

NORTH CAROLINA:
WAKE COUNTY:

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

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

And

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

Vs.

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

MEMORANDUM OF DECISION

SECTION ONE

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

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PROCEDURAL BACKGROUND

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

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

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

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

The relatively wealthy plaintiff-intervenors alleged that the present system of funding used in North Carolina does not take into account the burdens faced by urban school districts which must educate a large number of children that have extraordinary educational needs, such as special education, limited English Proficiency, and children whose poor economic backgrounds place them at risk of educational failure, and academically gifted programs. They alleged that these extraordinary needs require the school systems to divert substantial resources from their regular education programs. The plaintiff-intervenors contend that the State of North Carolina and the State Board of Education have violated the North Carolina Constitution and Chapter 115C of the General Statutes by failing to provide those districts with sufficient resources to provide all of their students with adequate and equal educational opportunities.

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

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

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

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

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

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

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

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

The right to a free education is explicitly guaranteed by the North Carolina Constitution: > The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.= N.C. Const. Art. I, Sec. 15. The Constitution also provides: The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal educational opportunities shall be provided for all students.= Art IX, Sec. 2(1). The principal question presented by this argument is whether the people=s constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequateYYYY

----- We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a >sound basic education= is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student=s community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary societyY.@ (emphasis added; citations omitted) slip op. 13-15).

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

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

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

Article IX, Section 2(2) of the North Carolina Constitution expressly authorizes the General Assembly to require that local governments bear part of the costs of their local public schools. Because the North Carolina Constitution expressly states that units of local government with financial responsibility for public education may provide additional funding to supplement the educational programs provided by the state, there can be nothing unconstitutional about their doing so or in any inequality of opportunity occurring as a result. Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. For the foregoing reasons, we conclude that Article IX, Section 2(1) of the North Carolina requires that all children have the opportunity for a sound basic education, but it does not require that equal educational opportunities be afforded students in all of the school districts of the state. (slip op. pp. 17-22)

The Supreme Court also addressed the wealthy plaintiff-intervenors' contention that their relatively wealthy urban districts have been denied equal protection because there is no rational nexus between the state's funding allotment and the actual costs of providing students with educational resources. They contend that this is an acute problem in their districts because they have so many children with special needs. Because the state system of funding does provide additional moneys to low wealth and small counties for their educational systems and fails to provide similar additional funding to the relatively wealthy school districts, the funding system is arbitrary and denies children in the plaintiff-intervenors' wealthy urban districts equal protection guaranteed by Article I, Section 19. On this issue, the plaintiff-intervenors did not argue that the General Assembly may not provide supplemental

funds to some districts and not others, but rather that the programs for supplemental funding to small county and low wealth counties without regard for the large urban districts needs is arbitrary and denies equal protection.

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

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

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

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

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

The Supreme Court then concluded as follows:

A In conclusion, we reemphasize our recognition of the fact that the administration of the public schools of the state is best left to the legislative and executive branches of government. Therefore, the courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children of the various school districts of the state a sound basic education. A clear showing to the contrary must be made before the court may conclude that they have not. Only such a clear showing will justify a judicial intrusion into areas so clearly the province, initially at least, of the legislative and executive branches as the determination of what course of action will lead to a sound basic education. But like other branches of government, the

judicial branch has its duty under the North Carolina Constitution. If on remand of this case to the trial court, that court makes findings and conclusions from competent evidence to the effect that the defendants in this case are denying the children of the state a sound basic education, a denial of a fundamental right will have been established. It will then become incumbent upon the defendants to establish that their actions denying the fundamental right are >necessary to promote a compelling governmental interest.= If defendants are unable to do so, it will then be the duty of the court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government.@ (Slip op. 33-34) *The case was remanded to the Superior Court of Wake County for trial.*

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

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

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

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

The Issue of Rights of Pre-kindergarten Aat-risk@ Children.

In considering the scope of the issues for trial, the Court, on its own motion, raised the issue of the rights of pre-kindergarten age children. The Court discussed with counsel the necessity for a determination at an early stage of the proceedings of whether or not the constitutional rights enumerated by the Supreme Court in its decision of July 24, 1997, extend

to certain Aat-risk@ children before they reach the age of (5), the beginning age for state supported kindergarten. The Court made this decision after reviewing Leandro and its mandate that every child in the state should have an equal opportunity to receive a sound basic education.

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

It was determined that the most expedient way to frame the question and have the issue decided sooner rather than later was by way of amendments to the complaints pursuant to Rule 15, North Carolina Rules of Appellate Procedure. On October 28, 1998, the Court entered an Order permitting amendments and setting a briefing schedule for the parties on this issue. The plaintiff parties both filed amended complaints alleging the need for pre-kindergarten and other programs in order to provide children living in poverty with the opportunity to receive a sound basic education. The State of North Carolina then filed a motion to dismiss both amendments to the complaints.

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

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

The trial of the Hoke County case began in September, 1999, one day before Hurricane Floyd arrived and devastated much of eastern North Carolina. Due to lack of courtroom availability, the case was continued from the first of October until November 15, 1999, where it resumed in the U.S. District Courthouse in Raleigh thanks to the generosity and cooperation of Senior United States District Judge W. Earl Britt who made his courtroom available for the trial

for three weeks. The plaintiff parties presented evidence for 12 days and the State of North Carolina for 11 days. No party was denied the opportunity to call any witness.

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

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

At the conclusion of the evidentiary portion of the Hoke County trial, there were no closing arguments. The Court believed it more productive to wait for the parties to obtain the transcripts, prepare their individual proposed findings of fact and conclusions of law, and exchange them between themselves. The parties exchanged their proposals in mid June, 2000. The volume of the proposed findings from all parties consists of some 800 pages, more or less. Upon receipt of the proposed findings, the Court directed the parties to review each other=s proposed findings and conclusions and Ared, white and green@ them. This required the parties to mark the findings and conclusions that they did not dispute Aagree@ and those that they did dispute Ared.@ If they did not dispute a finding or conclusion, but did not consider it relevant, it was to be left Awhite@ or unmarked. This process was completed in early July.

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

CHARTING THE COURSE B AN OPENING STATEMENT

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

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

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

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

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

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

Missing in the State=s argument is any focus on the term Aequal@ opportunity as applied to each child. What effort is required to provide an Aequal@ opportunity to each child is where the battle line is drawn. The State maintains that if the opportunity is there and certain children are able to take full advantage of the opportunity, then, the *Leandro* mandate has been complied with. It=s like the old saying, Ayou can lead a horse to water, but you can=t make it drink.@

The plaintiff parties contend that *Leandro* is not so simple. The plaintiff parties believe that the proper analysis is to examine what each child needs. In the plaintiff parties= analysis, one should look at each child as an individual, take the child as the child is found, and then assess the educational needs of that child. Within the possibilities of a public education system, the goal is to provide sufficient resources to enable the child to be on equal footing with other children so that child has an equal opportunity to take advantage of the educational delivery system available.

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

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

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

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

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

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

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

The State continues to adhere to the below grade level standard despite the State Department of Public Instruction (DPI)=s determination that Level III performance constitutes mastery of the Standard Course of Study and DPI=s admission that AStudents who fail to achieve Achievement (Performance) Levels III or IV are considered academically at risk.@ (Rule 30(b)(6)Deposition) T. 11/15, pp. 230-1.

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

The State argues that the goals of having all children achieving Level III and above on EOC and EOG tests are laudable, but that those goals are not the performance levels required to meet the

minimum Constitutional standard for a sound basic education. Level II performance - performance below grade level standards as set by the DPI - as far as the State is concerned, is sufficient to meet the minimum standards of the sound basic education.

The State also argues that neither of the plaintiff parties has presented any evidence as to what is the appropriate performance standard for determining whether a student is on track to acquire a sound basic education or whether a student has received a sound basic education. (Note to PIs= Proposed Findings, par.140, p. 99)

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

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

The plaintiff parties contend that the minimum performance standard is much higher and should be at least grade level (Level III, or above). The plaintiff parties concede that Level III is some evidence that a student is receiving a sound basic education, but that other input/output measures should also be considered. Because the differences between the parties as to what the minimum performance standard of the sound basic education is, or is not, are so extreme, the Court has to first determine what the minimum level of academic achievement is under the *Leandro* standard. Without making this initial determination, there can be no baseline in place for the Court to anchor its review of the North Carolina educational delivery system.

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

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

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

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

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

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

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

Under this bifurcated procedure, if one or more of the parties is unhappy with the Court=s decision on a particular segment of the case, the parties can request the Court to certify that particular decision for appellate review under Rule 54, North Carolina Rules of Civil Procedure without impeding the progress of the Court=s decision making on other segments of the case.

REVIEW OF COMPONENTS OF THE NORTH CAROLINA EDUCATIONAL DELIVERY SYSTEM

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

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

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

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

INTRODUCTION

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

(1) *sufficient* ability to read, write, and speak the English language and a sufficient knowledge of *fundamental* mathematics and physical science to enable the student to *function* in a complex and rapidly changing society;

(2) *sufficient fundamental* knowledge of geography, history, and *basic* economic and political systems to enable the student to *make informed choices* with regard to issues that affect the student personally or affect the student=s community, state, and nation;

(3) *sufficient* academic and vocational skills to *enable* the student to *successfully engage* in post-secondary education or vocational training; and

(4) *sufficient* academic and vocational skills to *enable* the student to *compete on an equal basis* with others in *further formal education or gainful employment* in contemporary society.

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

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

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

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

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

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

[T]he legislative process provides a better forum than the courts for discussing and determining what educational programs and resources are most likely to ensure that each child of the state receives a sound basic education. . . . The legislature can properly conduct public hearings and committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view as to what curricula will best ensure that every child of the state has the opportunity to receive a sound basic education.. . .

[T]he courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children of the various school districts of the state a sound basic education.

