African American families than of white families, this racial desegregation led indirectly toward the creation of schools with relatively similar socioeconomic compositions throughout the Charlotte system.

26. In 1992, the Charlotte Board, responding to the proposal of a new school superintendent, began to experiment with a more flexible system of student assignments, in which parents had the option to choose one of many magnet schools for their children.

27. In 1997, new litigation over Charlotte's assignment policy led to a declaration by the federal district court in 1999 that the Charlotte system had become "unitary" and no longer required federal judicial supervision. As part of its final order and judgment, the district court enjoined the Charlotte Board to cease any use of race as a criterion in making student assignments. The federal district court's finding that the Charlotte district had become "unitary" was affirmed on appeal to the United States

Court of Appeals for the Fourth Circuit; the portion of the district court's order enjoining the Charlotte Board's further use of race in making student assignments was reversed.

The Current Student Assignment Plan

28. In March of 1999, the Charlotte Board adopted a document entitled *Achieving the CMS Vision: Equity and Student Success*, which set forth the basic goals and strategies for a new student assignment system. On June 1, 2000, the Charlotte Board adopted a resolution committing itself to the new plan. In the June 1, 2000 resolution, the Charlotte Board instructed the superintendent to develop a student assignment plan for 2002-03 that would "maximize stability for students to the fullest extent feasible," "guarantee availability of a 'home' school assignment choice for every student in proximity to the student's home," and "guarantee[]s options for low performing students" and for "students of low socioeconomic status" . . . "who are assigned to home schools with high concentrations of low performing students, to choose assignment to schools with higher performance and lower concentrations of low socioeconomic status."

29. The entire Charlotte system is divided, under this plan, into four contiguous zones (designated the 'blue,' 'gold,' 'purple,' and 'green' zones). Each zone contains various elementary, middle, and high schools that are grouped to form separate "feeder systems." Students who enter particular elementary schools will flow into designated middle schools (designated as "continuation schools"), and students from middle schools will flow into designated high schools. Therefore, parents and students are assured that, if they are pleased with the feeder system attached to their home elementary school, they have an assured pathway through known continuation schools throughout their elementary, middle, and high school careers.

30. Students may, in theory, choose options other than their home school among an array of non-magnet and magnet schools within their residential zone, with the Charlotte system providing transportation (or may choose schools outside their assigned zone, though with no transportation provided). However, the Charlotte Board cautions that the available options, in reality, are far fewer. The Charlotte Board has informed parents that "[d]uring the 2004-05 school year the district grew by approximately 4,700 students. Our current overcrowding conditions at some schools will probably continue and thus limit the district's ability to provide families with their school of selection." Even in Charlotte's fifteen "Title I Choice Schools"—whose students are theoretically entitled under federal law to elect other schools since these schools failed to make "adequate yearly progress" under the federal No Child Left Behind Act for the past two years—the Charlotte Board has warned parents that "because so many of our schools are full, we cannot guarantee that we will be able to assign . . . students to one of their first three choices. The district may have to place them in another school that has space in their grade level." *Id.*

31. Apart from the Title I Choice schools, the Charlotte Board's priorities for transfer have shifted over time. Under the 2000 student assignment's initial priority design, highest priority was given (1) to those students who were eligible for free and reduced price lunch, so long as the student population of their home school averaged at least 30 percentage points higher in FRPL population than did the Charlotte systemwide. As of 2005-06, however, the transfer priority for transfers to *non-magnet schools* has shifted away from poverty deconcentration and toward assisting in moves from low-performing schools. Students who are themselves *low-performing* in reading have the

highest priority (if they attend home schools in which the reading performance is 15 percentage points below the Charlotte system's reading average). They may transfer to other, higher performing schools. The second priority is reserved for those students who are not themselves low-performing in reading, but who attend schools that are low-performing. These students have a priority to attend any school in the entire Charlotte district, whether or not it is in their assigned zone.

32. Only after students in low-performing schools have exercised their priorities are priorities honored for students who themselves qualify for FRPL, and only if they attend elementary or middle schools where the FRPL student populations are above 40 percent, or high schools where the FRPL populations are above 30 percent.

33. In sum, many students including the plaintiffs, who attend high poverty high schools in Charlotte system, are effectively locked into those schools by an assignment system that begins with an absolute home school guarantee, based upon a parent's residence at the elementary school level, and then links each elementary school to middle and high schools that likewise are "high poverty." The transfer options are broad in principle but restricted in practice, since the overwhelming majority of parents in higher income neighborhoods opt for home schools that quickly fill to 100 % capacity and beyond, foreclosing any new transfers into these schools. Moreover, students within many of the Charlotte systems schools are segregated by classroom according to their socioeconomic status, with lower income students grouped together in low-performing classes that often have less well-qualified teachers.

34. As a further result of this system, high poverty high schools (and elementary and secondary schools) tend to be disproportionately underutilized. The

Charlotte system's center city high schools — including West Mecklenburg and E.E. Waddell—operated at 77% and 81% capacity respectively during the 2004-05 academic year, with West Charlotte, Berry Academy, and Vance high schools at 90%, 95% and 96% capacity respectively. During the same academic year, Charlotte High schools in the northern and southern suburbs are seriously overcrowded—Butler at 127%, North Mecklenburg at 120%, Providence at 119%, and South Mecklenburg at 118%.

35. Nor has the 2000 assignment system achieved significant transportation efficiencies. Approximately 65 percent of those Charlotte system students currently eligible for transportation are transported to their schools on public school buses. On information and belief, transportation costs are currently higher, on a real dollar basis, under the 2000 student assignment system, than they were under the desegregation assignment system.

The Educational Consequences of the Current Student Assignment Plan

36. Although the 2000 assignment plan has only been in effect for two academic years (2002-03 and 2003-04), very wide disparities in student performance have already emerged among the schools, grouped by their socioeconomic status. For example, the high school composite scores reported by the North Carolina Department of Public Instruction in 2003-04 at the five highest poverty schools among Charlotte's 15 regular high schools—West Charlotte (61.92% eligible for FRPL; 31% at or above grade level); Garinger (57.03 eligible for FRPL; 45% at or above grade level); West Mecklenburg (46.49% on FRPL; 48% at or above grade level); E.E. Waddell (45.56% eligible for FRPL; 41% at or above grade level); and Independence (35.67% eligible for FRPL; 49% at or above grade level)—are far lower than the high school composite scores

at Charlotte's six lowest poverty high schools—Providence (4.92% eligible for FRPL; 85% at or above grade level); Hopewell High (11.61% eligible for FRPL; 68% at or above grade level); North Mecklenburg (13.91 eligible for FRPL; 72% at or above grade level); David W. Butler (14.32% eligible for FRPL; 75% at or above grade level); South Mecklenburg (15.37% eligible for FRPL; 74% at or above grade level), Myers Park (17.78% eligible for FRPL; 75% at or above grade level). Similar disparities, closely tied to the socioeconomic composition of various schools, are also present in Charlotte's elementary and secondary schools.

37. These disparities in measured student performance are caused, in substantial part, by the high poverty concentrations. Lower income students who attend higher income schools significantly outperform, on average, lower income students who attend high poverty schools. In 2003-04, 82% of lower-income students who attended Charlotte's low poverty schools were performing at grade level. Only 64% of lower-income students who attended high poverty schools were at grade level.

38. On information and belief, students who attend high poverty schools are more likely to drop out of school before graduation than are students in the Charlotte system as a whole.

39. On information and belief, students who attend high poverty schools are less likely to graduate than are students in the Charlotte system as a whole.

40. On information and belief, students who attend high poverty schools are more likely to face both in-school and out-of-school suspensions than are students in Charlotte's higher income schools. Consequently, the academic atmosphere in high poverty schools is substantially more chaotic and less well-ordered than is the academic

atmosphere in Charlotte's higher income schools. At Phillip Berry Academy, for example, classes in automotive engineering attended by plaintiff Clifton Jones went for weeks without any teacher at all—neither a qualified, certified teacher teaching in field, nor even a substitute teacher.

41. Under the Charlotte Board's Equity Plus II plan, schools with higher proportions of low income children are entitled to compensating educational inputs, including financial incentives designed to draw competent and experienced teachers to these schools.

42. These inputs and incentives have failed to stem very high losses of teachers from Charlotte's high poverty schools—a 38 percent departure rate for teachers employed in such schools in 2003-04, compared with a 16 percent departure rate in the Charlotte system overall.

43. The Equity Plus II plan has not succeeded in lifting student performance and graduation rates to levels comparable to those of other schools in the Charlotte system, or in reducing dropout rates, disciplinary rates, and other indicia of academic distress and failure, to levels comparable to higher income schools in the Charlotte system.

The Defendants' Knowledge of Likely Adverse Educational Consequences

44. The adverse effects of high poverty schools have been widely reported for nearly forty years. In his magisterial study of student performance and school resources in the mid-1960s, *Equality of Educational Opportunity*, Dr. James S. Coleman and his colleagues, commissioned by the United States Congress to carry out a comprehensive analysis as part of the implementation of the Civil Rights Act of 1964, concluded that:

"a pupil's achievement is strongly related to the educational backgrounds and aspirations of the other students in the school," and that if a "minority pupil is put with schoolmates with strong educational backgrounds, his achievement is likely to increase." Coleman Report, at 22. Indeed, the Coleman Report found that "[a]ttributes of other students account for far more variation in the achievement of minority group children than do any attributes of school facilities and slightly more than do attributes of staff." *Id.* at 302.

45. Professor Coleman's findings have been replicated in dozens of highly reliable, meticulous scientific studies. Many distinguished scholars and researchers, including Christopher Jencks, Alison Wolf, Karl White, Mary M. Kennedy, Susan E. Mayer, Robert L. Crain, Rita E. Mahard, Judith Anderson, Eric Camburn, Luis Laosa, Russell Rumberger, Sheryll Cashin, Richard Kahlenberg, and Gary Orfield, have reached similar conclusions based upon their careful studies of empirical evidence. These findings are well known to the defendant Charlotte Board and to the defendants State and State Board.

46. Upon information and belief, Professor Gary Natriello of Columbia University Teacher's College was retained as an expert by the Charlotte Board as it conducted its revision of its student assignment policies in 2000 and thereafter. Professor Natriello told the Charlotte Board that "Once you get at least 50 percent concentrations of poor students, it becomes very difficult to be effective in helping disadvantaged kids achieve." He also told the Board that it would cost significantly more to educate students in high poverty settings.

FIRST CLAIM FOR RELIEF
DENIAL OF A SOUND BASIC EDUCATION

47. Plaintiffs incorporate by reference each of the allegations of paragraphs 1 through 46 of this complaint.

48. Plaintiff students have a fundamental right under Article I, § 15 and Article IX, § 9(2) of the North Carolina Constitution to the opportunity for a sound basic education. Defendants the State, the State Board of Education, and their local educational agent, the Charlotte Board of Education, have a duty to guard and protect that right.

49. The defendant Charlotte Board has denied the plaintiffs their constitutional opportunity for a sound basic education, because it has chosen and maintained a student assignment system that systematically deprives plaintiffs of many essential elements of a sound basic education.

50. Defendants have the available fiscal, administrative, and educational capacity to adopt and implement alternative student assignment plans, including, for example, a plan that would establish floor and ceiling caps on the percentage of free and reduced price lunch students in every Charlotte school, in order to eliminate the barrier to a sound basic education erected by the Charlotte's 2000 student assignment policy.

51. The failure of defendant Charlotte Board to adopt and implement, and of the defendants State and State Board to insist upon, some alternative assignment policy, despite their awareness of the adverse educational consequences of high poverty schools, despite their knowledge that Charlotte's high poverty schools have not responded sufficiently to the Equity Plus II strategy, and despite the fact that alternative remedies are available in this wealthy school district, violates the plaintiffs' constitutional rights under Article I, § 15 and Article IX, § 2(1) of the North Carolina Constitution.

SECOND CLAIM FOR RELIEF
DEFENDANTS' VIOLATION OF PLAINTIFFS' RIGHT TO
THE EQUAL PROTECTION OF THE LAWS

52. Plaintiffs incorporate by reference paragraphs 1 through 51 of this complaint.

53. Plaintiffs have a right under Article I, § 9 of the North Carolina Constitution to the equal protection of the laws.

54. Defendants' maintenance of a system for student assignments that relegates plaintiffs and many other lower-income students to high poverty schools, which are (1) disproportionately filled with students at serious risk of educational failure because of parental poverty, parental unemployment and underemployment, lower parental educational levels, single parent families, non-white students, students with poor health, students whose families have inadequate or unstable housing, limited English proficient students, and students who need exceptional services, and which are (2) characterized by high teacher turnover, more inexperienced teachers, more teachers who teach out-of-field, and more administrative turnover, deprives the plaintiffs of educational opportunities that are equal to those afforded to those Charlotte's students who attend lower-poverty schools with fewer at-risk students and greater teacher stability and quality.

55. Defendants chose and implemented the present Charlotte student assignment system despite their clear knowledge that it would create many of these adverse school socioeconomic conditions and would, therefore, create educational disadvantages for plaintiffs and other students in high poverty schools.

56. Charlotte's present student assignment system deprives plaintiffs of the equal protection of the laws.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request:

1. A declaration that Charlotte's present student assignment plan is unconstitutional on its face and/or in its application to plaintiffs and others students similarly situated, under Articles I, §§ 9 and 15 and Articles IX, § 2(1);
2. An order enjoining the defendants to design and implement an alternative student assignment plan to end high poverty concentrations in every Charlotte school by establishing reasonable floor and ceiling caps on the free and reduced price lunch population of every elementary, middle, and high school in the Charlotte system;
3. An order retaining jurisdiction over this case to ensure full compliance with the Court's decrees;
4. An order granting to plaintiffs their attorneys' fees and reasonable costs to the extent permitted by law; and
5. An order granting such other and further relief as to the Court shall seem just and proper.

This 9th day of February, 2005

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Julius L. Chambers
North Carolina State Bar No. 769

John Charles Boger
John Charles Boger
Member of the New York Bar

Anita Earls
Anita Earls
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ATTORNEYS FOR PLAINTIFF-INTERVENORS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE 13:33
SUPERIOR COURT DIVISION
95 CVS 1158 - C. C. C.

