

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

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

And

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

Vs.

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

MEMORANDUM OF DECISION

SECTION TWO

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

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

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

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

Who are these children and where do they come from? Many are economically disadvantaged, have parent(s) with little education, if any, and have little incentive to do well academically as a result of their socioeconomic status and home environment. They fail to achieve in school, get passed along, become frustrated with school (many

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drop out) and ultimately enter society without being afforded the constitutional guarantee of the opportunity to receive a sound basic education.

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

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

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

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

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

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As an example, this Court was assigned to hold court in Warren, Vance, Granville, and Franklin Counties for the first six months of 2000. In the entire six (6) month period, the Court never encountered a young male defendant who was a father, white or black, who was married. Many had more than one illegitimate child by more than one female, no high school diploma, no job experience beyond menial work, selling drugs or engaging in drug-related criminal activity and no sound basic education whatsoever.

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

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

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

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difficulty in gaining proficiency in school. Low income often places children at risk of academic failure.

It is undisputed that socioeconomic and other factors place some students at-risk of educational failure. Schoolchildren who are at risk of educational failure are those who, for a variety of reasons, typically might be expected to have difficulty completing school successfully or doing well while they are in school.

Among the socioeconomic conditions that place students at risk of educational failure are: (1) poor health, beginning as early as prenatal and continuing through childhood; (2) poverty; (3) family break-up and instability; (4) low parental education; (5) inadequate or unstable housing; (6) racial/ethnic minority status; (7) lack of English language proficiency; (8) criminal activity in the school or neighborhood; and (9) parental unemployment or underemployment.

According to a two-year study conducted in the early 1990s and supervised by Dr. Triplett, the factors having the greatest impact on student performance in North Carolina were minority status, poverty status, (as measured by both free and reduced price lunch and Title I eligibility) absenteeism, parental education, and resources as measured by local spending.

The DPI uses the term at-risk to describe "students who are 'at-risk' of academic failure." Meeting the educational needs of all children who come to school in North Carolina is one of the greatest challenges faced by our educational

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system. Dr. Hanushek testified that "One of the most, if not the most, important issues facing our society at large and North Carolina society today, is that some kids come ill-prepared and need help in their schools." T.11/30,p. 243.

Critical Risk Characteristics

Low-income families. Children from low-income families are more at-risk of educational failure than children from higher income families. There is no dispute that poor children typically perform less well in school than families with more resources. Children living in families with incomes below the poverty line are nearly twice as likely to be retained in a grade as children in more affluent families, and also are more likely to drop out of high school.

In North Carolina 82% of individuals in prison are high school dropouts. The income level of one's community is also related to educational performance. Factors affecting at-risk status in education resulting from poverty include the relative absence of family resources that can be devoted to the educational process, including resources in the home to support the child's education. Family poverty undermines residential stability; consequently, families tend to move more frequently and are less able to provide support for educational success. Families under greater stress, including economic stress, more frequently dissolve, break up, or separate for periods of time, causing disruption in their children's lives and making it more difficult for them to do well in school. The deeper the poverty, the more intense

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these problems become.

Free and Reduced Price Lunch. The most common measure of an economically deprived family background is eligibility for federal free and reduced price ("FRPL") programs that were created to support the nutrition of young people coming from low-income homes. (PX 33, p. 8) The FRPL is a strong predictor of student success, whether the standard is SAT performance or performance on the ABCs tests given to students in North Carolina. It is not disputed that students who receive free or reduced price lunch are more likely than other students to drop out of school.

In 1997-98 (March) 38.9% of all North Carolina public school children were eligible for free/reduced lunch. 38.9% of 1,198,994 (the membership for 1998) is 446,408 children. The previous year the number was (40.1% of 1,171,782) 480,430 children. In contrast, Hoke County's percent of children on FRPL was 61.8% for 1997-98. That translates into (61.8 % of 5,873) 3582 students. There are also sizeable numbers of eligible children in the larger school systems. Take Charlotte for example.

In 1997-98 (March) the Charlotte-Mecklenburg School System ("CMS") had 37.4% of its school children eligible for free/reduced lunch, a total of (37.4% of 94,284) 35,262 children.

Level of Parental Education. Students with parents who never graduated from high school are more at-risk of poor educational performance and school failure. There is a direct correlation between students' performance on State EOG and EOC

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tests and parent education. Low scores of young children on developmental screening tests are often highly correlated with low maternal education. T. 9/29 p.99. This data is confirmed by "The Green Book" aka ***The North Carolina State Testing Results***. For 1998-99, (the data is similar for earlier years as well) the percent of Grade 3 students statewide who scored below grade level (Levels II and I) in both reading and mathematics and whose parent(s) had not graduated from high school was 65.7%. That translated into 7,362 children performing below grade level.

For the same year, the percent of Grade 3 students statewide that scored below grade level in reading and mathematics and whose parent(s) were high school graduates was 44.7%. That translated into 20,676 out of 46,527 performing below grade level in both reading and mathematics.

Contrast that data with the percent of Grade 3 students statewide who scored below grade level in reading and mathematics and whose parent(s) were graduates of a community college. Only 28% of those Grade 3 students, 3744 out of 13,372, were below grade level.

When one looks at the data with respect to college graduate parent(s) and Grade 3 students statewide who scored below grade level in reading and mathematics, the contrast is even greater. Only 13.8% of those Grade 3 students, 2,702 out of 19,580, were below grade level. (Court Exhibit B, p. 82) This data remains essentially the same as the children progress through the eighth grade and in the high school End of Course tests as well.

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For example, for students whose parents never finished high school, the percentage who failed to score at grade level (Level III) through the eighth grade never exceeded 57.7% in any one year in math and reading combined. Note: This data does not include students with disabilities or LEP exempt.

(The Green Book, pp. 82-87, 1998-99)

The same pattern emerges in high school when looking at academic performance evidenced by the EOC tests for 1998-99. In Algebra I, for students whose parents never finished high school, 48.2% (2738) failed to score at grade level (Level III); for students whose parents had finished high school, 41.7% (10,983) failed to score at grade level (Level III); for students whose parents had completed community/junior college, 34.4% (5,960 out of 17,326) failed to score at grade level (Level III); and for students whose parents had completed four years of college, 20.3% (4,589 out of 22,608) failed to score at grade level (Level III).