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

STATE CURRICULA STANDARDS

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

Following the publication of *A Nation at Risk*, which criticized the nation=s public schools and called for reforms, the General Assembly in 1985 passed legislation rewriting the Basic Education Program (ABEP@) for the State of North Carolina. Robinson, Nov. 16, 1999, at 65-67; N.C. Sess. Laws c. 479, s. 55(14)(c) (1985); N.C.G.S. ' 115C-81.

That legislation specifically directed the State Board of Education to adopt a Basic Education Program for the public schools of the State,@ N.C.G.S. ' 115C-81(a), and went on to describe the BEP follows:

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

N.C.G.S. ' 115C-81(a1).

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

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

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

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

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

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

include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of The University of North Carolina. The Board shall develop and implement a plan for end-of-course tests for the minimum courses required for admission to the constituent institutions. All end-of-course tests shall be aligned with the content standards.

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

N.C.G.S. ' 115C-12(9a).

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

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

Leandro specifically requires instruction in certain academic subjects, to wit: reading English, writing English, speaking English, mathematics, physical science, geography, history, and economic and political systems. The core academic areas@

identified in N.C.G.S. ' 115C-12(9a) include: reading, writing, mathematics, science, history, geography and civics.

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

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

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

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

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

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

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

Process. North Carolina has had a Standard Course of Study in one form or another since the Nineteenth Century. In accordance with the direction of the General Assembly, the State Board of Education undertook a substantial revision of the Standard Course of Study beginning in 1985. The Standard Course of Study is part of the Basic Education Program. Local boards of education and the schools they administer are statutorily required to teach the Standard Course of Study (SCOS).

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

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

The SCOS is, in effect, the State=s curriculum. Just having the SCOS is not enough to guarantee children an opportunity for a sound basic education. If students are to have a genuine equal opportunity to acquire the knowledge and skills set forth in the

SCOS, they most also have access to qualified teachers, adequate materials, equipment, facilities and programs to address the needs of children performing below grade level.

Prior to 1985, the content of the Standard Course of Study was substantially, if not exclusively, determined by curriculum experts and other academic specialists. Since 1985, however, the General Assembly has required DPI to seek input and DPI has sought input from a broad range of people and sources, including parents, the general public, business and industry, classroom teachers as well as State and national curriculum experts. Atkinson, Nov. 16, 1999, at 180-81, 186; Nov. 17, 1999, at 100; Defendants= Exhibit 3.

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

The opportunity for community input in the Standard Course of Study revision process is further illustrated in the Executive Summaries of the revisions for the Science curriculum, Defendants= Exhibit 2, the Mathematics curriculum, Defendants= Exhibit 7, and the Computer/Technology Skills curriculum, Defendants= Exhibit 9.

For example, in the course of revising the Mathematics curriculum alone, DPI relied on the services of a committee comprised of 108 classroom teachers, 16 school district level administrators, 20 faculty and administrators from institutions of higher education, 7 mathematics consultants and 14 others, including members of the business community, vocational education experts, parents and local board members. That committee surveyed 2,000 teachers and 1,100 parents; held public hearings in Asheville, Charlotte, Greenville and Raleigh; conducted focus group meetings for a variety of groups including the North Carolina Business Committee for Education and local parent groups and PTAs; and presented drafts of the revised curriculum to meetings of professional organizations of mathematics teachers. Defendants= Exhibit 7.

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

education, and trade and industrial education were revised in 1997-98. Defendants= Exhibit 4.

Structure of the Standard Course of Study

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

Consistent with the General Assembly=s mandates in N.C.G.S. ' 115C-12(9a), the Standard Course of Study is rigorous and compares favorably with other state curricula, the national curriculum standards embodied in the National Assessment of Educational Progress (ANAP@) and international standards in math and science education. Business and industry leaders involved in curriculum development endorse its content. Atkinson, Nov. 16, 1999, at 188-89.

Consistent with the General Assembly=s mandates in N.C.G.S. ' 115C-12(9a), the Standard Course of Study is specific. Each content area identifies competencies and objectives for each grade so that teachers will know exactly what the State expects of them and their students. Defendant=s Exhibit 1; Atkinson, Nov. 16, 1999 at 189.

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

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

Consistent with the General Assembly=s mandates in N.C.G.S. ' 115C-12(9a), the Standard Course of Study is focused on the competencies, objectives and contents that are

most important for students to know and are most likely to have an impact on their learning. Defendants= Exhibit 1; Atkinson, Nov. 16, 1999, at 190-91.

Consistent with the General Assembly=s mandates in N.C.G.S. ' 115C-12(9a), the competencies and objectives of the Standard Course of Study are measurable. They identify specific competencies and objectives that teachers can ascertain through observation and testing, including testing under the State=s ABC testing program. Defendants= Exhibit 1; Atkinson, Nov. 16, 1999, at 190-91.

Consistent with the General Assembly=s mandates in N.C.G.S. ' 115C-12(9a), the Standard Course of Study is based on high expectations for students compared with other state curricula as well as national and international curriculum standards. Defendants= Exhibit 1; Atkinson, Nov. 16, 1999, at 188-89, 191-92.

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

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

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

With the foregoing in mind, the Court finds that The Standard Course of Study is sequenced and builds on itself so that, as students progress through various levels of proficiency and ultimately graduate from high school, they will have had the opportunity to master all the material in the core academic content areas. Defendants= Exhibit 1.

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

English Language Arts

The philosophy of the Standard Course of Study for English language arts is predicated on the belief that the Twenty-first century will bring new challenges in preparing students for the demands of the information age. Therefore, A[t]he intent of the North Carolina Standard Course of Study for English Language Arts is to equip students with the level of literacy needed to participate as informed and effective citizens in a democratic society, to function effectively in the world of work, and to realize personal fulfillment. Defendants= Exhibit 1, English Language Arts, p. 6.

Overall A[t]he goals of the entire English Language Arts (Communication Skills) curriculum are to produce students who have the language skills to be self-directed learners, collaborative workers, and problem solvers who read carefully and write accurately. These are abilities students will need to be successful in both their personal and professional lives in the 21st century. Defendants= Exhibit 200, p. 7.

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

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

Among other competencies, the Standard Course of Study in English reading requires a student upon completion of the eighth grade to be able to read independently informational and practical materials with complex vocabulary, concepts and formats. The eighth grade student is also expected to recognize the characteristics of argumentative texts and the coherence, logic and organization of argumentative texts as well as to recognize the author=s bias. Finally, the eighth grade student is expected to be able to extract ideas embedded in complex passages of text and synthesize and expand on information from a range of texts. Defendants= Exhibit 1, English Language Arts, p. 89.

While the Standard Course of Study does not enumerate the English speaking skills that students are expected to master through the eighth grade, it does emphasize the importance of speaking skills and provides guidance on how those skills can be developed within the reading and writing competencies described above. For example, the Standard Course of Study states that elementary students should be provided the opportunity to use oral language in work groups to not only gain and give information to

others but also to evaluate the accuracy and reliability of oral information through asking, verifying and clarifying questions. Defendants= Exhibit 1, English Language Arts, p. 39.

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

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

Mathematics

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

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

Strong mathematical problem solving and reasoning abilities;

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

Connections within mathematics and with other disciplines;

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

The ability to communicate their understanding of mathematics effectively; and

Positive attitudes and beliefs about mathematics.

Defendants= Exhibit 1, Mathematics, p. 4.

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

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

Physical Science

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

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

Find or determine answers to questions derived from everyday experiences.

Describe, explain, and predict natural phenomena.

Understand articles about science.

Engage in non-technical conversation about the validity of conclusions.

Identify scientific issues underlying national and local decisions.

Pose explanations based on evidence derived from one's work.

Defendants= Exhibit 1, Science, p. 4.

The Standard Course of Study in science, kindergarten through eighth grade, is based upon four educational principals: the nature of science as a human endeavor; science as inquiry and experiment; the relation between science and technology; and the effect of science on people and social structures. Defendants= Exhibit 1, Science, pp. 9-15.

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

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

The Standard Course of Study with Respect to the Ability of Students To Make Informed Choices About Issues that Affect Them and Their Community, State, and Nation

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

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

Social Studies

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

Civil competence -- the knowledge, skills, and attitudes required of students to be able to assume the office of citizen . . . in our democratic republic @ -- is the major purpose of social studies programs under the Standard Course of Study. Defendants= Exhibit 1, Social Studies, p. 1.

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

possess civic understanding and accept their responsibilities as citizens in a democratic society;

are proficient in the skills of: information acquisition; information use for problem-solving, decision-making, and planning; interpersonal relationships and social participation; and civic participation;

possess the ability to apply concepts, generalizations, and theories to analyze and explain the structure, function, and operations of the economic, social, and political institutions of the United States and other societies and the economic, social, and political behavior of people;

the historical development and unique characteristics of past and present societies;

persistent issues and problems;

basic geographic concepts;

demonstrate values consistent with the fundamental tenets of democracy;

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

demonstrate concern for others and for the environment;

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

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

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

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

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

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

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

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

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

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

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

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

The Court finds that any student who has the opportunity to elect to take high school courses that satisfy the admission requirements for college can successfully engage

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

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

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

The State Board=s commitment to aligning the Standard Course of Study with the coursework required for admission to the constituent institutions of the UNC system is illustrated in the Executive Summary for the revisions to the mathematics component to the Standard Course of Study. Defendants= Exhibit 7. The review committee for the revisions of that content standard included representatives from 20 institutions of higher education. Defendants= Exhibit 7, p. 6. Drafts of the revised content standards were shared with and feedback was sought from the Mathematics and Science Education Network Center Directors, the North Carolina Association of Mathematics Teacher Educators, and the Early Mathematics Placement Test Committee. Defendants= Exhibit

7, p. 3. Further, a focus group on the proposed revised content standards was held for the Statewide College Tech Prep Advisory Committee. Defendants= Exhibit 7, p. 3.

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

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

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

In science, the Standard Course of Study for grades 9-12 includes: Biology, Chemistry, Earth/Environmental Science, Physical Science, and Physics. The Standard Course of Study also includes descriptions of curricula in Psychology and Sociology under its Social Studies curricula.