HOKE COUNTY BOARD OF EDUCATION;
HALIFAX COUNTY BOARD OF EDUCATION;
ROBESON COUNTY BOARD OF EDUCATION;
CUMBERLAND COUNTY BOARD OF
EDUCATION; VANCE COUNTY BOARD OF
EDUCATION; RANDY L. HASTY, individually
and as guardian *ad litem* of Randell B. Hasty;
STEVEN R. SUNKEL, individually and as
guardian *ad litem* of Andrew J. Sunkel; LIONEL
WHIDBEE, individually and as guardian *ad litem*
of Jeremy L. Whidbee; TYRONE T. WILLIAMS,
individually and as guardian *ad litem* of Trevelyn
L. Williams; D.E. LOCKLEAR, JR., individually
and as guardian *ad litem* of Jason E. Locklear;
ANGUS B. THOMPSON II, individually and as
guardian *ad litem* of Vandalliah J. Thompson;
MARY ELIZABETH LOWERY, individually
and as guardian *ad litem* of Lannie Rae Lowery;
JENNIE G. PEARSON, individually and as
guardian *ad litem* of Sharese D. Pearson;
BENITA B. TIPTON, individually and as
guardian *ad litem* of Whitney B. Tipton; DANA
HOLTON JENKINS, individually and as guardian
ad litem of Rachel M. Jenkins; LEON R.
ROBINSON, individually and as guardian *ad*
litem of Justin A. Robinson,

Plaintiffs,

CASSANDRA INGRAM, individually and as
guardian *ad litem* of Darrie Ingram; CAROL
PENLAND, individually and as guardian *ad litem*
of Jeremy Penland; DARLENE HARRIS,
individually and as guardian *ad litem* of Shamek
Harris; NETTIE THOMPSON, individually and
as guardian *ad litem* of Annette Renee Thompson;
OPHELIA AIKEN, individually and as guardian
ad litem of Brandon Bell; ASHEVILLE CITY
BOARD OF EDUCATION; BUNCOMBE
COUNTY BOARD OF EDUCATION;
DURHAM PUBLIC SCHOOLS BOARD OF
EDUCATION; WAKE COUNTY BOARD OF

SECOND AMENDED
COMPLAINT BY
PLAINTIFF-
INTERVENORS
CMS STUDENTS
AND CHARLOTTE-
MECKLENBURG
NAACP

EDUCATION; WINSTON-SALEM/FORSYTH
COUNTY BOARD OF EDUCATION,

Plaintiff-Intervenors,

and

RAFAEL PENN; CLIFTON JONES, individually
and as guardian *ad litem* of CLIFTON MATTHEW
JONES; DONNA JENKINS DAWSON,
individually and as guardian *ad litem* of
NEISHA SHEMA Y DAWSON and TYLER
ANTHONY HOUGH-JENKINS, DENISE
HOLLIS JORDAN, individually and as guardian
ad litem of SHAUNDRA DOROTHEA JORDAN
and BURRELL JORDAN, V; TERRY DARNELL
BELK, individually and as guardian *ad litem* of
KIMBERLY SHANALLE SMITH; SUSAN
JANNETTE STRONG, individually as guardian
ad litem of TRACEY ANNETTE STRONG and
ASHLEY CATHERINE STRONG; CHARLOTTE
BRANCH OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Intervenors,

vs.

CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION,

Plaintiff-Intervenor and
Realigned Defendant,

and

STATE OF NORTH CAROLINA and the
STATE BOARD OF EDUCATION.

Defendants.

Plaintiff-Intervenors Rafael Penn, Clifton Jones, Clifton Matthew Jones, Donna
Jenkins Dawson, Neisha Shemay Dawson, Tyler Anthony Hough-Jenkins, Denise Hollis
Jordan, Shaundra Dorothea Jordan, Burrell Jordan, V. Terry Darnell Belk, Kimberly

Shanalle Smith, Susan Jannette Strong, Tracey Annette Strong, Ashley Catherine Strong, and the Charlotte-Mecklenburg Branch of the National Association for the Advancement of Colored People allege and state the following against the defendants:

NATURE OF THIS ACTION

1. Plaintiffs include students (hereafter, "the CMS students") who attend public high schools in the Charlotte-Mecklenburg school district (hereafter, "the CMS district"), some of whom are represented by their parents and next friends. Plaintiffs also include the Charlotte-Mecklenburg Branch of the National Association for the Advancement of Colored People (hereafter, "the NAACP"), many of whose members have children who now attend or expect to attend public high schools in the CMS district.
2. Plaintiffs intervene in this lawsuit to enforce the constitutional rights of CMS high school students to a sound basic education—which is guaranteed by the North Carolina Constitution, art. I, § 15 and art. IX, § 2 (1), as clarified by the North Carolina Supreme Court in *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997), by *Hoke County Board of Education v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004), and by the various prior orders and decisions of this Court.
3. Plaintiffs CMS students attend, or expect to attend, high schools within the CMS school district that have undergone profound changes in their student populations during the past five years because of a series of resolutions adopted by defendant Charlotte-Mecklenburg Board of Education (hereafter, "the CMS Board"). These resolutions have created and implemented a new plan for student assignment (hereafter, "the 2000 Plan").

4. The 2000 Plan succeeded 28 years of federal court-supervised assignment plans that were designed to bring about racial desegregation under the *Swann v. Charlotte-Mecklenburg Board of Education* lawsuit. The 2000 Plan was built upon a policy foundation emphasizing parental choice—a “home school guarantee” that all students could attend a school in proximity to their residences—and an assurance that these home school guarantees and other choices would be stable “to the fullest extent feasible.”

5. The defendant CMS Board knows, and was cautioned by educational consultants, that the CMS district is comprised of residential neighborhoods that vary widely in their average socioeconomic circumstances. Some neighborhoods, especially in central city and west Charlotte, are predominantly lower-income. Others, especially in the northern and southern suburbs of Charlotte, are predominantly higher-income. The defendant CMS Board knew, therefore, that its adoption of the 2000 Plan with its “home school guarantee” would necessarily create public schools whose student populations would vary greatly in their overall average socioeconomic circumstances.

6. The 2000 Plan has created many “high poverty” and low-performing schools within the CMS school district. These high poverty and low-performing schools enroll disproportionately large concentrations of students who stand at risk of educational failure according to every known measure: poverty, parental unemployment or underemployment, low parental educational levels, single parent family status, inadequate or unstable housing, poor health, racial minority status, limited English proficiency, and status as exceptional children.

7. The students in these high poverty and/or low-performing schools have experienced extraordinarily high rates of teacher and administrative turnover, school disorder, and academic failure. They are not receiving the sound basic education guaranteed by *Leandro*, and the defendants have failed in their constitutional duties to provide that education.

PARTIES

PLAINTIFFS

8. Plaintiff Rafael Penn is a resident of Mecklenburg County. Plaintiff Penn was a student at Zebulon B. Vance High School in the CMS district until he concluded that he could not receive a sound basic education from CMS and enrolled in a GED program with the Urban League in the spring of 2005.

9. Plaintiff Clifton M. Jones is a resident of Mecklenburg County and is a student at Phillip O. Berry Academy in the CMS district. He is a minor and is represented in this case by his father, Clifton Jones.

10. Plaintiff Neisha Shemay Dawson is a resident of Mecklenburg County and is a student at Olympic High School in the CMS district. She is a minor and is represented in this case by her mother, Donna Jenkins Dawson.

11. Plaintiff Tyler Anthony Hough-Jenkins is a resident of Mecklenburg County and is a student at Southwest Middle School in the CMS district. He is a minor and is represented in this case by his mother, Donna Jenkins Dawson.

12. Plaintiff Shaundra Dorothea Jordan is a resident of Mecklenburg County and is a student at Garinger High School in the CMS district. She is a minor and is represented in this case by her mother, Denise Hollis Jordan.

13. Plaintiff Burrell Jordan ,V, is a resident of Mecklenburg County and is a student at Garinger High School in the CMS district. He is a minor and is represented in this case by his mother, Denise Hollis Jordan.

14. Plaintiff Kimberly Shanalle Smith is a resident of Mecklenburg County and is a student at West Charlotte High School in the CMS district. She is a minor and is represented in this case by her father, Terry Darnell Belk.

15. Plaintiff Tracey Annette Strong is a resident of Mecklenburg County and is a student at E.E. Waddell High School in the CMS district. She is a minor and is represented in this case by her mother, Susan Jannette Strong.

16. Plaintiff Ashley Strong is a resident of Mecklenburg County and is a student at E.E. Waddell High School in the CMS district. She is a minor and is represented in this case by her mother, Susan Jannette Strong.

17. Plaintiff Charlotte-Mecklenburg Branch of the National Association for the Advancement of Colored People is a local affiliate of the nation's oldest civil rights organization, dedicated to seeking justice for African Americans and other people of color. The membership of the Charlotte-Mecklenburg NAACP Branch includes parents whose children are currently enrolled or expect to enroll in CMS high schools, and who will be affected by the outcome of this litigation.

DEFENDANTS

18. Defendant Charlotte-Mecklenburg Board of Education is a corporate body granted powers pursuant to state law. It has the authority to sue or be sued under N.C. Gen. Stat. § 115C-40. The State has delegated to the CMS Board the "general control and supervision of all matters pertaining to the public schools in [its] respective local school

administrative unit[]," and the Board is charged with "execut[ing] the school laws in" its district, N.C. Gen. Stat. § 115C-40, so as "to provide adequate school systems within [its] respective local school administrative unit[], as directed by law." N.C. Gen. Stat. § 115C-47(1).

19. Defendant State of North Carolina (hereafter, "the State") is responsible under the North Carolina Constitution for public education. Art. I, § 15. It is the State's constitutional duty to guard and maintain the fundamental right to an adequate education. Consistent with this duty, the State must provide, through legislation enacted by the General Assembly, for a general and uniform system of free public schools wherein equal opportunities are provided for all students. Art. IX, § 2(1). The North Carolina Supreme Court has held that the State is ultimately responsible for the provision of a constitutionally adequate educational system, even when it delegates operational authority to local school boards. *Hoke County Board of Education v. State*, 358 N.C. 605, 636-38, 599 S.E.2d 365, 389-91 (2004).

20. Defendant State Board of Education (hereafter, "the State Board") is an agency of the State of North Carolina, charged with the "general supervision and administration of the free public school system" of the State of North Carolina. N.C. Gen. Stat. § 115C-12 (1).

JURISDICTION AND VENUE

21. This Court has jurisdiction over the subject matter of this action under N.C. Gen. Stat. §§ 7A-245(a) (1), (2), (3), & (4).

22. This Court has jurisdiction over the person of the defendants under N.C. Gen. Stat. § 1-75.4.

FACTUAL ALLEGATIONS

Some Historical Background

23. For over 15 years, from the late 1970s until 1992, the CMS system operated under a federal desegregation plan approved by a federal district court, which formally oversaw many CMS educational decisions as part of the remedy phase of the *Swann v. Charlotte-Mecklenburg Board of Education* case. The CMS assignment plan, based on the remedial requirements of the Equal Protection Clause of the Fourteenth Amendment, required efforts at racial balance in virtually every elementary, middle, and high school. Because of the lower average incomes of African American families than of white families, this racial desegregation led indirectly toward the creation of schools with relatively similar socioeconomic compositions throughout the CMS district.

24. In 1992, the CMS Board, responding to the proposal of a new school superintendent, began to experiment with a more flexible system of student assignments, in which parents had the option to choose one of many magnet schools for their children.

25. New litigation in 1997 over CMS's assignment policy led to a declaration by the federal district court in 1999 that the CMS district had become "unitary" and no longer required federal judicial supervision. As part of its final order and judgment, the district court enjoined the CMS Board to cease any use of race as a criterion in making student assignments. The federal district court's factual finding that the CMS district had become "unitary" was affirmed on appeal to the United States Court of Appeals for the Fourth Circuit. The portion of the district court's order enjoining the CMS Board's further use of race in making student assignments was vacated.

The CMS Board's Creation of High Poverty and Low-Performing Schools

26. In March of 1999, the CMS Board adopted a document entitled *Achieving the CMS Vision: Equity and Student Success*, which set forth the basic goals and strategies for a new student assignment system. On June 1, 2000, the CMS Board adopted a resolution committing itself to the new plan and instructing the superintendent to develop a student assignment plan for 2002-2003 that would "maximize stability for students to the fullest extent feasible," "guarantee availability of a 'home' school assignment choice for every student in proximity to the student's home," and "guarantee[] options for low performing students" and for "students of low socioeconomic status" . . . "who are assigned to home schools with high concentrations of low performing students, to choose assignment to schools with higher performance and lower concentrations of low socioeconomic status."

27. A revised version of the plan was approved on April 3, 2001. Under that revised plan, most students, including the plaintiffs, who attend high poverty and/or low-performing high schools in the CMS district are effectively locked into those schools by a system that begins with an absolute home school guarantee based upon a parent's residence at the elementary school level and then links each elementary school to middle and high schools that likewise are "high poverty."

28. The CMS Board's student assignment plan has led to disproportionate underutilization of its high poverty high schools. For example, West Mecklenburg and B.E. Waddell—two of the CMS district's center city high schools—operated at 77% and 81% capacity respectively during the 2004-2005 academic year, with West Charlotte, O. Berry Academy, and Vance high schools at 90%, 95% and 96% capacity respectively.

During the same academic year, CMS high schools in the northern and southern suburbs were seriously overcrowded—Butler at 127%, North Mecklenburg at 120%, Providence at 119%, and South Mecklenburg at 118% capacity.

29. In early 2005, the CMS Board underwent a Comprehensive Reassessment of Student Assignment and, in July 2005, adopted amendments (hereafter, "the 2005 Plan") to the 2000 Plan.

30. The CMS Board adopted its 2005 Plan, aware that it would perpetuate the existence of high poverty and low-performing schools within the CMS district that are now experiencing high rates of student failure.

31. The CMS Board adopted its 2005 Plan, aware that most high poverty schools create significantly more adverse learning environments for their students.

32. On information and belief, the 2005 Plan will worsen the economic and racial isolation that emerged under the 2000 Plan and further increase the educational risks to the intervening CMS students and other students consigned to high poverty schools.

33. At present, CMS students who attend high poverty and/or low-performing high schools stand at grave risk of suffering permanent and irreparable injury to their prospects for post-secondary educational or vocational training, for competing on an equal basis with others in further formal education or gainful employment, and for functioning in a complex and rapidly changing society.

34. On information and belief, students within many if not all of the CMS district's high schools are disproportionately segregated by classroom according to their race and/or socioeconomic status, with disproportionate numbers of lower income and

non-white students grouped together in low-performing classes that often have less well-qualified teachers. Even in otherwise high-performing high schools, such in-school assignment policies operate to deny these students their right to a sound basic education, as reflected by the huge disparity in grade level proficiency percentages for low income students as opposed to their higher income peers. For example, in CMS's five wealthiest high schools, only 39% of students eligible for free or reduced-price lunch reached grade level proficiency in 2003-04, while 74% of their middle and higher income peers reached grade level proficiency.

35. As developed more fully below, low income students in CMS's five highest poverty high are doubly disadvantaged: by the district's failure to educate low income and minority children generally and by their attendance at a high poverty school. Only 24% of these students reached grade level proficiency in 2003-04.

Educational Consequences of CMS's High Poverty Schooling

36. Although the CMS Board's plan has only been in effect for three academic years (2002-2003 through 2004-2005), very wide disparities in student performance have already emerged among the schools, grouped by their socioeconomic status.

37. The high school composite scores reported by the North Carolina Department of Public Instruction in 2003-2004 are far lower at the five highest poverty schools among CMS's 17 high schools—West Charlotte (61.92% eligible for FRPL; 31% at or above grade level); Phillip O. Berry Academy of Technology (57.54 eligible for FRPL; 44.5% at or above grade level); Garinger (57.03% eligible for FRPL; 44.9% at or above grade level); West Mecklenburg (46.49% eligible for FRPL; 48% at or above grade level); and E.E. Waddell (45.56% eligible for FRPL; 40.7% at or above grade

level)—than the high school composite scores at CMS's five lowest poverty high schools—Providence (4.92% eligible for FRPL; 84.9% at or above grade level); Hopewell (11.61% eligible for FRPL; 68% at or above grade level); North Mecklenburg (13.91% eligible for FRPL; 72% at or above grade level); South Mecklenburg (15.37% eligible for FRPL; 74% at or above grade level); and, Myers Park (17.78% eligible for FRPL; 75% at or above grade level).