The results for other 1998-99 EOC tests such as Biology, English I, Geometry, Physical Science and U.S. History are similar and bear out the fact that parental education level is reflected in academic performance. For example, there were 24,719 children taking U.S. History whose parents had either not finished high school or had only graduated from high school. For those children whose parents had not graduated from high school, 73.5% (3090) failed to score at grade level (Level III). For those children whose parents had only graduated from high school, 60.9% (12,493) failed to score at grade level (Level III). For those children whose parents graduated from a four-year college, 38.4% (6590) failed to score at grade

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level (Level III).

Source: *The Green Book*, 1998-99, pp. 243-252)

The greater weight of the evidence (and it is undisputed) shows that children with parents that have higher levels of education do better in school, and stay in school longer, than children whose parents have not completed high school.

Racial and/or ethnic background. Racial and/or ethnic minority group membership is perhaps the best-known factor associated with being educationally disadvantaged. Many reasons have been identified to explain the generally poorer academic performance of African American and Latino children. The most obvious reason is the inability to be able to communicate in the English Language that is the language of the society in which children live and hope to achieve. This barrier can be overcome with education. Contributing to this barrier are the social and economic conditions in which African American and Latino families live, their language and cultural background, and past social discrimination.

Limited English Proficiency ("LEP") Students whose primary language is not English or who have limited English proficiency ("LEP"), are at risk of school failure and face obstacles to success in school where the language of instruction is English.

Other factors. There are more factors that place students at risk of school failure:

a. The health status of children. The physical health and well-being of children have a clear

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connection to the ultimate performance of children in school.

b. The composition of the family. Children living in single parent families have been found to score lower on standardized tests, receive lower grades in school and to drop out of high school more frequently.

c. The housing status and environment in which the student lives. Adequate and stable housing is crucial to the foundation that children use as a basis for successful participation in school. A disrupted living environment impedes school performance and presents barriers to educational success.

d. Crime. Higher levels of violence and vandalism often are associated with high concentrations of at-risk students. Crime hurts not only the victims, but also other students who are witnesses to the crime. It follows that when levels of violence and vandalism in a school are high, some students will be afraid to attend.

e. The labor force participation of parents. There are social benefits to children who live in families in which the parents work. Children benefit when they grow up in a home where the parent(s) work and the children see the positive effect of the work ethic.

These environmental factors outside of the school grounds, which place children at risk of educational failure, create barriers to the at-risk child's educational success and to the at-risk child's opportunity to receive a sound basic

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education

Economically disadvantaged children, more so than economically advantaged children, need opportunities and services over and above those provided to the general student population in order to put them in a position to obtain an equal opportunity to receive a sound basic education. These additional opportunities may include additional time on task, lower class sizes, early childhood education, individual tutoring, early intervention or supplementary instruction and materials. Enabling at-risk children to perform well in school requires more time and more resources.

The educational needs of at-risk children are similar regardless of where they live. The correlation between students' economic status and school performance does not vary between urban and rural school districts. The educational needs of poor and otherwise at-risk children in Mecklenburg and Wake counties are similar to those situated in Hoke County. It is appropriate to consider, at this time, the needs of at-risk children in general rather than focus solely on Hoke County.

The State recognizes and acknowledges the problems of at-risk children in school and allocates some money to assist. The State of North Carolina clearly recognizes the problems that at-risk children face when the school doors open. Each child must be afforded the equal opportunity to receive a sound basic education. The State has devised an analysis to calculate allotments for at-risk student services. This analysis allocates funds under a weighting formula. This weighting formula factors in the school districts' end of

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grade test failures, the absence rate, the non-promotion rate, the dropout count, the poverty index, and the graduation rate. Hoke County ranked near the bottom of all school districts on a number of those factors.

The State's counsel's theme that at-risk children's low performance is somehow their responsibility is counter to the DPI and State Board's position and actions with respect to at-risk children. The State, through its counsel, suggests that the low academic performance of a great number of at-risk children throughout North Carolina may be due to a lack of desire to learn, lack of effort, too much television, lack of homework and lack of innate ability. The State suggests that it is somehow their fault that they fail, despite the fact that all of the State's witnesses testified that all children can learn.

Placing responsibility for the poor educational performance of at-risk children on the children is inconsistent with positions taken by the State Board of Education and DPI. According to the State Board and DPI, North Carolina's schools are accountable for 100 percent of the students who are following the SCOS. DX 213,p. 13. "High achieving schools accept their responsibility for enhancing student achievement and do not look for 'scapegoats' among the students, parents or other organizations." DX283, p.S28024.

The State's own expert witnesses testified that schools have the power to help disadvantaged students overcome their weaknesses. Schools can improve such problems as absenteeism by providing interesting, high quality programs and by working

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with parents to try to encourage children to attend schools. Schools can improve the amount of homework that students do. In fact, there is much schools can do to affect motivation, attendance and homework completion.

Furthermore, many of the socioeconomic conditions that place students at risk of educational failure also affect a student's ability to attend school and complete homework. Children from families of greater means generally have more stable residential patterns and are more likely to have two adults in the household supervising homework and school attendance. Moreover, research indicates that low-income children tend to be pulled out of school more often to meet family needs, such as providing child care or caring for a sick relative. A family of greater means would be able to provide professional care and not take a child out of school to perform those tasks.

The socioeconomic factors that place children at-risk of school failure are prevalent throughout North Carolina in counties big and small. Nationwide, the average of all school children that qualify for FRPL is around 31% while in North Carolina the average is around 39 to 40%.

Not all at-risk children will be academic low performers, but the more risk factors present, the harder the task to dig out. Not all at-risk children will have the same set of risk factors. The more risk factors that affect a child tend to cause the child to perform less well in the classroom than a child affected by fewer risk factors. It is undisputed that some at-risk students can score better on tests and otherwise

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attain a greater level of educational success than other at-risk students, given equivalent educational opportunities. This difference in scores is the result the severity of individual risk factors and combinations of different risk factors. Taking the risk factors one at a time, the record shows that these factors affect a child's performance on the ABCs' and other output measurements of achievement level such as the SAT.