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

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

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

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

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

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

The fact that some students may elect not to take advantage of courses that will best prepare them for college does not make the curriculum constitutionally infirm. Everyone knows that not every child, for various reasons, aspires to a college education and may wish to pursue a vocational education or no post high school education at all. The bottom line is that the State of North Carolina=s curriculum in High School for students who wish to pursue a college education meets the constitutionally required minimum to provide a student with the equal opportunity to receive a sound basic education sufficient to successfully engage in post-secondary education, provided the student is being taught those courses by qualified and competent teachers.

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

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

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

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

The content areas included in the Programs of Study and Support Services Guide go beyond the statutory requirements by including content standards for workforce development, *i.e.*, vocational education, through age appropriate vocational and technical courses beginning in grade 6 and running through grade 12. Defendants= Exhibit 1, Workforce Development; Atkinson, Nov. 16, 1999, at 181, 184.

Like the other components of the Standard Course of Study, the Programs of Study and Support Service Guide was developed with assistance and input from a broad community of interested persons, including at least 2,000 teachers, 130 local school administrators and 340 business/industry representatives and parents from across the State. Defendants= Exhibit 1, Workforce Development, p. I; Defendants= Exhibit 473. Business and industry representatives are the people that the curriculum developers first contact and they are the people that drive the curriculum in workforce development education.

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

1. Preparing students for further vocational and technical education and lifelong learning.
2. Preparing students for initial and continued employment.
3. Assisting students in making educational and career decisions.
4. Applying and reinforcing related learning from other disciplines.
5. Assisting students in developing decision-making, communication, problem-solving, leadership and citizenship skills.

6. Preparing students to make informed consumer decisions and apply practical life skills.
7. Making appropriate provisions for students with special needs to succeed in workforce development education programs.

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

Introduction of the term local education agency(ALEA@)

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

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

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

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

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

The second section of Workforce Development -- High School and Postsecondary Education Opportunities contains information regarding 43 high school courses of study within the 11 occupational clusters. For each course of study, this section describes the type of work performed by persons who have the knowledge and skills developed through that course of study. It lists examples of careers options for persons with that knowledge and skill. It sets out a secondary career development plan which includes the courses from the Standard Course of Study that a person interested in pursuing a career in that field should take. It lists work-based experience that would be helpful for a high school student interested in that field. It lists enhancement courses that a student might take, if available, to increase his knowledge or skill in the area. It lists community college and university degrees that a student could pursue after completing the high school course of study. Finally, it lists the registered apprenticeships available in the State for students with the requisite education.

The charts demonstrate how the State Board=s workforce development program in conjunction with the North Carolina Community College System and the UNC system offers the opportunity for an integrated continuous programs of study that lead to real careers related to the student=s interests and abilities. Atkinson, Nov. 17, 1999, at 20-22.

The Programs of Study and Support Service Guide provides extensive guidance on the issues that local school boards should consider when constructing their workforce development programs.

Dr. Atkinson, the Director of Instructional Services responsible for overseeing the revisions to the Standard Course of Study and the workforce development curriculum, conducts statewide meetings of local workforce development coordinators three times a year and holds regional meetings every other month to discuss support, new programs, funding and other issues related to workforce development.

In addition to vocation and technical courses offered in the high school curriculum, local school boards can enter into cooperative agreements with community colleges under the Huskins Bill and the concurrent enrollment program to provide high school students the opportunity to enroll in community college courses for which there might be insufficient demand at the high school level.

The most recent data show that approximately 10,700 high school juniors or seniors (about 8% of the student population in those grades across the State) earn college credits every year by taking community college courses through cooperative agreements. Atkinson, Nov. 17, 1999, at 19.

The Court finds that the content of The Standard Course of Study for vocational training in North Carolina public schools as described in the Programs of Study and Support Services Guide is more than sufficient to provide career-bound students with the equal opportunity to acquire sufficient academic and vocational skills to successfully engage in vocational training or compete with others on an equal basis in gainful

employment in a contemporary society provided those students are being taught by competent and qualified teachers.

In conclusion, the Court finds that the entire curriculum contained in and provided by The Standard Course of Study meets and exceeds the *Leandro* standards so long as the curriculum is being properly implemented and taught by competent and qualified teachers. However, the Court having determined that The Standard Course of Study has a more than adequate constitutional content does not answer the complete inquiry. The existence of a constitutionally sound and valid SCOS and curriculum, standing alone, does not constitute clear evidence that the SCOS is being implemented in each and every classroom in such a manner as to provide each child with an equal opportunity to receive a sound basic education.

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

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

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

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

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

The State=s program for certifying and licensing professional school personnel has four essential components: (1) The State sets minimum criteria for the approval or accreditation of teacher education programs; (2) The State establishes minimum criteria for entry level teacher licenses or certificates, including minimum scores on standardized tests; (3) The State requires local boards of education to monitor closely the performance of initially licensed teachers for three years and issues continuing licenses only upon recommendation of the school system in which they are employed; and (4) The State requires teachers who enter the profession after other careers, i.e., lateral entry teachers,

to complete the requirements for full certification within five years after they begin to teach. Defendants Exh. 111. It is the responsibility of local boards of education, through their staff, to ensure that employees are appropriately certified. N.C.G.S. ' 115C-315(f).

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

Accreditation of Teacher Education Programs

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

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

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

In North Carolina, all 47 institutions offering teacher education programs have been accredited by NCATE and maintain that accreditation. In order to maintain NCATE accreditation, an institution must have an on-site visit from an NCATE team every five years. Sullivan, Nov. 19, 1999, at 117. Each institution must also undergo an on-site review by the DPI every five years. DPI visits are arranged to coincide with the on-site visits by NCATE. DPI=s review includes the following: the institution must prepare a report that documents that it is in compliance with all State standards for teacher education programs; DPI teams consisting of trained representatives from institutions of higher education as well as from the public schools conduct on-site reviews; the reviews consist of examinations of documents, interviews with students, faculty, administrators,

and others, visits to clinical sites, observations of actual classes, and examination of facilities and libraries. The teams then prepare reports that document whether the institutions have met State standards or not.

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

Both the State Board and NCATE are moving toward new standards for evaluation of teacher education programs. The new standards will be performance-based. Rather than limiting their focus to inputs such as the number of books in the library, the performance-based standard will consider how well the graduates of the program perform in the public schools, and how well the students of those graduates perform.

While the specific course requirements of the teacher education program at each college or university may vary, there are four basic components.

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

The State Board has adopted a specific set of competencies or guidelines for the professional studies sequence that institutions must meet in order to train prospective teachers.

As part of their professional studies, and in recognition of the fact that children do not all have the same learning styles, prospective teachers study different learning styles and are supposed to be taught how to match instructional strategies to different learning styles. Sullivan, Nov. 19, 1999, at 104, 144-45; Defendants= Exhibit 85.

The competencies for professional studies specifically include instruction in the knowledge and skills necessary to understand and address the needs of a developmentally, intellectually, culturally and socio-economically diverse student body.

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

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

The third component is a specialty study sequence, which focuses on the specific content area the teacher is preparing to teach, including, *e.g.*, math, English, science or social studies.

Institutions with approved teacher education programs are required to introduce the prospective teachers to the Standard Course of Study. The students must take objectives from the Standard Course of Study and develop lesson plans and materials to show how they would teach those objectives.

For each of the areas in which the State offers teacher education programs, the State Board has adopted a set of competencies that institutions must meet in order to train prospective teachers.

The competencies for each program area also emphasize training in addressing the needs of a racially, culturally and socio-economically diverse student body. Defendants= Exhibit 93, pp. 3-1 and 3-2; Defendants= Exhibit 94, p. S 50551, Guideline I; Defendants= Exhibit 95, p. 1, Guideline I.

The fourth component includes the electives the teacher candidate must complete to round out his or her four-year degree.

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

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

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

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

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

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

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

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

Standardized Teacher Examinations

To help ensure that each teacher has the knowledge necessary to teach in the public schools, the State has also developed standards prescribing the minimum scores that each applicant for a teaching certificate in North Carolina must earn on standardized teacher examinations.

N.C.G.S. ' 115C-296(a) provides:

[t]he State Board of Education shall require each applicant for an initial bachelor=s degree certificate or graduate degree certificate to demonstrate the applicant=s academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose.

The State Board of Education shall make the standard initial certification exam sufficiently rigorous, and raise the prescribed minimum score as necessary, to ensure that each applicant has adequate academic and professional preparation to teach.

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

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

the Court is aware of lateral entry programs and conditional licensing, but as a general matter a licensed teacher must take and pass two different standardized teacher exams.

PRAXIS I is the pre-professional skills test (APPST®). It is a reading, writing and math test that a student must take and pass to qualify for admission into a teacher education program.

Before they are licensed, graduates of teacher programs must also pass area specialty tests that test a graduate's knowledge of a particular subject area, *e.g.*, middle grades language arts or middle grades mathematics. At this time, some of those specialty area tests are NTE and some are PRAXIS II tests.

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

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

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

The Court readily acknowledges that there are many who believe the standards are too low and that many believe they are too high. The debate over the sufficiency of the passing score's level will continue until the end of the world. Having said this, the Court will not substitute its judgment for that of the State Board as to the sufficiency of the minimum score and there has not been clear evidence presented that the scores are too low to comply with N.C.G.S. § 115C-296(a).

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

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

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

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

In making these and other findings relating to teacher licensure and certification, the Court is aware that there are certain conditional licenses where a person is permitted to teach on a short term basis without having passed the tests required by the State Board and that there are teachers who are not licensed in the normal sense of the word teaching in North Carolina Public Schools, including Hoke County.

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

Although most new teachers in North Carolina each year are graduates of in-state programs, approximately 40% come from out-of state-programs.

North Carolina has reciprocity agreements with other states that have approved teacher education programs. Teachers coming directly from teacher education programs out of North Carolina must still meet North Carolina's PRAXIS requirements. Sullivan, Nov. 19, 1999, at 123-24.

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

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

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

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

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

Types of Teacher Licenses

The State Board issues several types of teacher licenses. While all the licenses permit an individual to teach, each license has distinct requirements. The initial license is valid for three years. It is the entry level license given to a teacher with less than three years experience.