38. The story of two academic worlds, far apart, was repeated by CMS in 2004-2005. Reports from the 2004-2005 school year reveal that composite scores at the five highest poverty schools were far lower—West Charlotte: 35.7% at or above grade level; Phillip O. Berry Academy of Technology: 46.6% at or above grade level; Garinger: 42.1% at or above grade level; West Mecklenburg 46.7% at or above grade level; and E.E. Waddell 47.6% at or above grade level— than the 2004-2005 scores at CMS's five lowest poverty schools—Providence: 86% at or above grade level; Hopewell: 64.6% at or above grade level; North Mecklenburg: 71.9% at or above grade level; South Mecklenburg: 72% at or above grade level; and, Myers Park: 81.2% at or above grade level.

39. These disparities in student performance are caused, in substantial part, by the high concentrations of low-income and at-risk students in the lowest performing schools, and by the failure of the defendants to provide sufficient compensating fiscal, human, and educational resources to overcome these demographic disadvantages.

40. Lower income and at-risk students who attend higher income schools significantly outperform, on average, lower income students who attend high poverty schools.

41. Lower income students at higher income schools often outperform higher income students at lower income schools. For example, at Providence, CMS's wealthiest high school, 54.5% of lower income students performed at or above grade level in 2003-04. At West Charlotte, CMS's highest poverty high school, only 32.4% of middle and high income students performed at or above grade level in 2003-04.

42. On information and belief, students who attend high poverty schools are more likely to drop out of school before graduation than are students in the CMS district as a whole. On information and belief, students who attend high poverty schools are less likely to graduate than are students in the CMS district as a whole.

43. On information and belief, students who attend high poverty high schools are more likely to face both in-school and out-of-school suspensions than are students in CMS's higher income schools.

44. The academic atmosphere in high poverty high schools—both in class and out of class—is substantially more chaotic and dysfunctional than is the academic atmosphere in CMS's higher income schools. At Phillip O. Berry Academy of Technology, for example, plaintiff Clifton Jones' 2003-04 Freshman Focus class spent most days with no teacher at all, neither a qualified, certified teacher teaching in field, nor even a substitute teacher. Although CMS points to the Freshman Focus class as central to its strategy for stemming the district's widespread high school failure, plaintiff Jones and his classmates typically watched Jerry Springer on television during their Freshman Focus class.

The School Experiences of CMS's Students in High Poverty Schools

45. Plaintiff Shaundra Dorothea Jordan, assessed as academically gifted in elementary school, is a young mother who is determined to stay in school and go on to college. Shaundra passed the tenth grade at Garinger during the 2004-2005 academic year with low grades and low EOC scores. In school, her biggest struggle has been to stay focused despite the daily chaos and disorder in core classes, including English II, World History, Biology and Geometry. Shaundra's mother has unsuccessfully tried to transfer Shaundra to East Mecklenburg, David W. Butler or Independence high schools.

46. In 2004-2005, Plaintiff Kimberly Shanalle Smith, assessed as academically gifted in elementary school, completed her freshman year at West Charlotte High School. Her 2004-2005 U.S. History class had substitute teachers the first three quarters of the year. Some of the substitutes handed out worksheets, but none of the students' worksheets were graded or recorded. There were no lectures and no tests. Kimberly received an A, but in her words, "none of us earned what we got."

47. Plaintiff Kimberly Shanalle Smith's experiences in other core classes were not much better. The 40 African American students in her biology class could not understand their Biology teacher, for whom English was a second language. Kimberly earned a D as her final grade in biology.

48. Plaintiff Kimberly Shanalle Smith saw fights "by the day" at West Charlotte. The physical fighting did not bother her as much as the "constant loud arguing that you can't get away from." Kimberly has had friends suspended for arguing with teachers. Kimberly believes that the school "never deals with kids positively. Just negatively."

49. On information and belief, teachers and administrators in many high poverty and/or low-performing high schools communicate quickly with parents of students when there is a discipline problem. However, these teachers and administrators are significantly less available when parents want to discuss academic issues.

50. Plaintiff Kimberly Shanalle Smith has been scared at school "three or four times" when there were rumors of a big fight involving many students. Her fears "influence where you think you might be safe. You wait a little bit for the fight to get over before you walk on a certain part of campus or try to catch your bus." The big fights are "different from unexpected fights when it's just two or three kids."

51. West Charlotte is the home school for Plaintiff Kimberly Shanalle Smith. She and her parents tried unsuccessfully to have her transferred to Myers Park and Vance. They did not even list West Charlotte as one of their choices.

52. In 2004-2005, Plaintiff Tracey Annette Strong had an Individualized Education Plan that was followed haphazardly at best during her freshman year at E.E. Waddell. Two to three times a week, she and her classmates attended "Algebra Thinking" class in the absence of a teacher, totally without instruction. Tracey ultimately failed the class.

53. In 2004-2005, Plaintiff Tracey Annette Strong, a ninth-grader, was placed in an eleventh grade United States History class. Tracey failed the class and failed the EOC, but was told it would not count against her because it was an eleventh grade credit.

54. Plaintiffs who attend high poverty and/or low-performing CMS high schools regularly experience learning environments that are more focused on establishing order than on students' academic achievement or on personal and life advancement.

**The Defendants' Knowledge of The Adverse Educational Consequences
Of High Poverty Schooling**

55. The adverse effects of high poverty schools have been widely reported for nearly forty years. In his magisterial study of student performance and school resources in the mid-1960s, *Equality of Educational Opportunity*, Dr. James S. Coleman and his colleagues, commissioned by the United States Congress to carry out a comprehensive analysis as part of the implementation of the Civil Rights Act of 1964, concluded that "a pupil's achievement is strongly related to the educational backgrounds and aspirations of the other students in the school," and that if a "minority pupil is put with schoolmates with strong educational backgrounds, his achievement is likely to increase." Coleman Report, at 22. Indeed, the Coleman Report found that "[a]ttributes of other students account for far more variation in the achievement of minority group children than do any attributes of school facilities and slightly more than do attributes of staff." *Id.* at 302 (emphasis removed).

56. Professor Coleman's findings have been replicated in dozens of highly reliable, meticulous scientific studies. Many distinguished scholars and researchers, including Christopher Jencks, Alison Wolf, Karl White, Mary M. Kennedy, Susan E. Mayer, Robert L. Crain, Rita E. Mahard, Judith Anderson, Eric Camburn, Luis Laosa, Russell Rumberger, Sheryll Cashin, Richard Kahlenberg, and Gary Orfield, have reached similar conclusions based upon their careful studies of empirical evidence. These findings are well known to the defendant CMS Board and to the defendants State and State Board.

57. On information and belief, Professor Gary Natriello of Columbia University Teacher's College was retained as an expert by the CMS Board as it conducted its revision of its student assignment policies in 2000 and thereafter. Professor

Natriello told the CMS Board that "Once you get at least 50% concentrations of poor students, it becomes very difficult to be effective in helping disadvantaged kids achieve." He also told the Board that it would cost significantly more to educate students in high poverty settings.

The Equity Plus II Plan: CMS's Purported Compensation for High Poverty Schooling

58. The CMS Board has acknowledged that "some greater concentrations of low socioeconomic status . . . may not be reasonably avoidable under [the 2000] Plan." To compensate for this educational disadvantage, it declared as part of its 2000 Plan that "schools with higher concentrations of low socioeconomic status and schools which qualify as Equity Plus II schools under the applicable criteria of the Board shall receive additional resources under the Equity Plan, including, but not limited to, family support services, teacher and administrator incentives to create and maintain stable balances of experience and qualification, reduced class sizes and curriculum enhancements to elevate and meet expectations of excellence."

59. In effect, the 2000 Plan accepted the certainty that many of CMS's high schools would become far more economically and racially isolated. As compensation, CMS made the promise that these "Equity Plus II" schools would receive sufficient additional inputs and resources to bring equity and high performance to every school.

60. Under the CMS Board's Equity Plus II plan, some schools with higher proportions of low income and/or at-risk children, though not all, are entitled to compensating educational inputs, including financial incentives designed to recruit and retain significant numbers of competent and experienced teachers to these schools.

61. These compensating inputs and resources have not, however, been provided to all high poverty and/or low-performing schools that need them, nor have they been sufficient, even in the schools that receive them, to offset the severely crippling learning environments created within CMS's high poverty high schools.

62. These inputs and incentives have failed to stem very high losses of teachers from CMS's high poverty schools—a 38% departure rate for teachers employed in such schools in 2003-2004, compared with a 16% departure rate in the CMS district overall.

63. The Equity Plus II plan has not increased levels of student performance and graduation rates to levels comparable to those in other schools in the CMS district. Nor has it reduced dropout rates, disciplinary rates, and other indicia of academic distress and failure, to levels comparable to those in other schools in the CMS district.

64. Equity Plus II schools have not received all of the resources initially promised them to compensate for the grave educational disadvantages caused by high poverty and low-performance concentrations

65. Since 2003, the CMS Board of Education has under-funded Equity Plus II schools by millions of dollars annually.

66. In 2003, then Superintendent James Pughsley reported that the district was \$20 1 million short in providing sufficient funds to bring Equity Plus II schools up to standard. Equity Plus II high schools accounted for at least \$4.6 million of that underfunding.

67. Since 2003, the district has not released an updated number for the Equity Plus shortfall. However, the Equity Status Reports from 2004 and 2005 suggest that

underfunding has continued in many areas. For instance, more than \$9.2 million of the \$20.1 million shortfall in 2003 was due to the failure to fund a promised Designated Equity Plus II bonus incentives to faculty. Equity Plus II high schools accounted for \$2.3 million of the missing bonuses in that year. The Board and Commission did not pay the bonuses in 2004 or 2005, causing the total deficit in missing teacher bonuses to at least triple.

68. Compensatory funding for high poverty schools has been sought from the Mecklenburg Board of County Commissioners. In 2004, the Board appropriated \$5.8 million from restricted contingency funds to the CMS district to fund a "High School Challenge." This appropriation was designed to focus resources so as to increase test scores at the three lowest-performing high schools: Garinger, West Charlotte, and West Mecklenburg. The CMS district announced target improvements on their composite scores for 2004-05, of 55% at West Mecklenburg, 51% at Garinger, and 40% at West Charlotte.

69. Of the three aforementioned schools, only West Charlotte improved its composite scores from 2003-04 to 2004-05—a modest increase from 31% to 35.7% that fell substantially below its projected target.

70. West Mecklenburg and Garinger suffered, not advances, but instead declines in grade level proficiency from 2003-04 to 2004-05. West Mecklenburg composite scores dropped from 48.0% to 46.7% in grade level proficiency. Garinger's composite scores dropped from 44.9% to 42.1%.

The Teacher and Staff Challenges in High Poverty Schools

71. Although experienced teachers and administrators are key elements in achieving a sound basic education, the CMS Board has failed to assure a stable balance of experienced and qualified teachers in its high poverty high schools.

72. On information and belief, despite its promise of Equity Plus II bonuses and other strategies to recruit and retain competent, qualified teachers, teaching in their own subject areas, CMS has not provided sufficient fiscal and other resources to overcome the difficult working conditions, demoralization of teachers, staff and students, and other features that prompt teachers and staff to resign or transfer from CMS's high poverty high schools.

73. Despite the presence of some remarkable and dedicated teachers and administrators in CMS's high poverty and/or low-performing high schools, the average levels of experience, retention, teachers who teach in-field, and other recognized measures of teaching excellence are significantly lower in high poverty and low-performing high schools than in other schools within the CMS district.

74. On information and belief, even if Equity Plus II schools had received all of the resources promised under the Equity Plus II program—and they did not—Equity Plus II high schools would still lack the human, fiscal, and educational resources necessary to meet the educational needs of the students who attend these high-poverty and low-performing high schools.

**The Systemwide Underfunding of CMS's High Poverty
And Low-Performing Schools**

75. On information and belief, local educational authorities governing CMS do not have the will and/or the financial wherewithal to staff and fund CMS's high

poverty and low-performing high schools at the levels necessary to provide the students assigned to these schools the opportunity for a sound, basic education.

76. In an August 5, 2005 letter from CMS Superintendent Francis Haithecock to the Honorable Howard Manning, the CMS administration admitted that CMS had concluded, as of January of 2004, that its "lack of highly qualified teachers in every classroom" was a "root cause" of low performance in CMS high schools.

77. Superintendent Haithecock admitted that two other "root causes" of poor high school performance identified by CMS in 2004 were the high percentages of ninth graders entering high school below grade level and the CMS high schools' "lack of fidelity in the implementation of initiatives and programs."

78. To address the "root causes" identified in January of 2004, the CMS administration requested \$19 million from the Mecklenburg Board of County Commissioners in 2004 to implement various "programs and interventions identified" as part of its new "High School Charter."

79. The Mecklenburg Board of County Commissioners, however, rejected the CMS request, instead appropriating only a \$5.8 million "Challenge Grant," restricted to use in three high poverty schools—West Mecklenburg, West Charlotte and Garinger High Schools. No finding was made by the Commissioners or CMS that these were the only CMS high schools that needed additional funds.

80. On May 11, 2004, the Education Budget Advisory Committee ("EBAC"), comprised of three corporate executives appointed by the CMS School Board, criticized as fiscally insufficient the CMS administration's request to the Mecklenburg Board of County Commissioners for an additional \$24.9 million to fund CMS's 2004-05 operating

budget. The EBAC calculated that \$50 million in local funds was the minimal necessary to meet the needs of CMS students—especially after two years of flat funding and after the addition of 7500 new students to the system

81. The EBAC estimated in its May 11, 2004 report that educating each at-risk student required at least 130% of the expense necessary to educate other students. The EBAC criticized the CMS administration's request for a \$24.9 million allocation from the Mecklenburg Board of County Commissioners as "not designed to address the realities."

82. During the 2004-2005 academic year, CMS high schools, especially high poverty high schools, again failed to deploy sufficient numbers of competent and certified teachers in its class rooms.

83. In January 2005, in response to this continuing inability to recruit and retain highly qualified teachers into high poverty and low-performing schools, the CMS administration "recommended and the Board of Education adopted an initiative entitled 'Strategic Framework for Staffing Needy Schools With Quality Teachers and Administrators.'"

84. Superintendent Haithcock explained in her August 5, 2005 letter to the Court that this new "framework would focus funds on aggressive recruitment and placement of principals, enhanced teacher incentives, strengthening of instructional staff, enhanced working conditions and a 'state of emergency' provision" allowing involuntary placement of teachers based on students' academic performance. (Superintendent Haithcock Letter of Aug. 05, 2005, at 4)

85. According to Supt. Haithcock, "This initiative required \$17.6 million in additional funds, which the Board of Education requested from the Mecklenburg County Commission. Unfortunately, those funds were not provided by the Mecklenburg County Commission." *Id.*

86. In sum, during the 2003-2004 and 2004-2005 academic years, the Mecklenburg Board of County Commissioners refused to allocate resources that the CMS administration and the EBAC both judged to be indispensable to meet the substantial educational challenges burdening CMS's high poverty, low-performing high schools, in particular, to recruit and retain highly qualified teachers and staff in these schools.