Looking at risk factors individually clearly shows that each at risk factor can impact on a child's academic performance on the ABCs' and other output measures.

Parental education. This factor has an impact on student performance as previously demonstrated in this decision.

FRPL - low economic status. Using FRPL participation as an indicator of socioeconomic status, it is evident that North Carolina students from impoverished backgrounds have not performed well on the ABC tests. North Carolina reported in 1997 that "schools with historically higher percentages of students applying for free or reduced lunch tended to have lower performance composites (percentage of students at or above grade level) on the ABCs." PX 233.

Title I. Using inclusion of Title I programs as an indicator of low socioeconomic status, it is clear that North Carolina children from impoverished backgrounds have not performed well on the North Carolina Open Ended Assessment. PX 61.

Race. Using race, as opposed to level of

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parental education, as an indicator of socioeconomic status, it is clear that North Carolina Children from impoverished backgrounds have not performed well on North Carolina ABC's tests. DX234; DX235; DX239; DX243; DX244.

In High School, for Example, 1998-1999, the EOG test results for mathematics and reading combined for the third grade by race showed, in pertinent part:

46.4% (680) of American Indian children scored below Level III; 56.1% (17,728) of Black children scored below Level III; 49.8% (1462) of Hispanic children scored below Level III; and 25.6% (16,068) of White children scored below Level III. (The Green Book, Court Exhibit B, pp 82-87)

Using grades 3-8 as a snapshot for 1998-99 EOG test performance, the same pattern appears. 79.2% of white students in grades 3-8 were performing at grade level (Level III or above) in reading and math as compared to 48.5% of Black students, 55.5% of Native American students and 55.6% of Hispanic Students. PX490, p. 8.

The same patterns appear in the high school EOC tests. For 1998-99, the EOC test results in the following courses revealed by way of example:

U.S. History - 70.5% of American Indian children scored below Level III; 70.6% (13,788) of Black children scored below Level III; and 57.8% of Hispanic children scored below Level III.

Physical Science - 65.4% of American

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Indian children scored below Level III; 68.4% (13,885) of Black children scored below Level III; 58.3% of Hispanic children scored below Level III; and 32% (13,750 out of 42,967) of white children scored below Level III.

English I - 53.4% of American Indian children scored below Level III; 55.5% of Black children scored below Level III; 49.5% of Hispanic children scored below Level III; and 25.6% of white children scored below Level III.

Source: The Green Book, 1998-99; pp. 248-252.

Using race/ethnic background as an indicator of socioeconomic status, it is clear that students from impoverished backgrounds have not performed well on the North Carolina ABCs tests.

While these statistics are dismal, there are additional resources to help these students if the resources are provided.

THERE ARE ADDITIONAL RESOURCES FOR AT-RISK STUDENTS THAT CAN IMPROVE THEIR ACADEMIC ACHIEVEMENT

The evidence is clear and convincing that at-risk students require additional help, programs and resources in order to perform at a level satisfactory for them to obtain a sound basic education and to perform at the same educational level as children who are not at risk for academic failure. Pls. 627.

The educational needs of at-risk children can be met. As the educators and education experts for all parties unanimously agreed at trial, given the

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proper resources, the educational needs of at-risk students (such as students living in poverty) can be met. All children can learn, even children with substantial disadvantages. Many disadvantaged children not only learn, but they break through the disadvantages and do well academically in spite of their at-risk factors. Unfortunately, there are way too many at-risk children who do not break out and continue to perform poorly and below grade level. It is these children's needs that must be addressed in order to attempt to break the cycle of poverty and disadvantage.

As a general premise, witnesses for all parties agreed as to a number of particular programs and interventions that are effective in improving the scholastic performance of at-risk students, either by increasing the time devoted to instruction or by increasing the intensity of instruction by lowering class size or providing expanded staff development programs.

Reducing class size. Witnesses for all parties agreed that reducing class size is an effective means of improving student achievement and performance for at-risk children. Smaller class sizes are particularly beneficial for at-risk children and in schools that serve a student population with a high percentage of at-risk students.

Tutoring. Witnesses for all parties agreed that tutoring, especially when one-on-one with a trained tutor, is an effective means of increasing the academic performance of students, and especially at-risk students.

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More time on task. Witnesses for all parties agreed that providing at-risk students with more instructional time, by increasing the length of the school day or the school year is an effective means of increasing academic performance. Student performance is, to a large extent, a function of time on task. Several State witnesses testified that at-risk students often require more instructional time than other students to master the SCOS.

The evidence shows that with additional resources applied in a common-sense and practical manner, children with significant disadvantages can receive and take advantage of the equal opportunity for a sound basic education, including, but not limited to preschool programs, tutors and reduced class size.

DPI acknowledges that there are effective methods for improving student performance.

According to DPI, preschool programs, use of trained tutors, improving teacher quality, lowering class size and supporting teachers' professional development are effective methods for improving student performance. A large and well-accepted body of research establishes that programs that substantially improve the academic performance of children from poverty and at risk backgrounds (of course these programs would improve any child's performance) include early childhood intervention, more instruction, tutoring and lower class size, and recruitment and retention of good teachers.

Competent and well-trained teachers with updated professional development. It goes without saying that competent, well-trained teachers who

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are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above.

Early childhood intervention for at-risk children. The Smart Start Evaluation Team reported to the Department of Human Resources in 1997, "Children from poor families had fewer skills than those from non-poor families, supporting long standing research that 'poverty is a component of school failure'." PX 396,p.2.

Kindergarteners from low-income families consistently demonstrate fewer cognitive, language and social skills than children from non-poverty families. The evidence with respect to Hoke County kindergarten students supports this conclusion. Many Hoke County kindergarten students have not been exposed to colors, print, or had experiences outside of their front yards, a lack of exposure which detracts from their ability to relate to, or comprehend and learn what is expected in kindergarten. Since kindergarten is a building block for success in the first grade, the at-risk five-year old child is behind from the first day that child enters kindergarten as compared with the child's non-poverty counterparts. Despite this fact, Hoke County has only 3 pre-kindergarten classrooms that can accommodate 18 children--a total of 54. It is a "no brainer" that smaller classes taught by qualified and competent teachers are effective in helping children from at-risk backgrounds.