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

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

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

At the end of the three-year period, the employing school system must decide whether the teacher is qualified for a continuing license.

At the end of the three years, the local school system must determine whether to recommend a teacher in the initial licensing program for a continuing license. A continuing license is also known as a Aclear@ license. If an individual is denied a continuing license, he or she must return to an approved teacher education program for remediation. Sullivan, Nov. 19, 1999, at 127.

A continuing license must be renewed every five years. Renewal is earned by obtaining continuing education credits.

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

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

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

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

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

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

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

State Programs To Attract and Retain Qualified Teachers

In addition to requiring sufficient and valid standards for teacher licensing and certification, North Carolina has adopted many programs to attract and retain qualified teachers for the public schools. It is undisputed that North Carolina, as well as the entire nation is facing a crisis with respect to providing qualified teaching professionals to fill the classrooms in the State. Under the leadership of Governor Hunt and the encouragement of the General Assembly, North Carolina has charted a course to meet this crisis and to attempt to retain the qualified teaching professionals already here.

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

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

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

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

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

The Principal Fellows program is similar to the Teaching Fellows program and provides prospective administrators with two \$20,000 stipends for the two years they are enrolled full time in that program.

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

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

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

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

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

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

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

The Court takes judicial notice of the fact that all teachers, even though they meet the standards for certification, are not the same in terms of temperament, education level, training or skill in the delivery of educational services to their students. That goal is unattainable, people being as different as they are.

Having said this, the political diatribes about hiring only the brightest and the best teachers is merely that. Based on the evidence in this case, the Court is convinced that the great majority of teachers, although they vary in skill levels and ability to deliver educational services, are professionals who teach for the love of teaching and do the best that they can, in Hoke County and elsewhere in the State, to teach their students. However, a teacher can only do so much in a single year. The teacher must take the students assigned where he or she finds them on the performance scale and teach to that

level and attempt to achieve growth with the individual student for the year. It's not an easy task, especially when the State of North Carolina and the public at large expect students to achieve grade level or above performance on the EOG and EOC tests under the ABCs program.

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

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

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

GENERAL FINDINGS

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

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

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

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

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

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

BURDENS OF PROOF PERTAINING TO PUBLIC SCHOOL FUNDING

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

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

Never forget that this case focuses on the constitutional mandate, which is that all children have an equal opportunity to receive a sound basic education. The requirement

that all children in every county have an equal opportunity to receive a sound basic education mandates that the funds appropriated and applied from whatever source, be first used to satisfy the equal opportunity to receive a sound basic education mandate before funds are spent on programs not mandated by the constitutional threshold set forth in *Leandro*.

THE STATE BUDGET PROCESS

To understand the funding delivery system for public school education in North Carolina, it is necessary to have a basic understanding of the State Budget Process.

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

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

In budget year 1999-00, the continuation budget alone accounted for \$140 million of the increase in State public school funding. Among other things, the continuation budget included an inflationary adjustment of 5% for supplies and textbooks, provision for 783 additional teacher positions, and \$13 million in increased funds for at-risk students because of growth in the State=s low-income population. Price, Nov. 18, 1999, at 11-12.

The Expansion budget. Unlike the continuation budget which funds existing programs, the expansion budget adds new budget items to the public school system. Funding for new programs begins as part of an expansion budget. Typically, items funded in an expansion budget become funded in later years in the continuation budget. However, non-recurring items identified as such in an expansion budget are not, by definition,

typically continued in the next continuation budget. Price, Nov. 18 pp. 12,13; Nov. 19, p. 64.

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

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

Sometimes the General Assembly will authorize the expenditures from undesignated funds already appropriated for something requested by State Board without specifically making an appropriation for that purpose. For example, for FYs 1999-01 the General Assembly did not specifically appropriate \$5 million for assistance teams as requested, but instead permitted DPI to use undesignated public school funds for that purpose. Price, Nov. 19, 1999, at 71-72.

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

AN OVERVIEW OF STATE FUNDING FOR THE INSTRUCTIONAL PROGRAM

Since 1993, public school enrollment has increased by about 140,000 students, an increase of 15%. Price, Nov. 18, 1999, at 34; Plaintiffs= Exhibit 65. However, compared to the percent increase in student population, the increase in school funding has been even larger.

State funding for public schools has increased from \$1.9 billion in 1984-85 to \$2.9 billion in 1988-89, \$3.4 billion in 1992-93, \$4.0 billion in 1994-95, \$4.3 billion in 1996-97, and \$5.6 billion in 1999-00. Since this litigation began in 1994, State funding for the public schools has increased by 40%. During this litigation nearly half of the gap between the average teacher salary in North Carolina and the average teacher salary in the United

States has been eliminated. The number of teachers in North Carolina public schools has increased from approximately 71,000 to approximately 77,000. Low-wealth supplemental funding for qualifying poor county LEAs has increased from under \$40 million to over \$60 million. Plaintiffs= Exhibit 65; Price, Nov. 18, 1999, at 23.

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

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

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

If that is not being done, then the State of North Carolina will have to re-adjust its spending patterns in education and re-allocate the resources so as to satisfy the constitutional mandate. It may well be, if such is the case, that the present dollar amount spent is sufficient to meet the constitutional mandate or it may not be. It may well be that 42.6% of the State=s operating budget is too little to provide students in public schools with a constitutionally adequate educational opportunity in North Carolina, but that remains to be seen as the Court goes through its analysis of the evidence in this case.

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

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

FUNDING PER STUDENT (OR PER ADM) CAN BE MISLEADING

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

ADM is the usual way that student population in North Carolina is counted for funding purposes. North Carolina=s per-ADM expenditures do not fully or properly describe the extent to which the State provides educational opportunities among the many LEAs in part because the State provides guaranteed teacher positions based on ADM and the salary and benefits paid to each teacher authorized by the ADM will vary depending on the teachers= length of service, certification status and degree level.

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

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

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

The teacher cost per student in two systems will not be the same even though the primary resource provided by the State Bteachers generated by ADM B may be the same number of teachers. Price, Nov. 18, 1999, at 113-18.

Hoke County Schools are a good example.

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

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

School	# Teachers x Avg. Salary = Payroll	ADM	Payroll per ADM
J.W. McLauchlin	19 x \$32,972 = \$ 626,468	326	\$1,921.68
West Hoke Elementary	29 x \$31,635 = \$ 917,415	458	\$2,003.09
Rockfish Elementary	31 x \$29,781 = \$ 923,211	674	\$1,369.75
South Hoke Elementary	37 x \$29,510 = \$1,091,870	638	\$1,711.39
Scurlock Elementary	37 x \$30,884 = \$1,142,708	490	\$2,332.06
Upchurch Elementary	40 x \$29,574 = \$1,182,960	705	\$1,677.96
East Hoke Middle	45 x \$29,344 = \$1,320,480	797	\$1,656.81
West Hoke Middle	45 x \$29,378 = \$1,322,010	612	\$2,181.82
Hoke High School	98 x \$31,859 = \$3,122,182	1,431	\$2,180.29
Turlington	12 x \$34,335 = \$ 412,020	55	\$7,491.27

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

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

On a per ADM salary basis, HCSS spends far more to educate children at Turlington than at any other school. Not only does Turlington have the highest average salary in HCSS, it has an average salary per ADM of nearly \$7,500. Even discounting Turlington as an outlier, HCSS spends \$2,332 per ADM to provide teachers for students at Scurlock, but only \$1,370 at Rockfish. Yet, HCSS does not claim that it provides superior educational opportunities to students at Scurlock, even though it spends nearly \$1,000 per student more there in teacher salaries than on students at Rockfish. In 1999-00, average teacher salary in North Carolina was just under \$2,000 per ADM. In the previous year, half of the schools in Hoke County already had an average teacher salary greater than \$2,000 per ADM.

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

This variance is a factor that may be considered in analyzing the educational structure but it proves little, if anything, standing alone.

Comparing spending per ADM between LEAs of different size should be done with great caution because of the economy of scale generated by the ADM. Large systems enjoy an economy of scale greater than a small system such as HCSS. Irrespective of the salary paid, the salary of the superintendent in a small system is going to influence spending per ADM more than the superintendent's salary in a large system because the cost of administration is going to be spread over many more students in the larger system. Price, Nov. 18, 1999, at 118-19.

Funding for other administrative positions also makes it appear on a per ADM basis that smaller systems are receiving additional resources per student.

An alternate way to compare school systems is to assume that all teachers are paid at the State average. This eliminates much of the distortion that results when salary differences are taken into account. Using average salaries for the 1999-00 school year

State spending per ADM averaged \$4,017 in North Carolina, and was \$4,341 per ADM in Hoke. Price, Nov. 18, 1999, at 120; Defendants= Exhibit 694.

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

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

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

STATE OVERSIGHT OF INSTRUCTIONAL FUNDS

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

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

STATE FUNDING OF SCHOOL PERSONNEL AND OTHER THINGS

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

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

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

Teacher Allotments

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

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

The number of guaranteed teacher positions (months of employment) is generally based upon student grade populations within an LEA. For kindergarten through second grade a position is allotted for every 20 students, for third grade a position is allotted for every 22.23 students, for fourth through sixth grades a position is allotted for every 22 students, for seventh and eighth grades a position is allotted for every 21 students, for ninth grade a position is allotted for every 24.5 students, and for tenth through twelfth grades a position is allotted for every 26.64 students. These allotments are supposed to enable the LEAs to meet the class size restrictions imposed by the State. Price, Nov. 18, 1999, at 48-54.

The allotted teacher positions (months of employment) are not provided to LEAs by grade. Instead, each LEA is allotted a total number of months of employment. The

actual decision as to how many teachers to hire and to what grades those teachers will be assigned is made by the individual LEA. Price, Nov. 18, 1999, at 56-57.