87. Each year from 2001-02 through 2004-05, the Mecklenburg Board of County Commissioners reduced its per pupil allocation to CMS, despite an ongoing, well-documented pattern of low performance in most of the district's high poverty high schools.

88. Although the CMS administration has recognized that supplemental local funding to address CMS's problems in meeting the educational needs of students in high poverty and low-performing high schools is "not forthcoming," the CMS administration has promised that it will "still work to implement parts" of the Framework for Staffing Needy Schools With Quality Teachers and Administrators "by redirecting funds from other [unnamed] sources." (Superintendent Haithcock Letter of Aug. 05, 2005, at 4).

89. On information and belief, the CMS Board has received insufficient local funding to support its 2004 High School Charter and its 2005 Framework for Staffing Needy Schools. The CMS Board has substantially fewer funds available than the estimated three-year budget needs provided to the CMS Board by Superintendent James

Pughsley in his Financial Projection for the Year Ending June 30, 2004 through 2006, issued on May 27, 2003.

90. In 2003, then-Superintendent Pughsley reported to the Board of Education that CMS's three-year plan to recruit quality teachers, support ESL students, provide for high achieving students and guarantee equity for at-risk students would require an increase of over \$161 million in local funding, and over \$84 in additional State funding, between 2003-04 and 2005-06.

91. Instead of allocating the necessary funding increases to carry out this educational mission, the Mecklenburg Board of County Commissioners allocated no funding increases for CMS for the three school years 2002-03 through 2004-05, during a period when CMS experienced an increase in enrollment of 9000 students. By 2005-06, when the Mecklenburg Board of County Commissioners voted to increase CMS funding by \$115 million, the three-year total local revenue shortfall, when measured against the needs estimated by the Superintendent in May of 2003, was at least \$46 million.

92. On information and belief, at no time has the CMS Board initiated the statutory procedures provided by N.C. Gen.Stat. §115C-431 to require the Mecklenburg Board of County Commissioners to fund critical programs necessary to fulfill the constitutional rights of CMS students assigned to CMS's high poverty and/or low-performing schools to a sound basic education.

The State's Inaction and Malfesance

93. Neither the State nor the State Board of Education have effectively interceded with the CMS district to assure that the rights of students denied the opportunity for a sound, basic education by local educational officials are being honored.

94. While the Governor and Department of Public Instruction have recently promised that they will deploy "turnaround teams" and other programs to CMS to enhance the quality of teaching and instruction in high poverty and low-performing schools, on information and belief, the State of North Carolina, the State Board of Education and the N.C. Department of Public Instruction have no present plan to commit sufficient human, fiscal and educational resources to lift at-risk students to grade level performances in CMS's high poverty and low-performing high schools.

95. In a letter dated August 26, 2005, Superintendent Haithcock informed Howard Lee, Chair of the State Board of Education that "we [at CMS] understand that additional funds from the State for CMS high school reform efforts are extremely limited" even though "such additional funds are necessary for sustained improvement." (August 26, 2005 Letter from Supt. Haithcock to Chairman Howard Lee, at 2)

96. On information and belief, none of the defendants in this action has a comprehensive plan for ensuring that either the at-risk students who are concentrated in CMS's high poverty and low-performing high schools, or the at-risk students who also attend other high schools throughout the CMS district, will be provided with the teachers or the curricular and educational resources necessary to guarantee the opportunity for a sound, basic education.

97. On information and belief, none of the named defendants in this action has a comprehensive plan for ensuring that at-risk students concentrated in CMS's high poverty and low-performing high schools receive the medical, psychological, and social support services necessary, both in school and out of school, if they are to have an opportunity for a sound, basic education.

CLAIM FOR RELIEF:

**THE FAILURE OF THE CMS BOARD, THE STATE & THE STATE BOARD
TO PROVIDE SUFFICIENT HUMAN, FISCAL, AND EDUCATIONAL
RESOURCES TO HIGH POVERTY AND LOW-PERFORMING
HIGH SCHOOLS IN THE CMS DISTRICT**

98. Plaintiffs incorporate by reference each of the allegations of paragraphs 1 through 97 of this complaint.

99. North Carolina children have a fundamental right under Article I, § 15 and Article IX, § 9(2) of the North Carolina Constitution to the opportunity for a sound basic education. Defendants the CMS Board of Education, the State of North Carolina, and the State Board of Education have duties to guard and protect that right.

100. The CMS Board of Education, the State of North Carolina, and the State Board of Education each have a duty to ensure that all CMS students, including (but not limited to) students who attend CMS's high poverty and low-performing high schools, have an opportunity to receive a sound, basic education.

101. The CMS Board of Education, the State of North Carolina, and the State Board of Education each have violated their duty to provide sufficient human, fiscal and educational resources to CMS's high poverty and low-performing high schools in order to assure that all students in those schools receive a sound basic education.

102. On information and belief, the CMS Board of Education has not provided, and cannot provide, a sound basic education to students in CMS's high poverty and low-performing high schools at existing funding levels, no matter what combination of educational policies it chooses to employ.

103. On information and belief, the human, fiscal, and educational resources necessary to provide a sound basic education in such settings will require at least two

times, or perhaps three times as many dollars per student as would be needed for similar students in less poverty-concentrated educational settings.

104. The State of North Carolina has failed itself to provide sufficient funds to the CMS district to assure that CMS students who attend high poverty, low-performing schools receive a sound basic education, and/or the State and State Board have failed to take legislative, administrative and/or executive actions necessary to require its agent, the CMS Board of Education, to secure those funds.

105. The State's failure in 2004 and 2005 fully to fund the Disadvantaged Student Supplemental Fund, or otherwise to develop and distribute significant additional funds to the CMS district to address the low performance of CMS students in high poverty and low performing high schools, constitutes a continuing violation of the constitutional rights of CMS high school students.

106. The North Carolina Constitution, as interpreted in *Leandro v. State*, requires that, when a significant proportion of students in some schools within a district are not receiving a sound basic education, the board of education of that district must, as its first priority, provide human, fiscal, and educational resources to those low-performing schools to assure that no schools are deprived of necessary resources to provide a sound basic education to all students, before it distributes its resources to achieve other or additional goals.

107. The CMS Board of Education has failed to adopt policies that distribute many key educational resources—including competent, certified teachers who are teaching in their field, high quality administrators, and other educational resources—with

a first priority to assure that students in low-performing schools receive what they need to provide a sound basic education.

108. On information and belief, the CMS Board of Education allocates to schools with far lower levels of poverty, and far higher levels of student performance, human, fiscal, and educational resources that exceed in educational value the resources made available to its high poverty, lower-performing high schools.

109. The CMS Board of Education, the State of North Carolina, and the State Board of Education have not met their constitutional obligations, but instead have fallen seriously short of assuring at least an equitable division of necessary but scarce human, fiscal, and educational resources to CMS's high poverty and low-performing high schools.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request:

1. An order enjoining the defendants to provide sufficient human, fiscal, and educational resources to every CMS high school, including every high poverty and low-performing school, to assure that all students in CMS high schools are being consistently provided with a sound basic education.
2. An order retaining jurisdiction over this case to ensure full compliance with the Court's decree:
3. An order granting to plaintiffs their attorneys' fees and reasonable costs to the extent permitted by law; and
4. An order granting such other and further relief as to the Court shall seem just and proper.

Respectfully submitted, this the 30th day of September, 2005

The University of North Carolina School of Law
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ATTORNEYS FOR PLAINTIFF-INTERVENORS

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

HOKE COUNTY BOARD OF
EDUCATION, et al.

Plaintiffs,

and

ASHEVILLE CITY BOARD OF
EDUCATION, et al.

Plaintiff Intervenor

and

RAFAEL PENN, et al.

Plaintiff Intervenor


vs.

STATE OF NORTH CAROLINA and the
STATE BOARD OF EDUCATION, et al.,
Defendants.


**NOTICE OF VOLUNTARY
DISMISSAL**

Pursuant to North Carolina Rule 41(a)(1)(i), plaintiff intervenors, Asheville City Board of Education, Buncombe County Board of Education, Durham Public Schools Board of Education, Wake County Board of Education, and Winston-Salem/Forsyth County Board of Education hereby voluntarily dismiss all claims asserted in this action.

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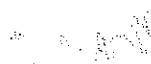
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May 4, 2006

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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NORTH CAROLINA: - ** FILED IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY: 2011 MAY 10 AM 9:26 SUPERIOR COURT DIVISION
FILE NO. 95-CVS-1158

HOKE COUNTY BOARD OF EDUCATION, et al.,

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.

MOTION FOR HEARING ON
CURTAILMENT OF PRE-
KINDERGARTEN SERVICES FOR AT-
RISK CHILDREN, ELIMINATION OF
EOC TESTING, AND DEFENDANTS'
COMPLIANCE WITH NORTH
CAROLINA'S CONSTITUTIONAL
REQUIREMENTS

Plaintiffs Hoke County Board of Education, *et al.* ("Plaintiffs") request that the Court hold a hearing and/or hearings on: (1) the reduction of pre-kindergarten services for at-risk children as reflected in the Budget for the upcoming biennium adopted by the House of Representatives ("House Budget"); (2) assessments and the elimination of certain End of Course ("EOC") tests; and (3) the continuation of the October 2009 hearing on the present state of Defendants' compliance with *Leandro's* constitutional requirements for competent principals, competent, certified teachers and sufficient resources for every school and the impact of the House Budget for the next biennium on such compliance.

BACKGROUND

The Supreme Court held in 1997 that all children in North Carolina are entitled to the opportunity to obtain a sound basic education. *Leandro I*, 346 N.C. 336. It held in 2004 that the Defendants in this case were failing to provide that opportunity to large numbers of the State's children. *Leandro II*, 358 N.C. 605.

A. Leandro Tenets and Minimal Compliance Standards

In its prior Notices of Hearing and Orders Re: Hearing, this Court has detailed the *Leandro* tenets and the minimal compliance standards as established by this Court and by the North Carolina Supreme Court. *See, e.g., Notice of Hearing and Order Re: Hearing*, Aug. 3, 2009. The Court's order and opinions are summarized below:¹

The North Carolina Supreme Court's decisions in *Leandro I* (346 N.C. 336) on July 24, 1997 and *Leandro II* (358 N.C. 605) on July 30, 2004, set in stone, once and for all, the following tenets relating to the Constitutional guarantee to each child of the right to an opportunity to obtain a sound basic education:

First, 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. The Supreme Court has defined a "sound basic education" as 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." (*Leandro I*, 346 N.C. at 347) (emphasis added).

¹ This summary is taken from the Court's Notice of Hearing and Order Re: Hearing dated August 3, 2009.

Second, 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 which 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. See, Notice of Hearing and Order Re: Hearing, p. 2, Aug. 3, 2009.

Third, a child who is showing Level III (grade level) or above proficiency on the State's ABC tests, End of Grade (EOG) tests or EOC tests, is obtaining a sound basic education in that subject matter and that a child who is not showing Level III proficiency (performing below grade level) on those same tests is not obtaining a sound basic education in that subject matter. The Supreme Court has affirmed this Court's determination that a showing of Level III proficiency is the proper standard for demonstrating compliance with the *Leandro* decision. *Leandro II*, 358 N.C. at 625. A child who is performing below Level III is "at-risk" of not obtaining a sound basic education and there are children "at-risk" of not obtaining a sound basic education located throughout the State of North Carolina and those children's needs are similar whether they live in a rural or suburban area.

Fourth, the State must assume responsibility for, and correct, those educational methods and practices that contribute to the failure to provide children with a constitutionally-conforming education. Further, when the State assesses and implements plans to correct educational
obligations in the face of a constitutional deficiency in a Local School System ("LEA"), or particular school, the solution proposed must ensure competent teachers in classrooms, competent principals in schools and adequate resources to support the instructional and support programs in that school so as to be *Leandro* compliant.

Fifth, LEAs are entitled to funding by the State sufficient to provide all students, irrespective of their particular LEA, with, at a minimum, the opportunity to obtain a sound basic education.

This Court has undertaken to monitor the State's progress with respect to carrying out its constitutionally mandated requirement that each and every child be afforded the equal opportunity to obtain a sound basic education. For the past several years, the Court has held hearings and has carefully reviewed the academic performance of every school in this State. Following its review, the Court has reported on various aspects of poor academic performance to the Chairman of the State Board of Education, and the Governor. Also, from time to time, the Court has reported this information to members of the General Assembly.

Poor academic performance remains a problem at all levels of education (elementary, middle and high schools) throughout North Carolina. As a result, the children who are blessed with the right to the equal opportunity to obtain a sound basic education as guaranteed by the Constitution and as set out in *Leandro*, are being deprived of their constitutional right to that opportunity.

B. Current State of Economy and the House Budget

The national economy has been, and remains, in difficult times and that problem has affected the economy of the State of North Carolina. The state of the economy and its resulting lack of generating revenue streams is a serious problem that is being grappled with by the Executive and Legislative branches. This financial crisis notwithstanding, the basic educational assets guaranteed to the children in North Carolina Public Schools must remain in place. It is imperative that every child's right to the opportunity for a sound basic education not be lost in by the continued financial crisis of this State.

On May 4, 2011, the North Carolina House of Representatives adopted the House Budget. This Budget would reduce the Continuation Budget for Public Education recommended by the Governor (the "Recommended Budget") from \$7.92 billion to \$7.16 billion for fiscal year 2011-2012 and from \$7.92 billion to \$7.19 billion for fiscal year 2012-2013. Some of the significant reductions and/or elimination of funding in the House Budget include, but are not limited to, (1) increases in discretionary reductions (LEA Adjustments) by \$42.1 million in FY 2011-2012 and by \$105.7 million in FY 2012-2013 (resulting in a total discretionary reduction of \$346.9 million in FY 2011-2012 and \$410.4 million in FY 2012-2013); (2) reduction in the At-Risk Student Services allotment by \$30 million (12%) in fiscal year 2011-2012 and 2012-2013; (3) reduction in funding for textbooks and inclusion of a provision prohibiting the State Board of Education from adopting any new textbooks throughout the biennium; and (4) elimination of funding for EOC tests in United States History, Civics and Economics, Algebra II, and Physical Science. In addition, the House Budget curtails pre-kindergarten services for at-risk children, including a \$16 million per year reduction in funding for More at Four, or approximately 20%, and a \$37.6 million per year reduction in funding for Smart Start, or approximately 20%.

The implications of the reductions and/or eliminations in the House Budget may seriously affect the ability of the State to meet the constitutional requirements mandated by *Leandro*.

NEED FOR A HEARING

Plaintiffs urge this Court to conduct a hearing and/or hearings at which time the Parties can present evidence regarding whether North Carolina's children, at present and during the next biennium, will have the opportunity for a sound basic education which is their right under the State constitution. Plaintiffs propose that the topics of such hearing and/or hearings include, without limitation: (1) the reduction in pre-kindergarten services for at-risk children as reflected in the House Budget; (2) assessments and the elimination of the EOC tests; and (3) the present state of compliance with the *Leandro* requirements for competent principals, competent teachers and sufficient resources for every school and the impact of the House Budget for the next biennium on such compliance.