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Reduction in class size. Smaller classes make the greatest impact in early grades for disadvantaged and minority students. Also, class size is especially important where there is a school with a concentration of at-risk students. When a school has a high concentration of at-risk students, those students bring all the risk factors with them into the classroom, imposing additional demands on their teachers. Reducing class size for students who are below proficiency would permit one-on-one instruction. Small group teaching would assist those students in reaching proficiency.

No one single program will meet all needs. The bottom line is that there is not necessarily one single program that is going to meet all the needs of at-risk students. Effective solutions are those that build upon one another as the child progresses through school. Having said that, however, the Court is convinced, by the greater weight of the evidence, that the earlier there is an opportunity to intervene in the at-risk child's educational ladder, the better chance that child will have to take advantage of its constitutional right to an equal opportunity to receive a sound basic education.

This Court has previously ruled that the right of every child in North Carolina to the opportunity to receive a sound basic education may not be conditioned on age, but is to be conditioned on the needs of the individual child. The evidence in this record supports this conclusion.

Early childhood intervention is critical for at-risk children so they may have an equal

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opportunity to participate in obtaining a sound basic education. After examining the evidence and weighing the credibility of the witnesses, the Court is convinced that the most common sense and practical approach to the problem of providing at-risk children with an equal opportunity to obtain a sound basic education is for them to begin their opportunity to receive that education earlier than age (5) five so that those children can reach the end of the third grade able to read, do math, or achieve academic performance at or above grade level (Level III or above). More is needed sooner to give these children a chance to start their education on an equal level with their non at-risk counterparts.

The evidence in this case shows that when a child reaches the third grade (the first year that the EOG tests are given) and is performing below grade level (Level I or II on the EOG tests) that child is at-risk of academic failure. The same evidence also shows that the educational system has failed to provide too many at-risk children with the equal opportunity to obtain a sound basic education in their first 4 years of school.

Using third graders (because the third grade is the earliest academic grade that the EOG tests are given, the Court has examined third grade (3rd grade) student EOG performance each year for six years - from 1993-94 until 1998-99 - using black and white student performance data (which makes up about 95% of all students). The examination results are disturbing in terms of the actual numbers of black and white children failing to perform at grade level or above by the end of the third grade at which point they have been in school for four

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years.

93-94 results for 3rd grade reading. There were 28,133, black (15,583), and white (12,550), students who scored below grade level in reading. That was 33% of all black and white third graders statewide.

93-94 results for 3rd grade mathematics. There were 32,226 black, (15,970), and white (16,256), students who scored below grade level in math. That was 38% of all black and white third graders statewide.

94-95 results for 3rd grade reading. There were 30,776, black (14,738), and white (16,038), students who scored below grade level in reading. That was 36% of all black and white third graders statewide.

94-95 results for 3rd grade mathematics. There were 29,416, black (15,023), and white (14,393), students who scored below grade level in math. That was 34.7% of all black and white third graders statewide.

95-96 results for 3rd grade reading. There were 29,941, black (14,826), and white (15,115), students who scored below grade level in reading. That was 35% of all black and white third graders statewide.

95-96 results for 3rd grade mathematics. There were 27,673, black (14,506), and white (13,167), students who scored below grade level in math. That was 32% of all black and white third graders statewide.

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96-97 results for 3rd grade reading. There were 30,278, black (15,367), and white (14,911), students who scored below grade level in reading. That was 33.6% of all black and white third graders statewide.

96-97 results for 3rd grade mathematics. There were 26,460, black (14,310), and white (12,150), students who scored below grade level in math. That was 29% of all black and white third graders statewide.

97-98 results for 3rd grade reading. There were 25,780, black (13,676), and white (12,104), students who scored below grade level in reading. That was 28% of all black and white third graders statewide.

97-98 results of 3rd grade mathematics. There were 29,046, black (15,711), and white (13,335), students who scored below grade level in math. That was 31.4% of all black and white third graders statewide.

98-99 results of 3rd grade reading. There were 24,173, black (12,937), and white (11,236), students who scored below grade level in reading. That was 26% of all black and white third graders statewide.

98-99 results of 3rd grade mathematics. There were 28,298, black (15,870), and white (12,428), students who scored below grade level in math. That was 30.3% of all third graders statewide.

Grade 3 Pretest results provide a snapshot of

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performance when children enter the third grade. Those results generally mirror the 3rd grade EOG test results as well in terms of the number of below grade level performance in black and white children.

The Grade 3 Pretest was implemented in 1996-97 and is a multiple-choice reading and math test given to students the first three weeks of the third grade. The test measures knowledge and skills specified for grade 2 against the SCOS in reading and math.

For 1998-99, 32.6 % of all students entering the 3rd grade scored below grade level (Level III) in reading and 25.3% of all students scored below grade level in math. This was a 2.1% gain in reading and 3.2% gain in math from 1997-98.

Disaggregating these results by race and looking only at black and white performance on the Grade 3 Pretests in reading and math reveals a similar picture in terms of the number of children entering third grade with below grade level performance in second grade reading and math.

97-98 Grade 3 Pretest in reading. 49.7% of black children (15,214), and 26.7% (16,726) of white children scored below grade level (Level III). The total is 31,940 children (B&W) below Level III in reading after the second grade and at the beginning of the third grade. At the end of the third grade, there were 25,780 children (B&W) below grade level on the 3rd grade EOG test in reading, 28% of the total of 3rd grade black and white children in 97-98.

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97-98 Grade 3 Pretest in math. 43.9% of black children (13,471), and 20.4% (12,831) of white children scored below grade level (Level III). The total is 26,302 children (B&W) below Level III in math after the second grade and at the beginning of the third grade. At the end of the third grade there were 29,046 children (B&W) below grade level on the EOG test in math, 31.4% of the total of 3rd grade black and white children in 97-98.