Vocational education is funded both with a dollar allotment and a guaranteed allotment. Every LEA receives a guaranteed base allotment of \$10,000 and 5 teachers (50 months of employment). In addition to the base allotment, the State provides a 10 month position (10 months of teacher employment) for every 95 students enrolled in grades seven through twelve.

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

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

Student Teacher Ratio.

The term **student teacher ratio** is defined as the number of students in the public school system (LEA) divided by the number of teachers (classroom, support or administrative) in the entire system. Thus, the use of student teacher ratio to prove much, if anything, about what is actually going on in terms of the actual number of students enrolled to the actual numbers of classroom teachers teaching them is not useful. A comparison of student teacher ratios for a system as compared to the maximum class size teacher ratio mandated by the General Assembly has the Court wondering if there are not too many former teachers in administrative positions and not teaching children.

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

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

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

Smart Start funds could just as easily be considered State funds as local funds, albeit State funds that are not part of the public school appropriations. Like Federal Impact Aid and locally-raised funds such as parental and business contributions, Smart

Start funds are not part of DPI=s funding process, but they are used for school purposes in HCSS (and elsewhere).

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

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

Superintendents And Central Office

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

Principals, Assistant Principals And Instructional Support Personnel

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

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

Teacher Assistants

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

Other Support Personnel

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

Except for substitute teachers, this allotment is not intended to pay for all non-instructional personnel that a school system elects to employ. Price, Nov. 19, 1999, at 36-40.

Textbooks

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

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

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

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

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

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

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

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

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

Transportation

State funding for transportation is based in part on how efficiently an LEA is deemed to use its transportation resources. The State funded all of HCSS transportation costs in 1999-2000 because the LEA is considered to operate its transportation system at

100% efficiency. Price, Nov. 18, 1999, at 94-95. HCSS received \$127.83 per ADM for transportation, less than the State average of \$151.15. Price, Nov. 18, 1999, at 130-31.

At-Risk Funds and Student Accountability

Categorical allotments provide State funds over and above the funding for teachers, administrators, books and supplies. Categorical allotments are used to provide funds to LEAs for at-risk students, including both low-income students and low-performing students. In 1999-2000 categorical allotments included, among other things, funds for academically gifted children and at-risk student services. Funds for at-risk students formerly were allotted in separate categories, such as drop-out prevention, summer school, and pre-school. Funds for at-risk students in 1999-2000 included \$52 per ADM plus \$286.40 per low-income student. Therefore, LEAs with more low-income students received more at-risk funds. The LEAs can use these funds as they see fit to meet the particular needs of all their students, including hiring additional teachers and providing supplies and materials. Price, Nov. 18, 1999, at 64-67, 79.

Fund for improving student accountability

A new categorical fund for 1999-00 was for improving student accountability. It included funds formerly used for NC HELPS and for a middle school pilot program. In addition to all other funding for teachers, equipment, supplies, books, and funding specifically provided for dealing with at-risk students, LEAs also received \$173.34 for every student who scored below grade level in grades three through eight. Price, Nov. 18, 1999, at 75. These funds can be used for supplies, materials, equipment and tutors for these students.

Funds for students with limited English proficiency (ALEP@) are allotted so as to provide more funds to systems having greater concentrations of LEP students. LEP funding results in LEAs having at least an additional \$4,951 for each LEP student. Price, Nov. 18, 1999, at 77-78.

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

Specific procedures and programs have been developed and implemented to identify and to meet the needs of Scurlock=s academically and behaviorally at-risk students. In addition to our regular education

kindergarten through fifth grade program, our school serves a special needs population as well.

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

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

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

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

Referred students who do not qualify for services from the Exceptional Children's program, will be monitored by teachers and Core Team. If appropriate, a student may be classified A504" and an accommodation plan developed.

Defendants= Exhibit 389.

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

Low-Wealth Supplemental Funding

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

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

After adding all the revenue available to the counties for taxing, the State average tax rate is computed. The State average tax rate does not reflect the true value of how much money a county can generate from tax revenue because the value of property fluctuates among counties. To account for this, the State takes the tax rate and multiplies it by the sales-assessment ratio, and the result is called the State average effective tax rate. That number is used to compare one county's ability to generate revenue with another's. After that number is decided, the State divides it by the number of students in the county. The result is how much money the county can generate per student. The value per square mile of property is the second calculation. It is used for the density adjustment. Some property has very little value for tax purposes. The formula accounts for this by taking total property value and dividing it by the square miles in the county. Price, Nov. 18, 1999, at 83-84.

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

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

The low-wealth formula next computes a county's wealth percentage, which is a county's ability to generate revenue percentage. The property value percentage is weighted 40% in the formula. Density is weighted at 10%. Half of the formula is weighted on per capita income. The total is added, and if a county is less than 100%, it is eligible for low-wealth supplemental funding. Hoke's low-wealth formula percentage in 1999-00 was 51.36%, the highest in the State. Therefore, Hoke received the highest allocation of low-wealth funds per student in the State.

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

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

Small County Supplemental Funding

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

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

Funds for Staff Development

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

Using Hoke as an example, in 1998-99 HCSS used its entire regional education and technical assistance fund allotment for staff development. In 1999-00, HCSS has over \$60,000 available from the regional education and technical assistance fund to pay for staff development, textbooks, remediation or other things. Price, Nov. 18, 1999, at 89-90. This is about \$10 per ADM.

In 1999-00 HCSS received \$5.45 per ADM for staff development, compared to the State average of \$4.62. Price, Nov. 18, 1999, at 124; Defendants= Exhibit 694. If HCSS uses its regional education and technical assistance funds for staff development again in 1999-00, as it did in 1998-99, that alone would raise HCSS=s funds for staff development to about \$15 per ADM, over three times the average State allotment for staff development.

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

Special Technology Funding

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

Despite this, the Court must keep in mind that its analysis must focus on the issue of whether the State is providing every child with the equal opportunity for a sound basic education. The Court, based on its own experience, notes that in order to use a computer

to write and communicate, the person undertaking to use the computer must be able to read, write and competently type on the keyboard using the English language in a manner that is comprehensible as well as knowing how to properly use the machine. Each child could have a brand new laptop computer on the desk but if the child cannot read, understand the instructions and use the keyboard to produce written communication, this expensive tool is extremely limited except for video games.

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

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

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

LEA FLEXIBILITY IN USING ALLOTTED FUNDS

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

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

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

Federal Funds

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

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

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

and 2 on the State=s EOG and EOC tests. Defendants= Exhibits 386, 387, 388, 389, 390, 391, 395, 397.

LOCAL FUNDS

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

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

CORRELATIONS BETWEEN EXPENDITURES AND STUDENT ACHIEVEMENT

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

This Court understood Dr. Hanushek quite clearly. Although plaintiff=s counsel described Dr. Hanushek as the witness who was going to testify that Amoney does not

matter@ the Court finds Dr. Hanushek to be very credible. His testimony was logical and full of common sense. Put in plain English, the thrust of Dr. Hanushek=s opinion is that throwing money at an educational problem without having goals in place for the spending and a system of accountability to measure the effectiveness of the spending is wasteful and not likely to result in improving student performance. The Court is of the same opinion. Dr. Hanushek believes that money matters provided the money is spent in a way that is logical and the results of the expenditures measured to see if the expected goals are achieved.

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

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

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

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

This does not mean that Amoney does not matter.@ Only a fool would find that money does not matter in education. The point is that money should be spent with specific goals in mind and with a method of accountability in place to measure whether or not the money that is spent is being appropriately spent to obtain the results desired.

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

performance under the State=s ABC system of financial rewards than under input-driven systems.

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

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

Caveat.

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

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

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

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

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

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

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

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

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

Most importantly, the *ABCs* shifted the unit of accountability. Prior accountability reform initiatives had focused on the overall performance of an LEA. In some cases, these accountability models gave the impression that an LEA was generally performing well when, in fact, the high performance of some schools was masking the poor performance of other schools. Put another way, schools that had large numbers of students performing at unacceptable levels could be *hidden* from view because the LEA's *Average* as a system would not reveal the unacceptable performance of a low performing school or groups of students within a school.

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

By holding individual schools accountable for student performance, the *ABCs* reduces the ability of poor performing schools to hide under the veneer of adequate district wide performance. One advantage of holding individual schools accountable for

student performance is that schools quickly learn whether they have left groups of students out of the education process. If those students are not making progress, then schools must give more attention to those groups or they can never make the achievement goals set for the school. Robinson, Nov. 16, 1999, at 13-14.

Although teachers and administrators may not do it consciously, they often assume that certain students will not learn as rapidly or as much as others. As a result of that kind of attitude, those students will not do as well as others. The ABCs provides teachers and administrators with an incentive to have higher expectations of all students. Robinson, Nov. 16, 1999, at 20.

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

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

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

To that end, the General Assembly mandated that the State Board [of Education] shall design and implement an accountability system that sets annual performance standards for each school in the State in order to measure the growth in performance of the students in each individual school. @ The accountability model for elementary and middle schools is different from the high schools model.

The State uses student performance on the EOG tests for math, reading and writing to set the goal for educational improvement in elementary and middle schools for a particular year and to determine whether the students in a school have achieved that goal.

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

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

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

The EOG test is aligned with the Standard Course of Study for those grades three through eight. The EOG tests for math and reading are not only valid measures of a student=s knowledge of the academic objectives in the Standard Course of Study but they are also developmentally scaled. Using developmentally scaled tests in reading and math permits the State Board to determine a growth in a group of students= reading and mathematics skills over time and between grades three through eight. The developmentally scaled scores on those tests permits the State Board to set standards for how much a student=s knowledge should grow for each additional year of school. Robinson, Nov. 16, 1999, at 102; Johnson, Dec. 1, 1999, at 204-06.

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

Each year the State sets an expected growth/gain standard for each North Carolina public elementary school and middle schools. That expected growth/gain standard is based on: (a) using the school=s present students= performance on EOG tests on reading and math from the prior year, no matter what North Carolina public school those students attended the prior year; (b) expected gain on the EOG writing tests in grades four and

seven; (c) the State=s average rate of growth on the EOG tests; and (d) a constant which is necessary to account for the statistical tendency to the mean. Defendants= Exhibit 209, p. 2; Johnson, Dec. 1, 1999, at 205-16.