A. Pre-Kindergarten Services

At the conclusion of the trial in this case in 1999, this Court found that (1) there was an inordinate number of "at-risk" children who were entering the Hoke County public school system; (2) that such "at-risk" children were starting behind their non "at-risk" counterparts; and (3) that such "at-risk" children were likely to stay behind, or fall further behind, their non "at-risk" counterparts as they continued their education. *Leandro II*, 358 N.C. at 641. This Court further found that "the State was providing inadequate resources for such "at-risk" prospective enrollees, and that the State's failings were contributing to the "at-risk" prospective enrollees' subsequent failure to avail themselves of the opportunity to obtain a sound basic education. *Id.* The North Carolina Supreme Court agreed with the trial court on these points and found that the evidence supported its findings. *Id.* at 642.

This Court found, and the North Carolina Supreme Court agreed, that the State's efforts in providing remedial aid to "at-risk" prospective enrollees was constitutionally inadequate. *Leandro II*, 358 N.C. 642. The State represented to this Court that it had chosen to address this deficiency by developing and expanding a "More at Four" program. *See Letter from Howard N. Lee and Patricia N. Willoughby to The Honorable Howard Manning Jr. attaching the State's plan to implement Leandro-based school reform, October 25, 2004; Letter from Howard N. Lee to The Honorable Howard Manning, Jr. regarding the State's compliance with Leandro, August 9, 2005.* This program of pre-kindergarten services for at-risk children is now in jeopardy in view of provisions in the House Budget.

Plaintiffs request that the Court hold a hearing on this subject which may include, without limitation, the following topics: (1) the number of children currently being served by the More at Four program; (2) the number of children estimated to be receiving services through the More at Four program in the upcoming year; (3) the number of children eligible for services through the More at Four program but for which such services are not currently being provided; (4) the right of "at-risk" prospective enrollees to receive remedial aid in order to avail themselves of their right to the opportunity for a sound basic education; (5) the State's constitutional obligation to provide such remedial aid/assistance to pre-kindergarten children who are identified as being "at-risk" of not being able to avail themselves of the opportunity for a sound basic education; (6) the proven effectiveness of pre-kindergarten services addressing this need; and (7) the State's plan to ensure at-risk students are given the opportunity for a sound basic education in light of the reductions contained in the House Budget for in at-risk student services and for the Smart Start and More at Four programs.

B. Assessments and the Elimination of the EOC Tests

The Supreme Court has stated that the use of test score evidence indicating student performance in subject areas that correspond to the very core of the Supreme Court's definition of a sound basic education is relevant to the question of whether children are receiving the opportunity for a sound basic education. *Leandro II*, 358 N.C. at 625. The EOG and EOC test scores from across the State and from Hoke County were submitted into evidence in this case in 1999 (and subsequently) and were used by the trial court to conclude that the failure of such a large contingent of Hoke County students to achieve Level III proficiency indicates that they were not obtaining a sound basic education in the subjects tested. *Id.* at 623, 625. While test scores are not the sole factor for assessing whether the State is meeting its constitutional obligation to provide children with the opportunity for a sound basic education, such evidence was an important contributing factor in the decision of this Court and the North Carolina Supreme Court. *Id.* at 625.

The elimination of the EOC tests by the General Assembly and the further 10% reduction in funding for the remaining tests as set out in the House Budget, hinders this Court's ability to monitor and assess whether the State is meeting its constitutional obligation to provide each child with the opportunity for a sound basic education. To ensure that certified, competent teachers are in the classrooms, as *Leandro* requires, there must be some objective way of measuring the teacher's performance in the classroom.

Plaintiffs request that the Court hold a hearing on this subject which may include, without limitation, the following topics: (1) the scientific validity of the EOC tests as an assessment of teacher performance; (2) what tests and/or assessments will be utilized in the future in order for the State to ensure that competent teachers are in the classroom and the timeline for each such future tests and/or assessments; (3) how the State is currently measuring teacher performance;

and (4) how the State will meet its obligation to assess teachers under Race to the Top funding requirements.

C. *Leandro* Compliance

The current financial difficulties of the State do not excuse or relieve it from its duty to satisfy the constitutional obligation to provide each and every child in North Carolina the opportunity to obtain a sound basic education. *See, Notice of Hearing and Order Re: Hearing*, p. 4, Aug. 3, 2009. Plaintiffs request that the Court hold a hearing in which the Parties can report on the following, as impacted by the House Budget for the next biennium: (1) the State's present compliance with the *Leandro* requirements for competent principals, competent teachers and resources for every school; (2) the State's plan to ensure that there will be sufficient competent certified principals and teachers in every school during the upcoming biennium despite the proposed budget cuts; and (3) the State's plan to ensure that each school has adequate resources to provide all students with the opportunity for a sound basic education in light of the cuts made in the House Budget. This portion of the hearings requested by this Motion would be a continuation of the Court's October 2009 hearing on the same subject matter.

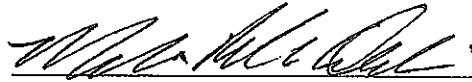
CONCLUSION

All children in North Carolina are entitled to an equal opportunity to obtain a sound basic education. To satisfy its obligation, the State must ensure that (1) every classroom is staffed with a competent, certified, well-trained teacher; (2) every school is led by a well-trained competent principal; and (3) every school is provided the resources necessary to support the effective instructional program within the school. The financial challenges being faced by the State do not relieve it of its obligation to provide this constitutional right to every child.

WHEREFORE, Plaintiffs respectfully request this Court hold a hearing and/or hearings to consider the impact and the constitutionality of: (1) the reduction in pre-kindergarten services

for at-risk children as reflected in the House Budget; (2) assessments and the elimination of the EOC tests; and (3) the present state of Defendants' compliance with the *Leandro* requirements for competent principals, competent teachers and sufficient resources for every school and the impact of the House Budget for the next biennium on such compliance.

This the 10th day of May, 2011.



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **MOTION FOR HEARING ON CURTAILMENT OF PRE-KINDERGARTEN SERVICES FOR AT-RISK CHILDREN, ELIMINATION OF EOC TESTING, AND DEFENDANTS' COMPLIANCE WITH NORTH CAROLINA'S CONSTITUTIONAL REQUIREMENTS** on the parties in this action by:

hand-delivering copies to the offices of:

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Counsel of Defendants State of North Carolina and State Board of Education

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depositing a copy thereof in the United States mail, postage prepaid, addressed as follows:

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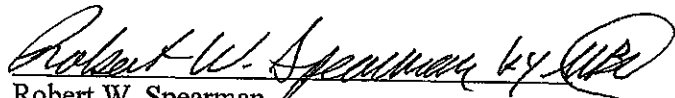
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This the 10th day of May, 2011


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NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY: 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.

FILED
2011 MAY 20 PM 3:51
WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER

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, June 22, 2011 at 10:00 a.m. in Courtroom 10-C, Wake County Courthouse.

All children in North Carolina are entitled to the equal opportunity to obtain a sound basic education. The children's constitutional right as set out in the North Carolina Constitution and this case follow:

Leandro Tenets and Minimal Compliance Standards

The North Carolina Supreme Court's decisions in *Leandro I* (346 N.C. 336) on July 24, 1997 and *Leandro II* (358 N.C. 605) on July 30, 2004, set in stone, once and for all, the following tenets relating to the Constitutional guarantee to each child of the right to an opportunity to obtain a sound basic education:

FIRST: 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 I p. 347*).....

SECOND: 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 which requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum: LEANDRO COMPLIANT PREREQUISITES

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.

FOURTH: That a child who is showing Level III (grade level) or above proficiency on the State's ABC tests, End of Grade (EOG) or End of Course (EOC), is obtaining a sound basic education in that subject matter AND that a child who is not showing Level III proficiency (performing below grade level) on the ABC tests is not obtaining a sound basic education in that subject matter.

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FIFTH: That a showing of Level III proficiency is the proper standard for demonstrating compliance with the *Leandro* decision.

SIXTH: That a child who is performing below Level III is "at-risk" of not obtaining a sound basic education.

SEVENTH: That there are children "at-risk" of not obtaining a sound basic education located throughout the State of North Carolina and those children's needs are similar whether they live in a rural or suburban area.

EIGHT: That the State must assume responsibility for, and correct, those educational methods and practices that contribute to the failure to provide children with a constitutionally – conforming education.

NINTH: That when the State assesses and implements plans to correct educational obligations in the face of a constitutional deficiency in an LEA, or particular school, the solution proposed must ensure competent teachers in classrooms, competent principals in schools and adequate resources to support the instructional and support programs in that school so as to be *Leandro* compliant.

TENTH: Local School Systems (LEAs) are entitled to funding by the State sufficient to provide all students, irrespective of their particular LEA, with, at a minimum, the opportunity to obtain a sound basic education.

The Supreme Court ended its decision in *Leandro II* with the following:

This Court now remands to the lower court and ultimately into the hands of the legislature 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. (358 N.C. 605,649)

This has been the law since April 4, 2002, when the Final Judgment was entered on the liability phase of this case. The North Carolina Supreme Court set the law in stone on July 30, 2004, over six (6) years ago. Since that time, this Court has

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undertaken to monitor the State's progress with respect to carrying out its constitutionally mandated requirement that each and every child be afforded the equal opportunity to obtain a sound basic education.

For the past several years, beginning in 2005 with the issue of poor performing high schools, the Court has held hearings and has carefully reviewed the academic performance of every school in this State as evidenced by each school's performance composite. Beginning in 2006, the Court has reviewed the individual schools' academic performance of its students by EOC scores in reading and math and the EOG performance in each high school by course.

Following its review, the Court has reported on various aspects of poor academic performance in elementary, middle and high schools statewide to the Chairman of the State Board of Education and the Governor. Also, from time to time, the Court has reported on poor academic performance in the public schools to the leadership in the General Assembly and prior to 2011, was invited to discuss the issues relating to poor academic performance and solutions to the issues and problems, including assessments with the leadership of the Senate and members of the educational subcommittee in the House of Representatives.

There is no need to rehash these efforts here. Suffice it to say that poor academic performance remains a serious problems in a host of elementary, middle and high schools throughout North Carolina and as a result, the children in those schools who are not performing at Level III on the EOC and EOG tests are being deprived of their individual constitutional right to have the opportunity to obtain a sound basic education on a daily basis.

To compound the problems of poor academic performance which is indicative of children not obtaining a sound basic education as is their constitutional right, the national economy has been, and remains, in a state of downturn. The economy of the State of North Carolina has been deeply affected as well. The state of the economy and its resulting lack of generating revenue streams is a serious problem which is being grappled with by the Legislative and Executive branches of government. Educational funding for North Carolina public schools from the Federal Government has likewise been reduced notwithstanding the receipt of federal funds for *Race to the Top*.

The financial crisis notwithstanding, the basic educational assets guaranteed to each and every child in the North Carolina Public Schools must remain in place in every school and classroom in the State of North Carolina.

Reduced to essentials, each child must have an equal opportunity to obtain a sound basic education in those subjects defined by *Leandro* as well as acquiring the educational skills necessary to meet today's 21st Century by achieving a sound basic education so that each child can possess

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"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."

In order to get to the finish line and graduate from high school, each child must have a school wherein there is a competent certified principal, competent certified teacher in each classroom, and the school must have sufficient resources to fund an effective instructional program within the school to meet the educational needs of all children, including those at-risk.

On May 10, 2011, the Plaintiffs' Hoke County Board of Education, et al. ("Plaintiffs") filed a Motion For Hearing on Curtailment of Pre-kindergarten Services for At-Risk children, Elimination of EOC testing, and Defendants' (The State of North Carolina) Compliance with North Carolina's Constitutional Requirements under Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution as defined by the North Carolina Supreme Court's decisions in *Leandro I* (346 N.C. 336) and *Leandro II* (358 N.C. 605) and the continuation of the October 9, 2009, hearing on the State of North Carolina's compliance with *Leandro's* constitutional requirements for competent principals, competent, certified teachers and sufficient resources for every school and the impact of the proposed budget for the next biennium on such compliance.

The Court has reviewed the motion and the Court will conduct hearings on the various subjects raised in the motion. The first hearing will be a continuation of the October 2009 hearing relating to the proposed budget for the next biennium in terms of its compliance with *Leandro's* constitutional requirement that **each child has the equal opportunity to obtain a sound basic education and the resources to ensure that constitutional right in every school and classroom in this State.**

Included in this hearing will be an examination of the plaintiffs' claim that pre-kindergarten services for "at-risk" prospective enrollees are being curtailed and not adequately met under the proposed budget for the next biennium. On this issue, *Leandro II, Part V. 358 NC 640-645* is relevant by way of background and because the Supreme Court recognized and confirmed that **the State has "educational obligations for "at-risk" prospective enrollees (children not yet of age to go to public kindergarten). "The evidence shows that the State recognizes the extent of the problem --- its deficiencies in affording "at-risk" prospective enrollees their guaranteed opportunity to obtain a sound basic education--- and its (the State's) obligation to address and correct it." 358 NC 644.**

The Court will notice a separate hearing for a later date on the issue of assessments of student academic performance to determine whether or not they are performing at Level III (grade level), including high school EOC assessments,

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all of which are required to assess student performance under the *Leandro* decisions.

Subject Matter of the June 22, 2011 Hearing:

The purpose of this hearing will be to provide the parties, including, the State of North Carolina, including, but not limited to, the State Board of Education and The Department of Public Instruction the opportunity to report to the Court concerning the following in order for the Court to be able to assess the present state of *Leandro* compliance of the State of North Carolina under the proposed State Budget for the next biennium, to receive the preliminary student academic performance on EOC and EOG tests for the 2010 and 2011 school year and to report on the status of other matters critical to the educational opportunities for children guaranteed by the North Carolina Constitution as declared by *Leandro* :

1. Pre-Kindergarten services to "at-risk" prospective enrollees:

The hearing on this subject shall include, without limitation, evidence relating to (1) the number of "at-risk" children being served by pre-kindergarten services, including the More at Four pre-kindergarten program; (2) the number of "at-risk" children estimated to be eligible to receive pre-kindergarten services, including the More at Four pre-kindergarten program in the 2011-2012 school year; (3) the number of children who are "at-risk" and eligible for pre-kindergarten services but are not being provided those services this year and for whom those services are not available in the forthcoming year, if available; (4) the obligation of the State of North Carolina, as set forth in *Leandro II*, Section V, to afford "at-risk" prospective enrollees their guaranteed opportunity to obtain a sound basic education; 358 NC 644; (5) the proven effectiveness of pre-kindergarten services in addressing the needs of "at-risk" prospective enrollees from 2002 through 2010; (6) the State's plan to ensure that "at-risk" prospective enrollees continue to be provided the pre-kindergarten services that have been selected by the State to meet its obligation to those children under the current financial budget situation.

2. *Leandro* Compliance in light of budget woes.

The current financial difficulties of the State do not relieve, justify or excuse the State of North Carolina from its constitutional obligation to provide each and every child in North Carolina an equal opportunity to obtain a sound basic education that is *Leandro* compliant in that every school must have a competent, certified principal, every classroom must have a competent, certified teacher and that each school must have the resources sufficient to provide all its students with the opportunity to obtain a sound basic education. 346 NC 347, 358 NC 616, 619, 624, 625, 636,

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The hearing on this subject shall be to take evidence on the State's plan to ensure that the children's constitutional right to the equal opportunity to obtain a sound basic education in a *Leandro* compliant public school is fulfilled despite the present budget problems and cuts. This will be a continuance of the October 9, 2009, hearing on the same issue of compliance with the constitutional right of the children of North Carolina to have the equal opportunity to obtain a sound basic education.