98-99 Grade 3 Pretest in reading. 46.2% of black children (14,304), and 25.2% of white children (15,947) scored below grade level (Level III). The total is 30,251 children (B&W) below Level III in reading after the second grade and at the beginning of the third grade. At the end of the third grade there were 24,173 children (B&W) below Level III on the EOG test in reading, 26% of the total of 3rd grade black and white children in 98-99.

98-99 Grade 3 Pretest in math. 39.2% of black children (12,213), and 17.9%(11,299) of white children scored below grade level (Level III). The total is 23,512 children (B&W) below Level III in math after the second grade and at the beginning of the third grade. At the end of the third grade there were 28,298 children (B&W) below Level III on the EOG test in math, 30.3% of the total of 3rd grade black and white children in 98-99.

These results are unacceptable. They clearly and convincingly show that more than 25% of our third graders are at-risk of academic failure after four years of education in the public schools. The only logical conclusion that one can draw is that these children who are at-risk for academic failure

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in the third grade have "missed the boat" in their first four (4) years in their respective schools. They are not on track to receive a sound basic education. For reasons not their fault, they have not had the equal opportunity to receive a sound basic education. The evidence of educational "outputs" on the 3rd grade EOG tests and the Grade 3 Pretests clearly and convincingly proves this.

The Court is convinced that the answer to the question as to why these at-risk children are sorely lagging behind the majority is simple. When these children came to kindergarten at age 5, they were at-risk, already behind, not ready to learn and certainly not in a position to take advantage of the opportunity to begin the process to obtain a sound basic education on an equal footing with their fellow five year old students who were not encumbered by outside at-risk factors.

Children should not leave the first grade unable to read and all should be ready to read to learn by the end of the third grade. That is not the case with the low performing children. At trial, all experts agreed with the Court that children should not leave the first grade unable to read and that they should be ready, by the end of the third grade, to "read to learn." While this seems to be occurring in the majority of children throughout the State, this is not occurring in the minority who are at-risk.

The fact that more than one-fourth of our children are academically at-risk in reading and math in the third grade is clear evidence that something more needs to be done to provide them with an equal opportunity to obtain a sound basic

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education. If they are not on track by the 3rd grade, a great many of these children are not going to be on track by the 8th grade. The evidence bears this out.

Tracking the 93-94 black and white 3rd graders through the 8th grade shows that a majority of those performing below grade level in the 3rd grade continued to perform below grade level through the 8th grade.

Pursuing this line of inquiry to see if the children at-risk at the end of the third grade ever got on track to obtain a sound basic education, the Court followed the 1993-94 "cohort" of black and white third graders through the end of the eighth grade in 1998-99.

In 1998-99 there were 88,878 black and white students in the eighth grade. These students were in the third grade during the school year 1993-94.

8th Grade Reading - 16,623, black (9226), and white (7397), students scored below grade level (Level III) in reading. This was 20% of all black and white 8th graders statewide performing below grade level.

8th Grade Mathematics - 18,763, black (10,537), and white (8,226), students scored below grade level in math. This was 22% of all black and white 8th graders statewide performing below grade level.

Comparing the 8th graders' reading performance to the 3rd grade students (B&W) that were below grade level in the 3rd grade in 93-94, 59% of those children who were below grade level in reading in

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the 3rd grade were still below grade level in reading in the eighth grade.

Comparing the 8th graders' mathematics performance to the third grade students (B&W) that were below grade level in math in the 3rd grade in 93-94, 66% of those children who were below grade level in the 3rd grade were still below grade level in math in the eighth grade.

Source: "**The Green Book**" years 93-94; 98-99.

Taking such clear and convincing evidence into account, educational intervention for these at-risk children must occur earlier than age 5, the age that children now enter the public school system via five-year old kindergarten. That is, unless they are already in a pre-kindergarten program operated by an LEA such as exists in Hoke and Charlotte-Mecklenburg.

Setting aside the poor output performance of large numbers of at-risk 3rd graders, the evidence at trial with respect to the deficit that these at-risk children suffer when they arrive at the school doorstep at age 5 supports early educational intervention for the at-risk group, regardless of race. "When young children enter kindergarten they bring with them a range of learning inequalities that staggers the imagination... Some walk into kindergarten already reading; others have rarely heard an adult read from a book, much less coach them on their ABCs." T. 10/1/99, pp. 196-97, PX 183.

The clear logical, common-sense solution to this problem is to offer at-risk children a pre-kindergarten educational opportunity so that they

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can have the opportunity to start kindergarten on a level close to, if not equal to, those children who are not at-risk.

There are sound programs already in place that are accomplishing the job, but they are few and far between. What do we know about pre-kindergarten programs for children? The credible and convincing evidence presented in this case tells us that pre-kindergarten programs are effective. Effective pre-kindergarten programs exist in North Carolina but these programs do not reach sufficient numbers of at-risk children.

Pre-Kindergarten Programs that work exist in North Carolina, but do not reach sufficient numbers of at-risk children.

Witnesses for all parties agreed that providing a quality pre-kindergarten program is an effective means of increasing the performance of low-income and otherwise at-risk students.

State Board Chairman Phil Kirk remarked that it is a "no brainer" that pre-kindergarten education would be a helpful way to address the needs of disadvantaged students. Pre-kindergarten education is particularly helpful for economically disadvantaged children and can help them to progress as fast as middle class children.

In addition, a large body of research supports the efficacy of quality pre-kindergarten programs. In the early 1990s, the State Board identified as one of its objectives the establishment of pre-kindergarten programs "in all LEAs so that all children will enter school ready to learn." (PX

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141) Pre-kindergarten would be a helpful way to address the needs of disadvantaged children.

The State of North Carolina does not provide pre-kindergarten programs to students, although pre-kindergarten programs are authorized for LEAs that wish to establish them.

The State of North Carolina does provide some early childhood education through the Smart Start program and some Smart Start programs provide funding for some pre-kindergarten programs in some LEAs such as Hoke and Charlotte-Mecklenburg. Also, the Federal Government provides Title I money that can be used for in school pre-kindergarten programs.