The students in schools that have a large percentage of low performing students must improve their knowledge of reading, writing and mathematics by more than an average year=s worth of growth for the school to meet its expected growth standard. Johnson, Dec. 1, 1999, at 213-15.

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

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

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

The components of the elementary and middle school accountability model have always been reading, writing and mathematics. The components of the high school accountability model have changed over time. In 1999-00, the high school model included the results from eleven EOC tests, including six courses required for graduation from high school -- Algebra I, Biology, English I and II, ELPS, and United States History -- and five college preparatory courses -- Algebra II, Chemistry, Physical Science, Geometry and Physics.

It also included student performance on the High School Competency Test and student performance on a high school comprehensive reading and mathematics test. The high school comprehensive reading and mathematics test is a tenth-grade level reading and mathematics test that is developmentally scaled to permit comparison to student performance on the eighth-grade EOG reading and mathematics test. Finally, the high

school accountability model included increases in student completion of the college preparatory course of study and the college/tech preparatory course of study.

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

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

At the end of each year, the performance of students in a school on the EOG tests, EOC tests and other measures is fed into a formula to determine whether the students in that school met the educational goal the State had set for that school. P-I 82 A school=s absolute performance is evaluated through the calculation of a Aperformance composite.@ The performance composite for a school is the number of valid test scores at or above Level III divided by the total number of test scores. The formula for determining the performance composite counts the number of test scores at or above grade level, regardless of whether the student generating that score tests at or above grade level in other subject areas. Therefore a 50% performance composite does not mean that 50% of the students at a particular school are proficient on all of the ABC tests they have taken that year.

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

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

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

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

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

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

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

The State has a system of recognition and rewards for schools based on their students performance on the ABCs school accountability model. Based on the outcome of both the performance and growth/gain calculations, schools are classified into a recognition category. If the school meets its growth standard, then it is classified as AExpected Growth. If it exceeds its growth standard by more than 10%, it is classified as AExemplary Growth. The 25 elementary or middle schools and the 10 high schools that exceeded their growth standard by the greatest amount are recognized as the AMost Improved Schools in Academic Growth. Schools that meet their growth standard and

have 80% of their students performing at or above Level III on the EOG/EOC tests are recognized as ASchools of Distinction.@ Schools that meet their growth standard and have 90% of their students performing at or above Level III on the EOG/EOC tests are recognized as ASchools of Excellence.@ Defendants= Exhibit 246; Johnson, Dec. 1, 1999, at 216.

The General Assembly has also authorized monetary bonuses for personnel in those schools that achieve AExpected Growth@ and AExemplary Growth.@ In the first year, the General Assembly appropriated \$1,000 for personnel in AExemplary Growth@ schools. The next year the General Assembly appropriated \$1,500 for personnel in AExemplary Growth@ schools and \$750 for personnel in AExpected Growth@ schools. General Assembly appropriations for bonuses for personnel in the ABCs program for 1997-98 totaled \$140 million -- the largest teacher incentive program in the nation.

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

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

In the first year of the implementation of the ABCs testing, 1996-97, 7.6% of North Carolina=s elementary and middle schools were designated as low-performing. In 1997-1998, only 0.9 % of the elementary and middle schools statewide were designated as low-performing. In fact, in the first two years of the ABC=s program, the number of schools designated low- performing fell from 123 to 30. In 1998-1999, 0.7% of all schools statewide were designated as low performing. The General Assembly required that certain remedial programs be implemented in those low-performing schools. Johnson, Dec. 1, 1999, at 220-23.

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

The first year the State Board only had the funds to select and train 15 assistance teams for 123 low-performing schools. Therefore, only 15 low-performing schools received assistance teams.

The next year, 1997-98, 12 of the 15 low-performing schools had improved to Exemplary Growth schools, meaning that those schools exceeded their expected growth standard by more than 10%.

In 1997-98, the number of low-performing elementary and middle schools fell to 15.

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

In 1998-99, schools that did not meet their expected growth standard and did not have at least 50% of their students at or above grade level would nevertheless not be identified as low-performing if their performance composite fell within a confidence band for that school.

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

The confidence band was used only for reporting low-performing schools and did not affect the reporting of the performance composite scores or the use of performance composite in school designations other than low-performing.

In 1998-99, Hoke County had no schools with performance composites below 50%. Therefore, the confidence band had no effect on the reporting of the performance of Hoke County schools in the 1998-99 ABCs Report. Defendants= Exhibit 246.

The ABC=s mathematics and reading tests for elementary and middle school students are scored on a developmental scale; that is, it is expected that a student will obtain a higher score than he or she did the previous year. An example of developmental scale scoring is that a child capable of multiplying larger numbers should score higher on the developmental scale than a child not capable of multiplying numbers at large. Each point in the developmental scale can represent a range of between 16% to 25% of a year=s worth of instruction. DX 226, PIX 80, p. 7.

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

In 1998-99, ABCs tests for elementary and middle school students included multiple choice end-of-grade tests in reading and math for grades 3-8 and a writing test in grades 4 and 7. The scores on these tests are used on both the performance and growth calculations. The high school tests (EOC) were included in both the performance and gain calculations. The high school tests that were included in both the performance and gain calculations were Algebra I, Biology, English I, English II (the high school writing test), ELPS, and U.S. History. DPI has developed and administers tests in Algebra II, Geometry, Physical Science, Chemistry, and Physics as well, but they were not used in the gain calculation in 1998-99. These five tests were, however, used in the performance calculation in 1998-99 for high schools.

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

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

If an assistance team determines that part of the reason for student performance in a low-performing school is the teachers' inadequate general knowledge, the assistance team can recommend that the teacher take a general knowledge test. A teacher who fails this test must engage in a remediation plan. If after completion of that remediation plan, the teacher fails the test again, the teacher is dismissed and the State Board could revoke his or her license.

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

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

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

If more than half the schools in an LEA are low-performing, the State Board has the authority to terminate the superintendent's contract and appoint an interim superintendent. If the local board does not cooperate with the interim superintendent, then

the State Board can suspend the powers and duties of the local board and operate the schools in that system itself.

Dr. Triplett, an expert in student and educational assessment and education program development and evaluation, testified that one of the strengths of the ABCs program is that it includes all students, both high and low performers, in the accountability model.

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

Experts and national organizations have recognized the ABCs as one of the strongest accountability programs in the country and the National Alliance of Business has recognized North Carolina as the 1999 Education State of the Year for the improvements in the public school system.

North Carolina is one of only two states that Education Week has recognized as having a comprehensive accountability program, *i.e.*, it has report cards, ratings, monetary rewards, ultimate sanctions for failing schools and identifies low as well as high performing schools. North Carolina's program is ranked as one of the top ten state standards and assessments programs.

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

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

The plaintiffs are critical of the ABCs in the areas of test design and analysis methods, EOG performance standards, exemption of certain sub-groups of students, too much emphasis on multiple choice and not enough open-ended tests. It is true that most of the tests used in the ABCs program are multiple choice.

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

These open ended tests were administered in the first two years of the program, but discontinued in 1998-99. The lack of performance testing has been criticized by the North Carolina Standards and Accountability Commission. The plaintiffs also criticize

the ABCs system=s focus on individual schools, claiming that the focus on individual schools tends to mask systematic problems statewide, particularly performance gaps between poor counties and economically advantaged counties.

This criticism is not justified. By using the information on performance in A The Green Book@ and the information in Volume II of the AABCs Annual Report Card,@ one can easily determine that there is a performance disparity between groups of students by race, by economic status and by levels of parent education. In addition, the information provided permits a cohort (group of students in grade 3 for a particular year) to be followed in their academic performance on the EOG tests through the 8th grade on a yearly basis.

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

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

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

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

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

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

Based on the clear and convincing evidence in the record in this case, the Court finds that (a) the ABCs program is specifically constructed to provide incentives to teachers to teach all children regardless of performance level; (b) under the ABCs program previously low-performing schools and schools that were, and are, not providing their students with a year's worth of academic growth for a year's worth of school have turned their educational programs around and are now providing their students with more educational opportunities to learn the SCOS than they previously received; (c) the ABCs program identifies low-performing schools and provides additional assistance to them; and (d) the ABCs program enhances the State's ability to analyze each individual school with a view towards determining if that school is providing each child with the opportunity to receive a sound basic education and towards determining if the children in each school are receiving a sound basic education.

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

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

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

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

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

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

- (1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.
- (2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.
- (3) Collaborate with school staff, central offices, and local boards of education in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.
- (4) Make recommendations as the school develops and implements this plan.
- (5) Review the school=s progress.

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

N.C.G.S. ' 115C-105.38.

DPI, through the Division of School Improvement, supervises the creation, training and duties of the assistance teams. Leak, Dec. 2, 1999, at 156-58. The State assistance teams are made up of educators selected from all over the State. They can consist of teachers, principals, central office staff, college professors, and retired teachers. Leak, Dec. 2, 1999, at 162-64.

To be eligible for selection to an assistance team, a candidate must have had at least four years of teaching experience. While there may be teachers with less experience who could do the job, for purposes of credibility and effectiveness in evaluating the performance of more experienced teachers and administrators, the four-year requirement was deemed necessary. Leak, Dec. 2, 1999, at 231.

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

All team members must undergo a rigorous four-week training course. Leak, Dec. 2, 1999, at 163-64. The training is conducted by local, State, and national consultants. Leak, Dec. 2, 1999, at 162.

A critical piece of the training is the emphasis on the Effective School Correlates. Based on research conducted on high achieving schools with large percentages of low socio-economic students, researchers have found certain common factors, including strong instructional leadership, high expectations of students, high time on task, and a warm and accepting climate. Leak, Dec. 2, 1999, at 166, 180-81.

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

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

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

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

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

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

When a team goes into a school, the first thing it does is to review all facets of the school's operation and assist in making recommendations for improving student performance at the school. Leak, Dec. 2, 1999, at 179-80. This is accomplished through a Needs Assessment. It includes a review of pertinent documents (schedules, test scores, discipline referrals, attendance records, etc.), and interviews with students, teachers, non-professional staff, and parents.