3. Preliminary Student Academic Performance Data for 2010-2011 school year to be placed in evidence:

The 2010-2011 preliminary End of Grade Mathematics Scores in Grades 3-8 by school for each grade 3,4,5,6,7 & 8 by LEA, statewide after re-tests.

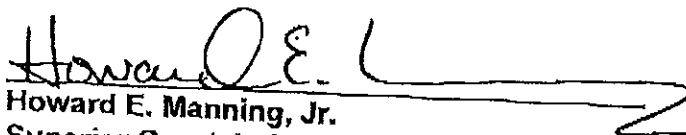
The 2010-2011 preliminary End of Grade Reading Scores in Grades 3-8 by school for each grade 3,4,5,6,7 & 8 by LEA, statewide after re-tests.

The 2010-2011 preliminary End of Course Mathematics Scores in Algebra 1, Algebra 2 and Geometry by school, by LEA, statewide after re-tests.

The 2010-2011 preliminary End of Course Scores in all high schools, by LEA, statewide which data shows the number of students in each EOC subject that were proficient in the subject in each high school and shows whether or not growth standards (state) were met or not met in each EOC subject in that high school.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this ^{20th} day of May, 2011.


Howard E. Manning, Jr.
Superior Court Judge

NORTH CAROLINA

WAKE COUNTY

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 IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO. 95-CVS-1158

2011 JUN 10 PM 1:29

WAKE COUNTY, S.S.C.

PLAINTIFFS' PRE-HEARING
SUBMISSION

This Court issued an order for a June 22, 2011 hearing to assess whether the State's budget legislation for the next biennium¹ (the "Legislation") complies with the constitutional mandates in *Leandro I* (346 N.C. 336, 488 S.E.2d 249) and *Leandro II* (358 N.C. 605, 599 S.E.2d 365). These cases require that each and every child, including those "at-risk," has an equal opportunity to obtain a sound basic education and that the local school systems (or "LEAs") be provided the resources sufficient to ensure that constitutional right for children across this State.

Not only does the Legislation drastically increase the "discretionary reductions" to the LEAs, including the low-wealth Plaintiff LEAs, it eliminates or severely cuts funding to many of the very programs and initiatives that have been implemented by Defendants to comply with *Leandro*. Among other things, the Legislation seriously diminishes the successful More at Four program for at-risk children, eliminates professional development and teacher mentoring

¹ On May 4, 2011, the North Carolina House of Representatives adopted the House Budget. The North Carolina Senate later adopted the Senate Budget which was subsequently concurred with by the House and which is currently before the Governor for action. It is the Senate Budget that is referred to in this submission.

programs, and eliminates grants for drop-out prevention programs and other key educational initiatives. It is difficult to ascertain how the Defendants can contend that the Legislation complies with the *Leandro* mandates. To the contrary, the Legislation poses a very real threat of reversing much, if not all, of what the *Leandro* litigation has accomplished to date.

Plaintiffs Hoke County Board of Education, Halifax County Board of Education, Robeson County Board of Education, Cumberland County Board of Education, Vance County Board of Education, *et al.* (the "Plaintiffs"), respectfully submit this pre-hearing submission to assist the Court with its assessment of the constitutionality of the Legislation.

I. THE COURT HAS THE AUTHORITY TO DECLARE ANY LEGISLATION UNCONSTITUTIONAL THAT FAILS TO PASS CONSTITUTIONAL MUSTER.

This Court is empowered to review and declare any legislation unconstitutional, including the Legislation at issue here, if it fails to pass constitutional muster. *See, e.g., Bailey v. State*, 348 N.C. 130, 152, 500 S.E.2d 54, 67 (1998) (affirming trial court's finding that State's tax exemption cap was unconstitutional); *Glenn v. Bd. of Educ. of Mitchell County*, 210 N.C. 525, 187 S.E. 781 (1936) (finding statute that closed certain streets used by the public and the plaintiff to access his property unconstitutional); *Bayard v. Singleton*, 3 N.C. 42 (1787) (finding legislation that authorized the State to confiscate land owned by former British loyalists unconstitutional). When a constitutional question is presented, "it is the duty of the court to ascertain and declare the intent of the framers of the Constitution and to reject any legislative act which is in conflict therewith." *Mitchell v. N.C. Indus. Dev. Fin. Auth.*, 273 N.C. 137, 143, 159 S.E.2d 745, 149 (1968). According to the North Carolina Supreme Court, "[i]t is well settled in this state that the courts have the power, and it is their duty, in proper cases to declare an act of the General Assembly unconstitutional; but it must be plainly and clearly the case." *McIntyre v. Clarkson*, 254 N.C. 510, 515, 119 S.E.2d 888, 892 (1961).

In this litigation, the Supreme Court has previously confirmed this Court's authority to determine the constitutionality of the State's system of public education and whether legislative decisions impacting education comport with the North Carolina Constitution. *See Leandro I*, 346 N.C. at 345, 488 S.E.2d at 253-54 (rejecting Defendants' "political question" argument that judicial review is improper in areas dealing with the administration of public education). The Court in *Leandro I* made clear that:

[i]t has long been understood that it is the duty of the courts to determine the meaning of the requirements of our Constitution. ... [I]t is the duty of this Court to address plaintiff-parties' constitutional challenge to the state's public education system.

Id. Similarly, the Supreme Court in *Leandro II* confirmed that the courts possess the inherent authority to ensure that the legislative and executive branches "live up" to their "constitutional duties" to offer an opportunity for a sound basic education to our children. *Leandro II*, 358 N.C. at 642-643, 599 S.E.2d at 393. The courts of this state are

empowered to order the [constitutional] deficiency remedied, and if the offending branches of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it.

Id. at 643, 599 S.E.2d at 393. Although courts should, at least initially, defer to the decisions made by the legislative and executive branches about the administration of public schools, the courts are empowered to make specific orders if these branches of government consistently fail to remedy the constitutional deficiencies. *Id.* at 642-45, 599 S.E.2d at 393-95.

It has been more than nine years since this Court concluded that children in North Carolina were being denied the opportunity for a sound basic education and that the Defendants were responsible for this constitutional violation. In its 2002 final judgment, this Court ordered the Defendants to remedy these constitutional deficiencies and to take the steps required to ensure, at a minimum, that (i) every classroom be staffed with a competent, certified, well-

trained teacher; (ii) every school be led by a well-trained, competent principal; and (iii) every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program so that the educational right of all children, including “at-risk” children, to have the equal opportunity to obtain a sound basic education can be met. Memorandum of Decision, Section IV (Judgment) (filed April 4, 2002); *Leandro II*, 358 N.C. at 636-38, 599 S.E.2d at 389-90. The North Carolina Supreme Court, in substantially affirming this Judgment on July 30, 2004, also held that the State must fund the LEAs at a level sufficient to provide all students, irrespective of their particular LEA, with, at a minimum, the opportunity to obtain a sound basic education. *Leandro II*, 358 N.C. at 634, 599 S.E.2d at 388.

At the conclusion of trial, this Court found, and the Supreme Court agreed, that “at-risk” children were starting behind their non “at-risk” counterparts and were likely to stay behind, or fall further behind, as they continued their education. *Leandro II*, 358 N.C. at 641-42, 599 S.E.2d at 392-93. This Court and the Supreme Court further stated that the State was providing inadequate resources for such “at-risk” prospective enrollees, and that the State’s failings were contributing to the “at-risk” prospective enrollees’ subsequent failure to avail themselves of the opportunity to obtain a sound basic education. *Id.* The State’s efforts in providing remedial aid to “at-risk” prospective enrollees were determined to be constitutionally inadequate. *Leandro II*, 358 N.C. at 642, 599 S.E.2d at 393.

While the Defendants have taken some steps in attempting to address these Constitutional deficiencies, the substantial record before this Court – derived from hearings this Court has held since 2004 and this Court’s extensive review of the academic performance of every school in North Carolina – makes plain that many children still leave the third grade unable to read at grade-level and that tens of thousands of North Carolina children at all levels (elementary, middle and high schools) are not at grade-level proficiency. The record therefore demonstrates

that North Carolina children, who are blessed with the equal opportunity to obtain a sound basic education as guaranteed by the Constitution and as set out in *Leandro*, are still being deprived of their constitutional right to that opportunity, nearly a decade after this Court's final Judgment. See *Leandro II*, 358 N.C. at 624-25, 599 S.E.2d at 382 (affirming trial court's determination that a child who is performing below grade-level (Level III proficiency on the State's ABC tests) is not obtaining a sound basic education in that subject matter).

In this context, the Court's review of the Legislation is of utmost importance. The financial challenges facing the Defendants simply do not excuse them from their duty to satisfy their constitutional obligation to each and every child in North Carolina, nor do they relieve Defendants of their obligation to comply with this Court's Judgment directing them to do so. The mandates of the Constitution, and its interpretation by our Supreme Court, require that the basic educational assets guaranteed to each child must be in place even in times of economic hardship. See Notice of Hearing and Order for June 22, 2011, p. 4.

Accordingly, if the Court should determine that the Legislation fails to meet the Constitutional mandates of *Leandro*, it has the power and the duty to issue an Order declaring that the Legislation violates *Leandro's* mandates and is therefore unconstitutional. In deference to the executive and legislative branches of government, the Court could, in its discretion, choose to stay the effectiveness of such an order for some period to afford the other branches time to remedy the Legislation's constitutional deficiencies. Similar actions have been taken by some courts in other states where funding or budget legislation has been declared unconstitutional for failing to provide adequate funding for schools. See, e.g., *West Virginia Educ. Assoc. v. Legislature of West Virginia*, 179 W.Va. 381, 382-383, 369 S.E.2d 454, 455-56 (1988) (holding budget legislation unconstitutional but not issuing an immediate injunction because the "law presumes" the governor and legislature "know [their] duty when faced with an unconstitutional

budget”); *Robinson v. Cahill*, 70 N.J. 155, 160-161, 358 A.2d 457, 459 (1976) (declaring the system of school funding unconstitutional but stating that “injunction will not become effective” if legislative action is taken by a date certain). *See also Abbott v. Burke*, 2011 WL 1990554, *21 (May 24, 2011) (finding New Jersey budget legislation violates children’s constitutional right to an adequate education and ordering state to reverse budget cuts to plaintiffs’ school districts); *Montoy v. State*, 279 Kan. 817, 845, 112 P.3d 923, 940 (2005) (finding Kansas’ school funding formula unconstitutional and ordering state to increase funding to school districts by \$285 million).

II. THE LEGISLATION: THE STATE REVERSES COURSE ON THE ROAD TO *LEANDRO* COMPLIANCE.

The Defendants – in their 2004 Action Plan to this Court and in over twenty hearings held by the Court to assess the Defendants’ progress – committed to implement and fund certain initiatives and programs to comply with the *Leandro* mandates. But many of these programs that were implemented to move Defendants towards *Leandro* compliance are now being entirely eliminated, or their funding severely cut, by the Legislation. As a result, the Legislation pushes North Carolina *backwards* and further away from *Leandro* compliance, a move in violation of this Court’s 2002 Judgment and the Supreme Court’s decisions in *Leandro I* and *Leandro II*.

For example, the Defendants committed to ensuring that “**every at-risk four-year-old has access to a quality pre-kindergarten program**” in order to comply with the *Leandro* mandates. *Defendants’ 2004 Action Plan to Court*, pp. 1, 7. To do this, they represented to the Court they would “expand the More at Four Prekindergarten Program and provide access to the program to the estimated 40,000 at-risk four-year-olds across the State.” *Id.* at 7. However, the Legislation effectively eliminates More at Four as an educational program, transfers it to the Department of Health and Human Services, and cuts its funding by twenty percent, or \$16 million (after a prior \$5.8 million cut made to it in 2009). The effect of the Legislation is to

restructure and diminish a program which the State implemented to specifically address a key component to providing the opportunity for a sound basic education to “at-risk” children and which has a proven history of success.

As a further example, in Defendants’ 2004 Action Plan, they committed to “[p]rovide **high quality professional development for teachers and principals.**” *Defendants’ 2004 Action Plan to Court*, p. 2. To do this, Defendants represented to the Court that they would initiate or expand professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals’ Executive Program, and would “explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers.” *Id.* However, the Legislation eliminates funding for staff development, all funding for the Teacher Academy, all funding for the NC Center for the Advancement of Teaching, and all funding for the Teaching Fellows Program. In addition, the Principals’ Executive Program was eliminated in the previous 2009-2010 budget legislation.

The Defendants also committed to implement and fund “Learn and Earn” as a step to comply with the *Leandro* mandates. *See* Defendants’ 10/25/04 and 8/9/05 Compliance Reports to the Court. The Legislation eliminates the Learn & Earn online course program entirely.

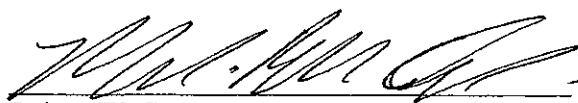
Further, the record before this Court is replete with testimony and information concerning the importance and effectiveness of student diagnostics and assessments. *See, e.g.*, testimony from hearings on September 26, 2007, August 20, 2008, and August 29, 2009. The Legislation, however, eliminates funding entirely for the student diagnostics pilot program.

In addition to the elimination of these programs that the Defendants implemented and funded to comply with *Leandro*, the LEAs are faced with an additional \$124 million in “discretionary reductions.” This amount coupled with the previous \$305 million in discretionary reductions implemented by the State in the previous biennium budget for 2009-2010, results in

total "discretionary reductions" of \$429 million for the fiscal year beginning July 1, 2011. The Legislation increases the amounts that Plaintiff counties must pay back to the State: for Plaintiff Cumberland County by over \$15 million, for Plaintiff Halifax County by over \$1.1 million, for Plaintiff Hoke County by over \$2.4 million, for Plaintiff Robeson County by over \$6.7 million, and for Plaintiff Vance County by over \$2.0 million. See NCDPI Chart of LEA Adjustments for Fiscal Year 2011-12, attached hereto as Exhibit A. Reductions of this magnitude will inevitably result in teacher and teacher assistant reductions, which will negatively impact the delivery of classroom instruction and the ability to adequately assess each student's progress in obtaining a sound basic education.

The Legislation plainly does not bring Defendants closer to complying with the *Leandro* mandates. To the contrary, it eviscerates *Leandro's* mandates ordered by this Court, and approved by the Supreme Court, by eliminating initiatives and programs initiated by the Defendants to comply with *Leandro*. By reversing the gains made since *Leandro II* in education funding and programming, the Legislation breaks the Constitution's promise to the children of North Carolina that they have an equal opportunity to a sound basic education.

This the 10th day of June, 2011.