Smart Start is an important state initiative that provides funds for early childhood health and welfare programs. Smart Start is operated by the North Carolina Partnership for Children, not DPI or the State Board. Governor Hunt, who has made the Smart Start program a major priority, acknowledged in 1999 that the existing programs have "barely scratched the surface of what needs to be done for... children." Smart Start is not principally a pre-kindergarten education program. There is no requirement that Smart Start funds be used for educational programs, but there is no prohibition against such use by a particular Smart Start program. The bottom line is that Smart Start is an existing public-private partnership through which programs for early educational intervention for at-risk children could be established and funded.

Studies consistently have found that the

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quality of a pre-kindergarten program is important in determining whether the program will have any effect on improving the skills of low-income children upon entry into kindergarten.

In a publication entitled "Early Intervention with Children: What We Know," the North Carolina Department of Human Resources summarized national studies showing that, when compared with children who receive no early intervention, preschool aged children who received early intervention showed substantial gains in IQ and other cognitive measures; were less likely to be placed in special education or retained in grade and more likely to achieve at grade level; had better self-esteem and attitudes; and showed higher projected life-time earnings. PX 419, pp H008716-17. The early education referred to was not day care centers or kindergartens which provided basic day care while parents worked.

The Frank Porter Graham Center, in a study of public preschool programs, examined the quality of North Carolina public preschools and the relationship between quality of the program and children's outcomes over time. The study found that the quality of public preschools in North Carolina was good on average and quite a bit higher than the quality of community child care centers.

Several large scale research studies have been conducted specifically examining the effects of early intervention programs for pre-school age children from disadvantaged (at-risk) backgrounds, including the Carolina Abecedarian Project, conducted by the Frank Porter Graham Child Development Center, the High/Scope Perry Preschool

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Project, and the Consortium for Longitudinal Studies PX 200, p. 2. These studies compared groups of disadvantaged children who participated in a pre-school program with those from similar backgrounds who did not participate in any pre-school intervention. The studies generally concluded that pre-school programs provide both long term and short-term positive effects on children's development and academic achievement.

Based on the evidence presented, the Court finds that effective and appropriate pre-school programs can materially assist at-risk children to be able to come to kindergarten and be able to have an equal opportunity to receive a sound basic education from the start. The absence of such pre-school intervention for at-risk children materially affects their being able to have the equal opportunity to obtain a sound basic education from the start of their academic ladder.

The Court finds that there are programs in existence that provide at-risk children with the opportunity to reach kindergarten with sufficient pre-school intervention so that they can have the equal opportunity to obtain a sound basic education.

Hoke County has a 3 classroom pre-school program but it can only serve 54 children, far less than are in need of the program.

Another of these is a program for pre-school intervention for 4 year olds that is being implemented in the Charlotte-Mecklenburg Schools that provides excellent pre-school educational intervention to at-risk children in that system.

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It is undisputed that the purpose of pre-school (pre-kindergarten) education is to prepare children to enter kindergarten. The purpose of kindergarten is to prepare children to be able to take advantage of the educational opportunities offered in the first grade.

The State has acknowledged a need for pre-kindergarten programs for at-risk children and state law authorizes such programs to be housed in public schools. Such programs have not been implemented in a full and uniform manner.

It is also undisputed that the State of North Carolina has acknowledged a need to establish pre-kindergarten programs as part of the public school system since 1993. Former State Superintendent Bob Etheridge's 20 Point Plan for Reshaping K-12 Education in North Carolina was to "Provide pre-kindergarten programs for all economically disadvantaged 4 years olds who are at risk of school failure." PX275

Further, there is no dispute that pre-school programs are authorized in the public schools. Despite this authorization, the fact remains that such programs are not uniformly available to disadvantaged children throughout the State. Let's examine Charlotte-Mecklenburg's pre-kindergarten program.

Bright Beginnings

The Charlotte-Mecklenburg Schools ("CMS") started Bright Beginnings in 1998 in an effort to improve the skills of at-risk (especially low-

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income) children at the time they start kindergarten. Bright Beginnings shows that a carefully developed pre-kindergarten program, with well-trained teachers, is effective in improving the skill level of at-risk students upon entry to kindergarten.

The outreach efforts for Bright Beginnings focus on low-income children because those students frequently start kindergarten less prepared to begin school than their peers, particularly with respect to language development skills.

There are five (5) critical components to the Bright Beginning Program: (1) an aligned, written, taught and assessed curriculum that is child centered and has a strong language development and literacy component; (2) parent-family involvement and partnership agreements; (3) community participation and collaboration; (4) professional development; and (5) on-going research and evaluation.

CMS primarily funds Bright Beginnings through federal Title I monies. CMS contends that it lacks the funds to serve all of the children that are in need of Bright Beginnings. In funding Bright Beginnings, CMS is spending 85% of CMS's Title I funding from the federal government. This is approximately 10.1 million dollars to provide 1,800 low-income, (\$5,800 per child) at-risk children, with a literacy and language development curriculum. The State of North Carolina questions this expenditure as having no proven long term effect or advantage for the children.

Based on all the evidence, the Court disagrees

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and rejects this contention. The goal of pre-kindergarten is to prepare the student to come to kindergarten with the skills and knowledge to be able to equally obtain the benefits of a kindergarten and early elementary education on as similar terms as possible with those children whose parents drop them at school in a Land Rover, Lexus, Tahoe, Expedition or Mercedes-Benz.

Bright Beginnings classes have 16 to 19 students with a teacher and teacher assistant. The teachers have obtained, or are in the process of obtaining, birth to kindergarten certification from the State.

The data from the first year of Bright Beginnings demonstrates that, upon entering kindergarten, participants in the program had retained skills and knowledge acquired the previous year, and were better prepared for kindergarten than were similar children who were eligible for Bright Beginnings but had not participated in the program. On some measures, Bright Beginnings participants were better prepared for kindergarten than were children from less deprived backgrounds. Those children scored higher on measures of book and print awareness, word recognition, language comprehension, spelling and writing, number identification, and behavioral adjustment than did those children who had participated in some other full day care experience the year before starting kindergarten.

Despite this successful outlook not all children who would benefit are being served. CMS would like to be able to offer Bright Beginnings to approximately 2000 additional four-year old

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students who would likely be eligible based on qualifying for free or reduced priced lunch or other socioeconomic data.

Having covered the Bright Beginnings' pre-kindergarten program in CMS, let's cover what Hoke County provides for its at-risk children in terms of pre-kindergarten educational opportunity.