The Team then arranges the information along the lines of the Effective School Correlates. The findings, both strengths and areas needing improvement, are shared with the principal and the School Improvement Team. The findings are compared to the

School Improvement Plan and the latter adjusted if needed. Leak, Dec. 2, 1999, at 179-80, 184-87.

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

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

In her entire career as a teacher and administrator, Dr. Leak had never encountered a teacher who could not teach; on the other hand, she had encountered teachers who would not put forth the effort. Leak, Dec. 2, 1999, at 193. Dr. Leak agrees with State policy that All children can learn, regardless of socioeconomic background. Leak, Dec. 2, 1999, at 193.

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

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

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

It is critical when the team leaves a school that the principal and central office staff take over the support of the school. It is the duty of central office instructional support staff to do exactly what the Team had been doing for the school. Leak, Dec. 2, 1999, at 225-29.

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

By law, the assessment teams are required to:

- (1) Conduct evaluations of certified employees in low-performing schools;
- (2) Provide technical assistance and training to principals, assistant principals, superintendents, and superintendents' designees who conduct evaluations of certified employees;

- (3) Develop action plans for certified employees; and
- (4) Assist principals, assistant principals, superintendents, and superintendents' designees in the development and implementation of action plans.

N.C.G.S. ' 115C-334.

During the summer months, the Division of School Improvement offers professional training to assessment teams at the request of any school system. The training consists of three days of training delivered by staff at the school system. This training allows professionals at the local level to help their own schools that may be struggling. Leak, Dec. 2, 1999, at 159-61.

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

V. STUDENT PERFORMANCE STANDARDS

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

The Supreme Court=s determination on this issue acknowledges that academic achievement cannot exist without opportunity and that the Court may consider the actual achievement of students on a variety of Aoutput@ measures of academic achievement as evidence of underlying educational opportunity.

In this regard, a student=s academic achievements, *i.e.*, educational outputs, may be affected by a myriad of factors other than the educational opportunities available to a student during the 5 or 6 hours of the 180 days the student is actually in school.

Just as academic achievement may be affected by a myriad of factors in a student=s life outside of school, as well as the educational opportunities provided to the

student in the classroom 5 or 6 hours a day, academic achievement also depends on the student's ability, maturity, effort and attitude towards learning.

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

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

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

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

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

further formal education or gainful employment in contemporary society.

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

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

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

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

Because students will learn different things at different times depending on their ability, effort and opportunity to obtain a sound basic education, the fact that a student fails to demonstrate a satisfactory level of academic achievement, *e.g.*, a level of performance that indicates that the student is receiving a sound basic education (performing at grade level or above Level III, or above) does not, in and of itself, prove that the State has failed to provide that student the equal opportunity for a sound basic education or that the opportunity to obtain a sound basic education does not exist in the student=s school or school system.

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

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

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

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

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

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

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

This Court is expressly bound to Agrant every reasonable deference to legislative and executive decision branches when considering whether they have established and are

administering a system that provides children of the various school districts of the state a sound basic education.@ *Leandro*, 346 N.C. at 357, 388 S.E.2d at 261.

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

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

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

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

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

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

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

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

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

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

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

While we are on the subject of expert witness testimony, the Court notes that this is a non-jury case in which the Court is the fact finder. With respect to the testimony of expert witnesses, the Court, like the jury, is not required to accept the testimony of expert

witnesses to the exclusion of facts and circumstances disclosed by other evidence. Put another way, the Court should consider an expert witness= testimony but it is not bound by it.

Dr. Suzanne Triplett, the State=s expert in educational assessment and educational program evaluation, testified that a student who has satisfied all the requirements for a North Carolina diploma, including passing the required courses in the Standard Course of Study (including algebra I) and passing the required North Carolina High School Competency Test has acquired a sound basic education. Triplett, Nov. 22, 1999, at 32-38. With all due respect to Dr. Triplett, this may be true in some cases, but it is certainly not true as to those students who have performed below grade level as evidenced by their grades, EOG and EOC tests, SAT scores and other measurements of academic output achievement. Another valid reason for questioning the prima facie validity of a high school diploma can be found in the present North Carolina Competency Standard.

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

At that time, the competency test in use by the State of North Carolina for high school graduation tested only 6th grade level skills. After receiving the Commission=s recommendation, the State Board considered adopting a test that would actually test 12th grade level skills (those that a high school senior should have mastered in order to show that he or she had obtained a sound basic education), but elected not to adopt so rigorous (and in light of *Leandro* , July, 1997) a standard and instead adopted an 8th grade level test as the minimum competency standard. Had the real 12th grade skill level test been implemented, data provided the State Board at the time indicated that at least one third (1/3) of North Carolina high school students would **fail a test that actually measured 12th grade skills**. The State Board was not happy about the decision to only elevate the test from the 6th grade to the 8th grade skill level. ANo one is really happy about awarding a bonus to students who might only have eighth grade skills..@ T. 11/23 p. 185.

Rather than stand up and face a known, but disagreeable truth, the North Carolina Competency Standard for high school students was revised for 1995. The standard was Alifted@ from the bottom of the educational barrel to about 1/3 of the way to the top. Thus, the competency standard which is presently in place requires that North Carolina students demonstrate mastery of educational skills and competencies that one would expect in the 8th grade in order to receive a high school diploma. The Court notes that

passing this test is not the only requirement for a high school diploma because in addition to being able to show one has mastered the equivalent of an 8th grade education, the student must have Apassed@ the core high school curriculum in the subjects required for graduation.

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

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

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

Accordingly, the Court finds that the (eventual) passage of the 8th grade level competency test fails to prove much, if anything. It certainly does not prove that a student has been offered the opportunity to receive a sound basic education and depending on what year it was Apassed@ tends to show more likely than not that the student has failed to obtain one.

In addition to her own study and knowledge of educational assessments, Dr. Triplett cited other experts in the field, including Dr. Richard Jaeger, the plaintiffs= expert in the fields of education and psychological measurement, to support her opinion that a high school diploma is a superior measure of educational attainment and that a diploma is in fact a better measure than performance on competency tests. Triplett, Nov. 23, 1999, at 178-80.

This is a red herring that has been out of the water for several days. A high school diploma awarded to a student that has been provided with the equal opportunity to receive, and has in fact received a sound basic education, is certainly a superior measure

of educational attainment than performance on a competency test, especially if the competency test only measures academic performance at the eight grade level like North Carolina's present high school competency test does.

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

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

Having said that, the Court finds that the State standards for courses and course content required for obtaining a high school diploma (excluding the North Carolina High School Competency Test) more than meet the *Leandro* standard in terms of content and subject matter **provided** the student earning the diploma is performing at grade level or above (Level III and IV) and has been taught by competent and qualified teachers. The Court finds that the *Leandro* goal would be achieved when each student who receives a high school diploma has received a sound basic education evidenced by performance at grade level or above. If that standard of performance constitutes the basis underlying the award of a high school diploma, the student would have received the sound basic education mandated by the Constitution.

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

TEACHER GRADES ARE ONE IMPORTANT MEASURE OF STUDENT PERFORMANCE

Pursuant to State law, the principals in individual schools are statutorily authorized to grade and classify students. N.C.G.S. ' 115C-288(a); Jacobs, Nov. 15, 1999, at 113.

It is the policy of the State of North Carolina to entrust the decisions to promote a student or to award them a passing grade in a course to the principals in individual schools.

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

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

In the years 1993-94 through 1997-98, HCSS deemed 1,147 students to be sufficiently educated in the required components of the Standard Course of Study to award them diplomas from Hoke County High School. Plaintiffs' Exhibit 291. This fact does not answer the question as to whether or not all those students left school having acquired, or been provided the opportunity to acquire, a sound basic education.

The Court acknowledges, as did the Supreme Court, that a debate rages as to whether a standardized test is a better indicator of the student's knowledge and skill than the classroom teacher's assessment, *i.e.*, the grade the teacher gives the student at the end of the course. Defendants' Exhibit 226, p. 3; A. Jackson, Sep. 20, 1999, at 130-34; D'Annunzio, Sep. 20, 1999, at 221-22; Calhoun, Sep. 21, 1999, at 246, 331-34, 360; Ross, Sep. 30, 1999, at 201-02; Jacobs, Nov. 15, 1999, at 109-11; Keim, Nov. 15, 1999, at 167-72.

Hoke County schools grade students according to the following standards: 100 to 93 is an AA; 92 to 85 is a AB; 84 to 77 is a AC; 76 to 70 is a AD; and scores below 70 are AF or failing. Defendants' Exhibit 614; Keim, Nov. 15, 1999, at 200-03.

A student must have at least an average grade of 70 or a AD at the end of the course in order to pass and receive credit for a course or graduate. Keim, Nov. 15, 1999, at 167-68, 200. A student who achieves a AD may pass but that student has not performed at the level expected to obtain a sound basic education.

Students who pass a course or are promoted have, in the professional judgment of the teacher, acquired a minimal level of proficiency in that academic material covered in that grade or course. Calhoun, Sep. 21, 1999, at 333-34; Keim, Nov. 15, 1999, at 167-72. This does not, standing alone, ensure that the student has acquired, or been given the

opportunity to acquire, that level of academic proficiency sufficient to provide that student with the knowledge and skills required for receipt of a sound basic education if that subject is one included in the definition of sound basic education. A AD@ does not meet the minimal standards for a sound basic education.

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

When setting standards for student performance on the EOG tests, the State Board of Education chose to rely on teachers= knowledge of student achievement and performance outside the domain of standardized testing to set the benchmarks for student performance on the EOG tests. Triplett, Nov. 22, 1999, at 63-67; Plaintiffs= Exhibit 119, p. 5.

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

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

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

the academic year. However, promotion in this manner, in the absence of valid proof of performance at or above grade level as established by Level III or above performance, does not necessarily mean the student has obtained, or been offered the opportunity to obtain, a sound basic education for that year.