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **PLAINTIFFS' PRE-HEARING SUBMISSION** on the parties in this action by:

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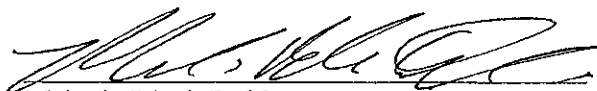
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This the 10th day of June, 2011



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Public Schools of North Carolina
North Carolina Department of Public Instruction

Fiscal Year 2011-12
 LEA Adjustment

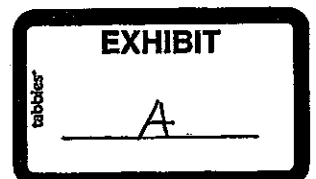
LEA No.	LEA Name	Allotted ADM	LEA Adjustment
010	Alamance County	22,531	(6,526,452)
020	Alexander County	5,507	(1,595,188)
030	Alleghany County	1,455	(421,463)
040	Anson County	3,810	(1,103,625)
050	Ashe County	3,205	(928,378)
060	Avery County	2,141	(620,174)
070	Beaufort County	7,018	(2,032,872)
080	Bertie County	2,762	(800,056)
090	Bladen County	5,123	(1,483,956)
100	Brunswick County	12,306	(3,564,623)
110	Buncombe County	25,571	(7,407,035)
111	Asheville City	3,956	(1,145,916)
120	Burke County	13,417	(3,886,441)
130	Cabarrus County	29,298	(8,486,618)
132	Kannapolis City	5,290	(1,532,330)
140	Caldwell County	12,709	(3,681,358)
150	Camden County	1,969	(570,351)
160	Carteret County	8,594	(2,489,385)
170	Caswell County	2,941	(851,906)
180	Catawba County	17,266	(5,001,363)
181	Hickory City	4,297	(1,244,692)
182	Newton-Conover	2,941	(851,906)
190	Chatham County	7,952	(2,303,420)
200	Cherokee County	3,411	(988,049)
210	Edenton/Chowan	2,320	(672,024)
220	Clay County	1,373	(397,711)
230	Cleveland County	15,886	(4,601,625)
240	Columbus County	6,550	(1,897,309)
241	Whiteville City	2,262	(655,223)
250	Craven County	15,100	(4,373,948)
260	Cumberland County	52,443	(15,190,924)
270	Currituck County	3,924	(1,136,647)
280	Dare County	4,905	(1,420,809)
290	Davidson County	20,418	(5,914,389)
291	Lexington City	2,961	(857,699)
292	Thomasville City	2,448	(709,101)
300	Davie County	6,566	(1,901,943)
310	Duplin County	9,220	(2,670,715)
320	Durham County	32,369	(9,376,181)
330	Edgecombe County	7,175	(2,078,350)
340	Forsyth County	52,850	(15,308,818)
350	Franklin County	8,683	(2,515,165)
360	Gaston County	31,400	(9,095,495)
370	Gates County	1,832	(530,667)
380	Graham County	1,201	(347,888)
390	Granville County	8,640	(2,502,709)
400	Greene County	3,245	(939,964)
410	Guilford County	72,056	(20,872,133)
420	Halifax County	3,860	(1,118,109)

Division of School Business Services

School Allotments Section

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 Principals.xls

5/31/2011
 Page 1 of 3





Public Schools of North Carolina
North Carolina Department of Public Instruction

Fiscal Year 2011-12
LEA Adjustment

LEA No.	LEA Name	Allotted ADM	LEA Adjustment
421	Roanoke Rapids City	2,899	(839,740)
422	Weldon City	1,052	(304,728)
430	Harnett County	19,780	(5,729,582)
440	Haywood County	7,701	(2,230,714)
450	Henderson County	13,472	(3,902,373)
460	Hertford County	3,148	(911,867)
470	Hoke County	8,326	(2,411,754)
480	Hyde County	577	(167,137)
490	Iredell-Statesville	21,518	(6,233,021)
491	Mooresville City	5,491	(1,590,553)
500	Jackson County	3,611	(1,045,982)
510	Johnston County	32,821	(9,507,109)
520	Jones County	1,162	(336,591)
530	Lee County	9,786	(2,834,666)
540	Lenoir County	9,220	(2,670,715)
550	Lincoln County	11,782	(3,412,838)
560	Macon County	4,367	(1,264,969)
570	Madison County	2,581	(747,626)
580	Martin County	3,789	(1,097,542)
590	Mcdowell County	6,403	(1,854,728)
600	Mecklenburg County	137,497	(39,828,129)
610	Mitchell County	2,090	(605,401)
620	Montgomery County	4,152	(1,202,691)
630	Moore County	12,672	(3,670,640)
640	Nash-Rocky Mount	17,014	(4,928,368)
650	New Hanover County	24,636	(7,136,198)
660	Northampton County	2,357	(682,741)
670	Onslow County	23,644	(6,848,850)
680	Orange County	7,272	(2,106,447)
681	Chapel Hill-Carrboro	11,718	(3,394,300)
690	Pamlico County	1,455	(421,463)
700	Pasquotank County	6,069	(1,757,980)
710	Pender County	8,353	(2,419,575)
720	Perquimans County	1,758	(509,232)
730	Person County	4,995	(1,446,879)
740	Pitt County	23,557	(6,823,649)
750	Polk County	2,359	(683,321)
760	Randolph County	18,664	(5,408,316)
761	Asheboro City	4,697	(1,360,559)
770	Richmond County	7,632	(2,210,727)
780	Robeson County	23,420	(6,783,965)
790	Rockingham County	13,722	(3,974,789)
800	Rowan-Salisbury	20,336	(5,890,636)
810	Rutherford County	8,857	(2,565,567)
820	Sampson County	8,444	(2,445,935)
821	Clinton City	3,085	(893,618)
830	Scotland County	6,253	(1,811,278)
840	Stanly County	9,070	(2,627,266)

Division of School Business Services

School Allotments Section

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Public Schools of North Carolina
North Carolina Department of Public Instruction

Fiscal Year 2011-12
LEA Adjustment

LEA No.	LEA Name	Allotted ADM	LEA Adjustment
850	Stokes County	6,931	(2,007,671)
860	Surry County	8,576	(2,484,171)
861	Elkin City	1,194	(345,861)
862	Mount Airy City	1,652	(478,527)
870	Swain County	1,969	(570,351)
880	Transylvania County	3,570	(1,034,106)
890	Tyrrell County	582	(168,585)
900	Union County	39,844	(11,541,430)
910	Vance County	7,003	(2,028,527)
920	Wake County	146,078	(42,313,748)
930	Warren County	2,549	(738,357)
940	Washington County	1,764	(510,970)
950	Watauga County	4,380	(1,268,735)
960	Wayne County	19,244	(5,574,322)
970	Wilkes County	9,984	(2,892,020)
980	Wilson County	12,194	(3,532,180)
990	Yadkin County	5,854	(1,695,701)
995	Yancey County	2,373	(687,376)
	Charters	44,829	(12,985,412)
Total Including Charters		1,480,991	(428,991,908)

FY 11-12 LEA Adjustment	
Budget Reduction	428,991,908
ADM	1,480,991
Dollars per ADM (calculated):	289.66543900
(adjustment):	(0.00000251)
(used in allotment):	289.66543649
(reconcile):	0

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 95-CVS-1158

WAKE COUNTY

2011 JUN 21 PM 4:48

HOKE COUNTY BOARD OF EDUCATION, et al.,

BY Plaintiffs,

AND

ASHEVILLE CITY BOARD OF EDUCATION, et al.,

Plaintiff-Intervenors,

VS.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,

Defendants.

PLAINTIFFS' NOTICE OF FILING

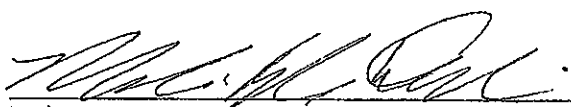
Plaintiffs hereby give notice that they have filed the following documents in this matter:

Plaintiffs/ Exhibit No.	Description
1 (6/22/11)	Affidavit of Ronald Gregory (Superintendent of Vance County)
2 (6/22/11)	Affidavit of Frank Till (Superintendent of Cumberland County)
3 (6/22/11)	Affidavit of Dr. Freddie Williamson (Superintendent of Hoke County)
4 (6/22/11)	Affidavit of Dr. Elease Frederick (Superintendent of Halifax County)
5 (6/22/11)	Affidavit of Dr. Johnny Hunt (Superintendent of Robeson County) ¹
6 (6/22/11)	Questionnaire Responses from Districts in the Low-Wealth Consortium
7 (6/22/11)	Part 7 of Session Law 2011-145
8 (6/22/11)	Part 10 of Session Law 2011-145 ("Department of Health and Human Services") (<i>Excerpt</i>)
9 (6/22/11)	"Report on the Continuation, Expansion and Capital Budget", Senate Appropriations Committee, Section F (Education)
10 (6/22/11)	2011-2012 Budget Comparison
11 (6/22/11)	NCDPI's Summary of LEA Adjustment for 2011-2012
12 (6/22/11)	Resolution of State Board of Education

¹ To be filed with the Court under separate cover.

13 (6/22/11)	Statement by William C. Harrison, Ed. D ("Breaking an Improving System")
14 (6/22/11)	<i>Leandro's</i> Mandates Concerning Teachers and Principals & The Budget Legislation
15 (6/22/11)	Impact of New Budget on Defendants' <i>Leandro</i> Compliance
16 (6/22/11)	State Defendants' 10/25/2004 Action Plan to Court
17 (6/22/11)	Public School Forum of North Carolina Report ("Race to the Bottom")
18 (6/22/11)	Public School Forum of North Carolina Report ("2010 Local School Finance Study")
19 (6/22/11)	<i>Leandro's</i> Mandate Concerning Resources & The Budget Legislation
20 (6/22/11)	Decline in Education Funding 2008-Present
21 (6/22/11)	Percentage of Students at Level III Proficiency
22 (6/22/11)	Brief by NC Head Start-State Collaboration Office titled "Impact of H200 on More at Four and Head Start"
23 (6/22/11)	Section 645A of the Head Start Act (42 U.S.C. 9840)
24 (6/22/11)	Franklin P. Graham Child Development Institute Report ("Long-term Effects of the North Carolina More at Four Pre-Kindergarten Program Children's Reading and Math Skills at Third Grade")
25 (6/22/11)	Helen Ladd's "From Birth to School: Examining the Effects of Early Childhood Programs on Educational Outcomes in North Carolina")
26 (6/22/11)	NCDPI's "More at Four Pre-Kindergarten Program Requirements"
27 (6/22/11)	The National Institute for Early Education Research's "The State of Preschool 2010"

This the 21st day of June, 2011.



Robert W. Spearman

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Raleigh, North Carolina 27602

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.,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF
EDUCATION, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA; STATE
BOARD OF EDUCATION,

Defendants.

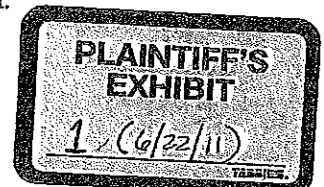
AFFIDAVIT OF
RONALD E. GREGORY

RONALD E. GREGORY, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen years old, am under no disability, and have personal knowledge of all the matters stated in this Affidavit.

2. I am the Interim Superintendent of the Vance County Public Schools ("VCPS"). Prior to that, I served as assistant superintendent of VCPS from 1996 to 2011. I have 48 years of experience in public education as a teacher, assistant principal, principal, assistant superintendent, and superintendent in this school district.

3. In the 2010-11 school year, VCPS had 7155 total students attending the district's 10 elementary schools, 2 middle and junior high schools, and 4 high schools. Our student population or ADM is approximately 22.84% white, 62.36% African American, and 11.13% Hispanic. Of the total student population, 83% qualify for free and reduced lunch.



4. In the 2008-09 school year, VCPS County spent approximately \$1,491 in local funds per student. This was decreased to \$1,489 in local funds per student in the 2009-10 school year and increased to \$1,555 in the 2010-11 school year. In the 2011-12 school year, we will spend \$1,500 in local funds per student.

5. For the 2010-11 school year, VCPS had 623 teaching positions. The number of teachers has decreased over the last three school years from 639 teachers employed in the 2008-09 school year, 635 teachers employed in 2009-10 school year and 623 teachers employed in the 2010-11 school year. As a result of the current State budget cuts, including the impact of implementing the LEA Adjustment discussed below, it is expected that 614 teachers will be employed during the 2011-12 school year.

6. For the 2010-11 school year, VCPS employed 158 teacher assistants. The number of teacher assistants has decreased over the last three school years from 175 teacher assistants employed in the 2008-09 school year, 165 teacher assistants employed in 2009-10 school year and 158 teacher assistants employed in the 2010-11 school year. As a result of the current State budget cuts, including the impact of implementing the LEA Adjustment discussed below, it is expected that 153 teacher assistants will be employed during the 2011-12 school year.

7. As a result of the cuts in the State budget for 2011-12, it is anticipated that we will have to reduce, eliminate or change certain programs for the 2011-12 school year, including but not limited to, summer school, after school tutoring, child and family support teams, More at Four, Smart Start, use of literacy coaches, programs for non-English speaking students, Reading First, Direct Instruction, Mentor Program, Buddy Teacher Program, and Mentors for New Administrators.

8. As a result of the cuts in the State budget for 2011-12, the programs for at-risk children for the 2011-12 school year that will be impacted are: summer school, after school tutoring, child and family support teams, More at Four, Smart Start, use of literacy coaches, programs for non-English speaking students, staff development, teacher training/mentoring, remediation for Level I and II students, credit recovery and other on-line learning opportunities, drop-out prevention programs, curriculum development, Model Teacher Consortium, and Collaboration Effort to Support Initially Licensed Professional.

9. Vance County incurred an LEA Adjustment ("discretionary reduction") in the 2008-09 school year of \$513,793. The "discretionary reduction" was increased to \$1,145,863 in 2009-10 and \$1,501,496 in 2010-2011.

10. The State budget for 2011-12 includes an LEA Adjustment ("discretionary reduction") of \$2.0 million for Vance County. This amount is approximately the same as the \$2.0 million VCPS received in Disadvantaged Student Supplemental Funding ("DSSF") for the 2010-11 school year.

11. The VCPS expects to implement this "discretionary reduction" in the 2011-12 school year, by eliminating 9 teachers, 5 teacher assistants, 3 administrative personnel (assistant principals), and 4 non-instructional support personnel (clerical, custodians, maintenance).

12. I am familiar with the More at Four Program in Vance County which is run by Cassandra Evans, Title I Coordinator.

13. The number of "at-risk" children in Vance County served by the More at Four pre-kindergarten program was 147 during the 2008-09 school year, 135 during the 2009-10 school year, and 151 during the 2010-11 school year. We estimate that the number of "at-risk" children in Vance County eligible to receive pre-kindergarten services through the More at Four

program in the 2011-12 school year is 140. We estimate that the number of "at-risk" children in Vance County eligible to receive pre-kindergarten services through the More at Four program in the 2011-12 school year but for which slots will not be available is 153. The 20% cut to the More at Four budget has had a direct impact on our ability to provide the necessary pre-kindergarten services to "at-risk" children.

14. The transfer of More at Four to the Department of Health and Human Services Division of Child Development and funding reductions have a direct impact on our ability to provide a quality pre-kindergarten education program to at-risk four year olds. The significant barriers for public schools to continue their current pre-kindergarten classrooms include:

- o The bill will require public school pre-kindergarten classrooms to be licensed as child care programs by the Division of Child Development.
 - o This facility licensure requirement is unnecessary and costly, since public schools are regulated under public school law, and will result in a significant loss of pre-kindergarten services in public schools.
- o The bill will eliminate the coordination of state funding with federal pre-kindergarten funding, including Title I Pre-K, IDEA Preschool for Children with Disabilities and Head Start, resulting in a newly divided, less efficient and lower quality pre-kindergarten system.
 - o Over \$45 million in federal funding is combined with More at Four dollars at the classroom level. The flow of More at Four dollars to school districts has motivated local contribution of Title I dollars for pre-kindergarten.
 - o The coordination of federal and state funds has enabled the adoption of More at Four quality standards across all pre-kindergarten classrooms in NC.