Pre-Kindergarten Opportunities in Hoke County are limited and not all at-risk children are being provided with a pre-kindergarten opportunity. The low performance on the third grade EOG tests reflects the absence of such opportunities for Hoke County at-risk children.

Hoke County offers a full-day kindergarten experience to any child who reaches the age of 5 before October 16. At the time of trial there were only three (3) pre-kindergarten classes for the entire pre-school 4 year-old population. Each class served 18 students. Those classes were located at South Hoke Elementary, Scurlock Elementary and West Hoke Elementary.

These classes were physically located in public school classrooms but were not funded by the public school system (except for providing the classroom space and utilities). The children accepted to the pre-kindergarten program are those who are the lowest on the screening test scores for admittance to the program. The children are selected by using the LAP-D screening instrument that measures cognitive, language and fine motor abilities.

The Hoke County Schools funded these three classes through a combination of federal Title I

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funds and local Smart Start funds.

The Hoke pre-kindergarten program was evaluated by Dr. Ellen Peisner-Feinburg, a recognized expert in the areas of early childhood education and developmental psychology. Dr. Feinburg concluded that the Hoke pre-kindergarten classes are in the good quality range and thus, are likely to have beneficial effects on the children's outcomes in later grades. Dr. Feinburg concluded that the present pre-kindergarten program in Hoke County is not sufficient to accommodate the number of at risk (low income) children who would benefit from being admitted to the program. (Pl. 361,2)

Data from the South Hoke and Scurlock pre-kindergarten programs shows that the children who have participated have shown development and growth. One Hoke kindergarten teacher observed that the children who had participated in the pre-kindergarten program have better gross and fine motor skills, better comprehension skills, listening skills, social skills and hygiene skills than students who do not participate in the program.

South Hoke Elementary School has the longest running pre-kindergarten program (1992). The principal testified that the students enrolled in the pre-kindergarten program make gains in the course of the year as reflected by developmental tests. Those students who complete the pre-kindergarten program are better prepared for kindergarten than those who do not. Despite this evidence, which the Court finds credible, there are great many at-risk children in Hoke County who are denied this opportunity because only 3 pre-

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kindergarten classes are available.

For 1998-99, 101 Hoke County children were screened for 54 slots in pre-kindergarten. Based on the number of kindergartners enrolled in the Hoke County Schools for the 1998-99 school year (497) and the percentage of elementary school children who qualified for free and reduced lunch (70.1%), Feinburg concluded that there were approximately 348 Hoke children who would have benefited from participation in the pre-kindergarten programs, yet only 54 children were actually served.

Peisner Feinburg expects that the children who participated in the pre-kindergarten programs are far more likely to perform better over a longer period of time than similar low income children who did not receive any type of formal, center based experience before entering kindergarten.

To expand the existing Hoke pre-kindergarten program to serve eligible low income, at-risk children, Hoke County School Administrators calculate it would take some 17 additional teachers at a yearly cost of \$1,103,784, plus the capital costs for classrooms, equipment and supplies.

Despite this evidence, the State of North Carolina's counsel in this case continue to be adamant that pre-kindergarten programs for at-risk children are not required in order for them to have an equal opportunity to receive a sound basic education. This position stands on the same quicksand as the State's position that Level II performance is evidence that a child is receiving the components of a sound basic education, a

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position rejected by this Court.

In the case of Hoke County, the performance of 3rd graders, as well as children in grades 4 through 8, is below the State performance average. Hoke County has shown that its at-risk 5 year old kindergarten students (who have not had the benefit of a 4 year old pre-kindergarten program) come to five year old kindergarten not ready to learn and their 3rd - 8th grade performance shows this clearly. Far too many of these Hoke children are at-risk of academic failure in the 3rd grade and remain so for the next six years.

Hoke County third grade performance is even poorer when compared to the overall state data for black and white 3rd grade students on the EOG tests in reading and math. The overall performance in Hoke County elementary and middle schools reveals an unacceptable level of at-risk academic performance below Level III.

The Court has previously set forth the data to see at what levels black and white students were performing statewide at the end of the 3rd grade in reading and math. That data will not be repeated here. The statewide numbers of at-risk children (B&W) is unacceptable. Hoke's is even more so.

The Court has also examined the data for Hoke County to see how Hoke County students were, and are, performing on the Third Grade EOG tests for reading and math.

While the results from 1993 through 1999 are improving, the number of 3rd grade students in Hoke

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County performing at Level I or Level II in Reading and Mathematics is worse than the state average.

Reading. In 1993-94 in Hoke County, 395 students took the third grade EOG Reading Comprehension tests. 213 scored at Level II or below. 54% of all Hoke third graders were performing below grade level in reading comprehension.

In 1997-98 in Hoke County, 520 students took the third grade EOG Reading Comprehension tests. 206 scored at Level II or below. 39% of all Hoke third graders were performing below grade level in reading comprehension.

In 1998-99, in Hoke County, there were 543 3rd grade students who took the EOG reading comprehension tests. Of that number, 180 scored at Level II or below. 33% of all Hoke third graders were performing below grade level in reading comprehension.

Math. In 1993-94, in Hoke County, 391 students took the 3rd grade EOG Mathematics test. 205 scored at Level II or below. 52% of all Hoke third graders were performing below grade level in math.

In 1997-98, in Hoke County, there were 522 3rd grade students who took the EOG Mathematics test. 214 scored at Level II or below. 41% of all Hoke third graders were performing below grade level in math.

In 1998-99, in Hoke County, there were 543 3rd grade students who took the EOG Mathematics test. 196 scored at Level II or below. 36% of all Hoke

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third graders were performing below grade level in math.

Looking at the 5th grade in Hoke County in reading and math for 1998-99 shows a dismal picture as well.

In 1998-99, in Hoke County, there were 435 5th grade students who took the EOG Reading and Mathematics. 49.1% of those Hoke students scored at Level II or below.

In contrast, the statewide average for students taking the 5th grade EOG Reading and Mathematics tests showed 28.5% of all students scoring at Level II or below.

In 1998-99, in Hoke County, the reading performance for grades 3 through 8 on EOG tests showed that more than 30% of the students in each grade were performing below grade level in reading (Level I or II).

In 1998-99, in Hoke County, the mathematics performance for grades 3 through 8 on EOG tests showed that below grade level performance varied, grade by grade between 22.5% (grade 4) and 35.7%(grade 3).

In 1998-99 Hoke County had 61.8% (3743) of its 6,057 children eligible for FRPL (March, 1998). The system racial makeup was 32.7% (1980) white; 50.0% (3028) black; 13.4% (812) American Indian; and 3.0% (182) Hispanic children.

Disaggregating the composite performance data for the elementary and middle schools in Hoke

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County by race (an at-risk factor)(black and white) shows that 40.8% of the black students are performing below grade level in reading, math and writing (Levels I & II). This ranges from 43% below grade level in reading for the 3rd grade to 54.7% below grade level in writing for the 4th grade. The Mathematics performance ranges from 23.5% below grade level in the 6th grade to 49% below grade level in the third grade and 36% below grade level in the 8th grade.

Whites, on the other hand, have a composite percentage of only 18.7% performing below grade level in grades 3 through 8 in all subjects. In each subject area and in each grade (with the exception of reading grade 4 and math grade 3 and writing grades 4 and 7) white students performed below grade level less than 20% in all courses tested in each grade.

The American Indian composite performance for grades 3 through 8 showed that 38.7% were performing below grade level (Levels I&II) in the subjects tested. The 3rd grade reading performance was 41% below grade level and the math performance was 35.7% below grade level. In the 8th grade reading tests, 46.3% of the American Indian children scored below grade level while in math, 31.7% scored below grade level (Level I&II).

The Hispanic composite performance was that 29.1% of Hispanic children were performing below grade level on all the EOG tests in grades 3 through 8.

Reduced to essentials, it is clear from the evidence that many more pre-kindergarten age at-

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risk children in Hoke County are in need of additional educational opportunities before they attend 5-year old kindergarten than are now being served. Hoke County is only serving 54 children, about one-third (1/3) of those who need the program as well in order to be able to obtain an equal opportunity for a sound basic education.

The same (although the numbers are higher in CMS) is true in the Charlotte-Mecklenburg School system as in Hoke. The Bright Beginnings Program does not serve all the at-risk students who would benefit from the program and thus, be placed on an equal footing with those more fortunate at the time they enter 5-year old kindergarten.

Unfortunately, this pre-kindergarten program deficit permeates throughout the State of North Carolina for at-risk children who are not presently entering kindergarten ready to learn or take advantage of an equal opportunity to begin to obtain a sound basic education.

The at-risk, pre-kindergarten age children of North Carolina are not being provided with an equal opportunity to obtain a sound basic education from the start unless, and until, they are provided with an appropriate pre-kindergarten educational opportunity substantially similar to the Hoke County pre-kindergarten program or the Bright Beginnings Program.

DISCUSSION AND CONCLUSION

The bottom line is simple. The Court, based on the clear and convincing evidence, finds that at-

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risk children should be provided the opportunity to attend a quality pre-kindergarten educational based program that has, as its goal, the preparation of at-risk children for kindergarten.

This educational opportunity should be geared to put at-risk children in a position to take advantage of the equal opportunity to receive a sound basic education when they reach five-year old kindergarten. As a result, the at-risk children should arrive at five- year old kindergarten prepared, as best they can with the extra help, to take advantage of the opportunity to receive a sound basic education on a level with those children that are not at-risk.

The investment in early childhood pre-kindergarten education for at-risk children should yield dividends in their future educational experiences.

The Court finds that the academic performance of these at-risk children should materially improve as shown by the evidence and data coming out of the Bright Beginnings and the Hoke County pre-kindergarten programs.

This vital early childhood intervention should improve academic achievement by at-risk children so that by the end of kindergarten, first grade, second grade, third grade and onward, these at-risk children will be performing at or above grade level and receiving a sound basic education as is their constitutional right and no longer be academically at-risk.

The Court is not so naïve as to think that every single at-risk child will be an academic

superstar as a result of this early childhood intervention, but the Court is convinced that without this intervention more children will be doomed to the academic basement when in fact, with this help, they can perform at grade level or above and receive a sound basic education.

In conclusion, the Court, based on the clear and convincing evidence, finds and concludes as a matter of law that under the North Carolina Constitution as interpreted by Leandro, the right of each child to an equal opportunity to receive a sound basic education in the public schools is not to be conditioned upon age, but rather upon the need of the particular child, including, if necessary, the equal opportunity of an at-risk child to receive early childhood pre-kindergarten education prior to reaching the age of five and prior to entering five-year old kindergarten.

The Court further finds and concludes as a matter of law that at the present time, the State of North Carolina lacks sufficient quality pre-kindergarten educational programs to meet the needs of its at-risk children. As a result, those at-risk children, who are not presently in quality pre-kindergarten educational programs, are being denied their fundamental constitutional right to receive the equal opportunity to a sound basic education.

The denial of this fundamental constitutional right is the failure of the State to provide early childhood education in the form of quality pre-kindergarten educational programs that will help at-risk children come to school ready to take advantage of the educational opportunities offered

in five-year old kindergarten and beyond.

CAVEAT. The Court's decision does not require the State of North Carolina to provide every four (4) year old child with a pre-kindergarten program at state expense. A universal four year old pre-kindergarten program is not required to meet the sound basic education standard of Leandro because, fortunately, the majority of four year olds are not at-risk and are able to enter the kindergarten at age five ready to learn.

Pre-kindergarten educational programs for at-risk children, however, must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs. The nuts and bolts and implementation of the expansion of pre-kindergarten educational programs for at-risk children is a matter to be taken up by the Executive and Legislative Branches of Government.

This is so because Leandro instructs the Court to grant deference to those branches of Government in terms of the implementation of such programs if a constitutional deficit is determined to exist.

Notwithstanding this, the pre-kindergarten deficit for at-risk children must be made up in Hoke County, as well as in other counties in North Carolina, at a reasoned and deliberate pace.

This the _____ day of October, 2000.

Howard E. Manning, Jr.

Superior Court Judge