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

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

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

STUDENT PERFORMANCE AS MEASURED ON STANDARDIZED TESTS

The Supreme Court has specifically stated that:

Another factor which may properly be considered in this determination [whether any of the state's children are being denied their right to a sound basic education] is the level of performance of the children of the state and its various districts on standard achievement tests. In fact, such Aoutput@ measurements may be more reliable than measurements of Ainput@ such as per-pupil funding or general educational funding provided by the state. It must be recognized, however, that the value of standardized tests is the subject of much debate. Therefore, they may not be treated as absolutely authoritative on this issue.

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

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

When aggregated, students' performance on standardized tests can permit comparisons between the demonstrated abilities of groups of students.

Like other output measures, standardized tests are approximate measures of a student's knowledge and skill in the areas measured by the test on the day the test is given.

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

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

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

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

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

The record contains extensive evidence regarding the EOG and EOC tests.

The EOG and EOC tests were specifically developed to correlate to the knowledge and skills described in the Standard Course of Study.

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

A student=s scores on the EOG and EOC tests have been determined to be valid measures of a student=s knowledge of the material covered in the Standard Course of Study. Defendants= Exhibits 232, 234, p. EOGiii; Defendants= Exhibit 235, p. iii; Johnson, Dec. 1, 1999, at 191-92.

Both the EOC and EOG tests were designed to measure achievement of curricula objectives which have a strong emphasis on higher-order thinking skills. Defendants= Exhibit 234, p. EOGiii; Defendants= Exhibit 235, p. iii.

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

Student performance on the EOG and EOC tests is a valid measure of the student=s knowledge of objectives in the Standard Course of Study.

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

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

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

Development of the EOC and EOG Tests

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

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

The process is repeated for each percentage of students in each defined category until 100% of the students are accounted for. In this manner, the external judgment of the experts is used to identify the range of scale scores associated with a particular definition of performance. Plaintiffs= Exhibit 119, pp. 5-13; Defendants= Exhibit 245, Glossary, p. 2; Triplett, Nov. 22, 1999, at 63-81.

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

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

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

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

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

Not a clear example of any of these achievement levels.

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

During this Afield test, @ teachers were able to place 95% of all students into one of the four specified achievement levels. The results are included in Plaintiffs= Exhibit 119 at pages 5-6.

The teachers professional judgment of the percentage of students performing at the specified levels was fairly consistent over grades three through eight with the largest range occurring in teacher judgments over time of the percentage of students failing reading (5.3%) and the smallest range being teacher judgments over time of the

percentage of students achieving at an advanced level in mathematics (1.3%). Plaintiffs= Exhibit 119; Triplett, Nov. 22, 1999, at 79.

In an attempt to measure the accuracy of the teachers= professional judgments in 1992, teachers of a random sample of fifth and eighth grade students selected to take the Iowa Test of Basic Skills (AITBS@) were asked to again assign their students to achievement levels under the same instructions used in the 1992 survey. Plaintiffs= Exhibit 119, p. 7. Comparing the performance on the ITBS with performance on the EOG tests, the State Board of Education determined that Level IV performance was equivalent to students who scored two grades above grade level on the ITBS. Triplett, Nov. 22, 1999, at 147-48; Plaintiffs= Exhibit 119, p. 11.

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

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

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

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

Level II: Students performing at this level demonstrate inconsistent mastery of knowledge and skills in this subject areas and are minimally prepared to be successful at the next grade level.

Level III: Students performing at this level consistently demonstrate

mastery of grade level subject matter and skills and are well prepared for the next grade level.

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

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

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

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

When considered with the fact that the top scale score for Level I performance was established at 130, the State Board therefore recognized a scale score range of 131 to 140 to be Level II performance. Defendants= Exhibit 226, p. 5. Continuing in this

manner to apply the results of the 1992 field test to the 1993 student scale scores on the EOG reading and mathematics tests, the State Board of Education established a range of scale scores that it deemed representative of Level I, II, III or IV performance on those EOG tests.

In addition to establishing achievement levels for performance on the EOG tests, the State Board of Education used the scale scores on the EOG tests to set the mean scores on the 1993 EOG tests as the State standard for grade level performance for purposes of establishing expected growth in student performance in grades three through eight. The State Board of Education can use the EOG test results to establish expected growth standards because the EOG test results are developmentally scaled over grades three through eight.

By comparing the difference between a student's developmental scale score from one year to the next to the statewide average differences in developmental scale score on the EOG tests, it is possible to determine how much academic growth a student has achieved over the course of one year and whether that growth is more or less than an average amount of growth for students in that grade.

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

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

In each case, the State Board of Education has classified all the scores on the EOC tests into four Levels of performance: Level I, Level II, Level III and Level IV, Defendants' Exhibit 226, p. 13, according to the following definitions:

Level I: Students performing at this level do not have sufficient mastery of knowledge and skills of the course to be successful at a more advanced level in the content area.

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

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

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

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

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

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

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

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

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

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

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

The State of North Carolina contends in its arguments to this Court that Level II performance more closely describes the minimal level of performance which is indicative of a student being on track to acquire the sufficient, fundamental education envisioned and described in the Supreme Court's definition of a sound basic education.

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

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

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

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

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

The Court, considering all of the evidence in this case, agrees with the State Board's assessment that Level III is grade level performance and finds that a child who is performing at Level III or above, as those standards are defined by the ABCs, is clear evidence that as to the content and subject matter tested, that child has obtained a sound basic education as defined by the Supreme Court.

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

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

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

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

A score in Level II or below means that a student is below the level expected by the SCOS at that time. Students who fail to reach Level III or IV are considered academically at risk and it is undisputed that they haven't mastered at least part of the skills required for a sound basic education. Dr. Triplett herself considers performance at Levels I and II to be inadequate.

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

This evidence shows that, although students are doing work that their teachers in their best professional judgment would grade as passing, their performance on the EOC tests may be below the level the State Board of Education has designated as grade level performance, *i.e.*, Level III.

Common sense and the greater weight of the evidence in the record regarding the meaning of student performance on the EOG and EOC tests proves that Level III performance, or above as described on the EOG tests and the EOC tests are aligned with the constitutional standard for a minimally sufficient sound basic education as described in *Leandro* .

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

Level III performance is described as A well prepared @ to be successful at the next level is the minimum standard. The State of North Carolina can accept no less and expect no less achievement than Level III. The evidence in the record with respect to Level II is that Level II performance is generally deemed by teachers in North Carolina to be at least congruent with an overall average of 70 which is recognized in Hoke County schools as being a passing grade. Keim, Nov. 15, 1999, at 167-68, 200, 200-03; Defendants= Exhibit 543, ex. 26.

While students who score Level II are in the judgment of their teachers demonstrating sufficient knowledge and skill in their academic courses to pass their courses and ultimately receive a high school diploma, performance at that level is not sufficient for those students to have mastered sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training and sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in a contemporary society and thus obtain a sound basic education defined by **Leandro**.

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

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

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

This finding does not establish a level of performance that is out of reach of North Carolina children, including those in Hoke County. According to Dr. Triplett (the State's own expert), every school in North Carolina is capable of having **90 percent of its students score at proficient levels (ie, Level III or IV) on EOG and EOC tests (except for students with disabilities or LEP who are excused from the tests)**. In her opinion a student scoring at Level I or II on an EOG test has not mastered the knowledge and skills necessary to be successful at the next grade level; thus, such a student, to that point in their education has not acquired a sound basic education. A school or a school system that has 90% of its children scoring at Level III or above would certainly be found in compliance with **Leandro** even as to the 10% who did not achieve the sound basic education standard.

On this basis, Dr. Triplett has concluded that for example, 27,911 North Carolina 3rd grade students had not obtained a sound basic education in reading comprehension to

that point in their education because they scored Level I or Level II on the 1998 EOG test. Similarly some 18,052 North Carolina 8th grade students had not obtained a sound basic education in reading comprehension to that point in their education because they scored Level I or II on the 1998 EOG tests.

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

DISCUSSION AND CONCLUSION

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

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

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

individual teacher to use his or her training and professional knowledge to competently implement and deliver The Standard Course of Study to the children entrusted to their care.

3. That the State of North Carolina=s educational funding delivery system, including ADM, low wealth, small county, at-risk and other areas of funding, is valid, sound and flexible enough to provide for the delivery of adequate funding to all school systems in North Carolina, including Hoke County, so that they may provide each child with the equal opportunity to obtain a sound basic education. One of the most impressive and strongest aspects of North Carolina=s educational funding delivery system is its flexibility. The system may be easily changed to meet new funding needs and programs in education. So long as this flexibility exists, the structure of the system will remain sound. This finding does not answer the question of whether or not the State of North Carolina is providing adequate funding to HCSS or any other LEA in a manner that ensures that all children are receiving an equal opportunity to obtain a sound basic education.
4. That the State of North Carolina=s school based accountability program, The New ABCs of Public Education, is a valid, appropriate and necessary program with which to measure and improve the academic performance of the public school children of North Carolina and thus, it is a valid and appropriate process to assist the Court in determining whether or not the State of North Carolina is meeting its constitutional obligations to the children as required by Leandro. Further, that the Assistance and Assessment Teams under the ABCs Accountability Program, are a critical and important component of the ABCs in that those teams assist schools to improve their methods and standards so that all children can be provided an equal opportunity to obtain a sound basic education.
5. That a student in a public school in the State of North Carolina who is performing below grade level (as defined by Level I or Level II on the End of Grade and End of Course tests)is not on track to obtain a sound education under the Leandro standard and that a student in a public school in North Carolina who is performing at or above grade level (as defined by Level III or Level IV on the End of Grade and End of Course tests) is on track to obtain a sound basic education under the Leandro standard. The bottom line is that the End of Course and End of Grade test results under the ABCs provide highly probative evidence of the extent to which North Carolina students are

(or are not) receiving the opportunity to obtain a sound basic education.

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

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

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

This the _____ day of October, 2000.

Howard E. Manning, Jr.
Superior Court Judge