- The cornerstone of the current education model for state-funded pre-kindergarten is a workforce of teachers with a BA in early education or a related field, plus a license in early education.
 - This standard for pre-kindergarten classrooms is applied to all pre-k settings in NC— public schools, private licensed child care centers and Head Start.
 - Effective curriculum implementation and teaching practices that best serve our State's most disadvantaged four-year-olds requires professional teachers.
 - Teachers with at least a BA and Birth-Kindergarten license (i.e. current More at Four requirements) have generated greater student learning gains on literacy assessments than teachers without this level of education.
- The continued work of an appropriately trained teacher workforce in public and private settings is severely threatened by the new funding model.
 - The Budget allocates 20% less funds than what were used in 2010-2011 to serve similar numbers or more children through the child care subsidy system for a longer day and year.
 - The alignment with NC Professional Teaching Standards and the NC Professional Educator Evaluation System is eliminated.

This the 20th of June, 2011.


Ronald E. Gregory

STATE OF NORTH CAROLINA

COUNTY OF Vance

I, Sharon Bawcum, a Notary Public of Vance County, State of North Carolina, do hereby certify that Ronald E. Gregory personally appeared before me this day and acknowledged the execution of the forgoing instrument.

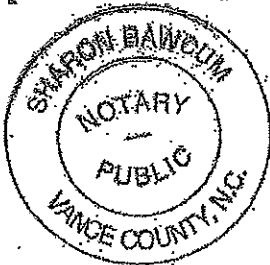
Witness my hand and seal, this 20th day of June, 2011.


Notary Public

My Commission Expires:

2-22-12

[NOTARY SEAL]



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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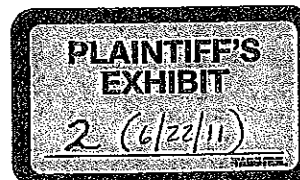
AFFIDAVIT OF
FRANK TILL

FRANK TILL, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen years old, am under no disability, and have personal knowledge of all the matters stated in this Affidavit.

2. I am the Superintendent of the Cumberland County Schools ("CCS"). I have served as Superintendent of Cumberland County Schools since July 2009. Prior to that, I served many years in public education as math teacher, principal, associate superintendent of Curriculum and Instruction, area superintendent and deputy superintendent in San Diego, California. I have also served as superintendent in Broward County, Florida for July 1999 to July 2009.

3. In the 2010-11 school year, CCS had 52,187 total students attending the district's 52 elementary schools, 15 middle and junior school high schools, and 14 high schools. Our



student population or ADM is approximately 36.3% white, 47% African American, 3.0% American Indian, and 7.04% Hispanic. Of the total student population, 52.42% qualify for free and reduced lunch.

4. In the 2008-09 school year, the Cumberland County appropriation for local schools was \$71,812,043. This was increased to \$78,831,035 in 2009-10 and decreased to approximately \$77,600,000 in 2010-11. In the 2011-12 school year, we will receive \$76,220,000 in local funds.

5. For the 2010-11 school year, CCS has 3,533 teaching positions. The number of teachers has decreased over the last three school years from 3,574 teachers employed in the 2008-09 school year, 3,546 teachers employed in 2009-10 school year and 3,533 teachers employed in the 2010-11 school year. As a result of the budget cuts, we will lose 130 regular classroom teachers and 43 exceptional children's teachers. This happened despite the fact that the total student enrollment has increased each year (52,521 student enrollment for 2008-09, 52,984 for 2009-10, and 52,079 for 2010-11).

6. For the 2010-11 school year, CCS expects to employ 1,036 teacher assistants. The number of teacher assistants has decreased over the last three school years from 1,156 teacher assistants employed in the 2008-09 school year, 1,001 teacher assistants employed in 2009-10 school year and 1,036 teacher assistants employed in the 2010-11 school year. As a result of the current State budget cuts, it is expected that only 875 teacher assistants will be employed during the 2011-12 school year. CCS has 419 substitute teachers. Of those, 139 are licensed teachers and 43 have four-year college degrees for a total of 182 substitutes with college degrees.

7. As a result of the cuts in the State budget for 2011-12, it is anticipated that we will have to reduce, eliminate or change certain programs for the 2011-12 school year, including but not limited to More at Four, Smart Start, and Pre-k services. CCS will also lose approximately \$2,044,350 in reimbursement to the More at Four programs the following school year (2012-13) which will result in further reduction in services to students, fewer classrooms, and fewer personnel.

8. As a result of the cuts in the State budget for 2011-12, the programs for at-risk children for the 2011-12 school years will be impacted by a reduction of approximately \$200,000 in Smart Start funds and a decrease in funding for services for disabled children through More at Four of \$539,220. Cumberland County incurred an LEA Adjustment (“discretionary reduction”) in the 2009-10 school years of \$8,181,399. The “discretionary reduction” was increased to \$10,782,683 in 2009-10.

9. The State budget for 2011-12 includes an LEA Adjustment (“discretionary reduction”) of \$15.2 million for Cumberland County. This amount is significantly more than the \$1.8 million CCS received in Disadvantaged Student Supplemental Funding (“DSSF”) for the 2010-11 school year.

10. CCS expects to implement this “discretionary reduction” in the 2011-12 school year, by eliminating 130 number of teachers, 179 number of teacher assistants, 9 number of administrative personnel (principals, assistant principals, etc), 28 number of other instructional support personnel, and 33 number of other non-instructional support.

11. In addition to the personnel reductions occurring in order to implement the “discretionary reduction,” as a result of specific cuts to assistant principals in the 2011-12 budgets, CCS will eliminate 9 assistant principal positions.

12. I am familiar with the More at Four Program in Cumberland County which is run by Are-Nita Davis. The Pre-K Coordinator for Cumberland County Schools is Patricia Eaton.

13. The number of "at-risk" children in Cumberland County served by the More at Four pre-kindergarten programs was 1990 during the 2008-09 school year, 1971 during the 2009-10 school year, and 1912 during the 2010-11 school years. We estimate that the number of "at-risk" children in Cumberland County eligible to receive pre-kindergarten services through the More at Four program in the 2011-12 school year is 3000. We estimate that the number of "at-risk" children in Cumberland County eligible to receive pre-kindergarten services through the More at Four program in the 2011-12 school year but for which slots will not be available is 1500. The 20% cut to the More at Four budget has had a direct impact on our ability to provide the necessary pre-kindergarten services to "at-risk" children.

14. The transfer of More at Four to the Department of Health and Human Services Division of Child Development and funding reductions have a direct impact on our ability to provide a quality pre-kindergarten education program to at-risk four year olds. For example:

- The decrease in services to eligible at-risk students will require schools to expend 4 or 5 times the resources that are currently being expended to address student needs when students enter Kindergarten.
- Meeting child care licensing requirements will require CCS to expend local funds to retrofit buildings to meet the new pre-k requirements under HB 200. Sites built prior to 2000 will require the most work (e.g. meeting ADA requirements such as widening doors, appropriate door handles, and making the site handicap accessible).

- The requirement of a sliding fee scale for eligible families would require that CCS' preschool program must develop the capacity for handling fees from families and incorporate the current SEEK billing system in place through the subsidy system.
- The inability to meet DHHS requirements could require CCS to close MAF sites in the future, thereby reducing opportunities for children. This would also result in additional positional losses and the negatively impact the Exceptional Children's (EC) program's ability to offer blended learning opportunities in the least restrictive environment.

This the 20th of June, 2011.


Frank Till

STATE OF NORTH CAROLINA

COUNTY OF Cumberland

I, Connie F. Powers, a Notary Public of Cumberland County, State of North Carolina, do hereby certify that FRANK TILL personally appeared before me this day and acknowledged the execution of the forgoing instrument.

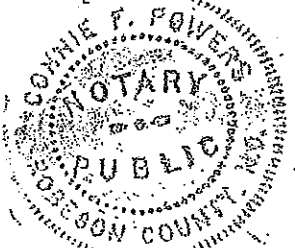
Witness my hand and seal, this 20th day of June, 2011.


Notary Public Connie F. Powers

My Commission Expires:

2-27-2015

[NOTARY SEAL]



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
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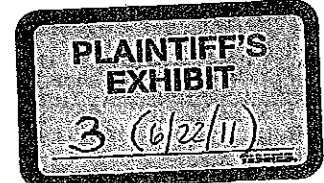
AFFIDAVIT OF
FREDDIE WILLIAMSON

FREDDIE WILLIAMSON, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen years old, am under no disability, and have personal knowledge of all the matters stated in this Affidavit.

2. I am the Superintendent of the Hoke County Public Schools ("HCPS"). This is a position I have held for the past 5 years. Prior to that, I served as associate superintendent of Scotland County Public Schools for 7 years. I have 22 years of experience in public education as an assistant principal, principal, assistant superintendent, associate superintendent and superintendent in 3 school districts.

3. In the 2010-11 school year, HCPS had 8,050 total students attending the district's 9 elementary schools, 2 middle and junior high schools, and 2 high school/early colleges. Our student population or ADM is approximately 27% white, 37% African American, 12% American



Indian, and 16% Hispanic. Of the total student population, 64% qualify for free and reduced lunch.

4. In the 2008-09 school year, Hoke County spent approximately \$548 in local funds per student. This was decreased to \$533 in local funds per student in 2009-10 and to \$501 in 2010-11. In the 2011-12 school year, we will spend \$528 in local funds per student.

5. For the 2010-11 school year, HCPS has 594 teaching positions. The number of teachers has fluctuated over the last three school years from 592 teachers employed in the 2008-09 school year, 557 teachers employed in 2009-10 school year and 594 teachers employed in the 2010-11 school year. As a result of the current State budget cuts, it is expected that 599 teachers will be employed during the 2011-12 school year. This increase is not proportional with the increase in total student enrollment which has increased each year (7,642 students enrolled for 2008-09, 7,687 students enrolled for 2009-10, and 8,050 students enrolled for 2010-11).

6. For the 2010-11 school year, HCPS employed 128 teacher assistants. The number of teacher assistants has decreased over the last three school years from 240 teacher assistants employed in the 2008-09 school year, 167 teacher assistants employed in 2009-10 school year and 128 teacher assistants employed in the 2010-11 school year. As a result of the current State budget cuts, it is expected that only 103 teacher assistants will be employed during the 2011-12 school year.

7. As a result of the cuts in the State budget for 2011-12, it is anticipated that we will have to reduce, eliminate or change certain programs for the 2011-12 school year, including but not limited to; summer school, after school tutoring, child and family support teams, More at Four, Smart Start, use of literacy coaches, and programs for non-English speaking students.

8. As a result of the cuts in the State budget for 2011-12, the programs for at-risk children for the 2011-12 school year that will be impacted are: summer school, after school tutoring, child and family support teams, More at Four, Smart Start, use of literacy coaches, programs for non-English speaking students, staff development, teacher training/mentoring, remediation for Level I and II students, credit recovery and other on-line learning opportunities, drop-out prevention programs, and curriculum development.

9. Hoke County incurred an LEA Adjustment ("discretionary reduction") in the 2008-09 school year of \$505,284. The "discretionary reduction" was increased to \$1,199,162 in 2009-10 and \$1,650,406 in 2010-2011.

10. The State budget for 2011-12 includes an LEA Adjustment ("discretionary reduction") of \$2.4 million for Hoke County. This amount is approximately \$700,000 more than the \$1.7 million HCPS received in Disadvantaged Student Supplemental Funding ("DSSF") for the 2010-11 school year.

11. The HCPS expects to implement this "discretionary reduction" in the 2011-12 school year, by eliminating 25 teacher assistants and not filling 2 non-instructional support positions. HCPS has been granted an Assistant Principal position through Fayetteville State's internship program, otherwise that Assistant Principal position would be eliminated.

12. I am familiar with the More at Four Program in Hoke County which is run by Elizabeth Mitchell.

13. The number of "at-risk" children in Hoke County served by the More at Four pre-kindergarten program was 378 during the 2008-09 school year, 414 during the 2009-10 school year, and 420 during the 2010-11 school year. We estimate that the number of "at-risk" children in Hoke County eligible to receive pre-kindergarten services through the More at Four program

in the 2011-12 school year is 425. We estimate that the number of "at-risk" children in Hoke County eligible to receive pre-kindergarten services through the More at Four program in the 2011-12 school year but for which slots will not be available is 371. The 20% cut to the More at Four budget has had a direct impact on our ability to provide the necessary pre-kindergarten services to "at-risk" children.

14. The transfer of More at Four to the Department of Health and Human Services Division of Child Development and funding reductions have a direct impact on our ability to provide a quality pre-kindergarten education program to at-risk four year olds. For example,

- **Reduction in number of students served** – the only outside committed funding for pre-kindergarten is from Smart Start which can only support three classrooms (a total of 54 children) in the public schools. This leaves 371 children whose families would have to qualify under the Division of Child Development (DCD) guidelines for pre-kindergarten slots.
- **Eligibility under Subsidized Early Education for Kids-** although a percentage of families will qualify under the eligibility requirements to maintain or seek employment, the majority will not due to the at-risk factors of the family eligibility requirements. For example: gross income may exceed the income guidelines or one unemployed parent remains in the home.
- **Non-English speaking population** – the local Hispanic population that has historically been served would not meet the eligibility criteria for the Department of Health and Human Services Division of Child Development Subsidized Early Education for Kids (SEEK) Program.

- **The loss of More at Four funding** – the loss of More at Four funding results in a net loss of 37 special needs spaces (from 42 to 5) based on 425 applications for 2011-2012. Special needs children who have traditionally been placed in More at Four classrooms at a rate of 10% enrollment will lose space availability due to attrition of classrooms in the public school sites. The public school sites offer the specialized services required in the Individualized Education Plan for those students.
- **Parent Fee** – with the proposed parent fee it is inherent that it will put Hoke County families in a particular difficult situation due to the high unemployment and poverty rate in this county.
- **Private sites spaces** – high quality private site spaces have the potential to be maxed out by virtue of the limited number of four and five star rated Childcare Centers in Hoke County. Currently, there are only three. Conversely, five of the six public pre-kindergarten elementary schools are 4 or 5 Star licensed facilities.
- **Transportation** – transportation is essential to meet the needs of the at-risk four year old students in Hoke County. A vast majority of the parents do not have a means of transporting the students to and from school. The Hoke County Schools Department of Transportation is the primary source of transportation for the students served in the public schools. Without funding for transportation our most needy at-risk population of students will remain at home un-served.
- **Qualified staff** - due to the budget cuts a minimum of 20 qualified teachers and teacher assistants jobs are in jeopardy. Hoke County Schools has made a concerted effort to recruit, develop, and retain highly qualified preschool staff in accordance with the Division of Child Development and More at Four teacher standards.

This the 21 of June, 2011.


Freddie Williamson

STATE OF NORTH CAROLINA

COUNTY OF Hoke

I, Nancy J. Walker, a Notary Public of Hoke County, State of North Carolina, do hereby certify that Freddie Williamson personally appeared before me this day and acknowledged the execution of the forgoing instrument.

Witness my hand and seal, this 21 day of June, 2011.


Notary Public

My Commission Expires:

