

dismiss the Plaintiffs' Complaint, which Motion was denied by the trial court. The State then appealed that decision to the North Carolina Court of Appeals and the North Carolina Supreme Court, which remanded the case to this Court for trial in Leandro v. State of North Carolina, 346 N.C. 336 (1997).

In a landmark decision, the North Carolina Supreme Court declared that the Constitution of North Carolina required the State of North Carolina to provide each and every child with the right to an equal opportunity to obtain a sound basic education and defined the content of a sound basic education as follows:

" ...We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.." emphasis added; (Leandro p. 347).....

The case was designated exceptional under Rule 2.1 and this Court was assigned the case by then Chief Justice Burley B. Mitchell, Jr.

It should never be forgotten that the State of North Carolina, represented by its Attorney General, while acknowledging the State's constitutional responsibility has consistently fought "tooth and nail" to prevent any finding that (1) the State of North Carolina is not providing the equal opportunity for each child to obtain a sound basic education through its educational programs, systems and offerings and (2) that the State of North Carolina is not providing sufficient funding to its school districts to provide each and every child with the equal opportunity to obtain a sound basic education within its funding delivery system.

The State has consistently taken the position that the system of education it maintains and funds is adequate and meets the constitutional mandate. The State takes the position that it is the responsibility of the individual school district ("LEA"), in partnership with the State, to spend the money the State provides to meet the constitutionally mandated needs of the school children. Put another way, if an individual LEA is failing to provide any of its school children with the opportunity for a sound basic education, it is the LEA's fault, not the State's fault.

Special Deputy Tom Ziko summed up the State's position on this question as follows:

The State of North Carolina does not fund its school system on a one size fits all basis. In partnership with local boards of education, the State provides sufficient funding for every child and every school system to have the opportunity to acquire a sound basic education. If the local board is irresponsible, ignores its constitutional duties and fails to apply the money where constitutional need exists, that's not... that will not support a claim that the State system of

general and uniform free public schools is unconstitutional. (Tr. 8/18/2000 pp 111-112)

After a six-week trial in the fall of 1999, having considered evidence submitted by the parties, this Court issued two Memoranda of Decision in October, 2000 and a third Memorandum of Decision on March 26, 2001.

All of the Memoranda of Decisions were interlocutory. A synopsis of each of the Court's Memoranda of Decision follows:

On October 12, 2000, the Court entered Section One of its decision. At the outset, the Court charted a course in which there would be at least three (3) separate Memoranda of Decision, each addressing different aspects of the case.

In the first Memorandum of Decision, the Court analyzed separate components of the North Carolina Educational Delivery System and determined that, as a system, it was sound, valid and constitutional when measured against the sound basic education standard of **Leandro**. The Court also found that a student who was performing at Level III (grade level) or above on the ABCs EOC and EOG tests was obtaining a sound basic education under **Leandro**.

The second Memorandum of Decision was entered on October 26, 2000. In that decision, the Court analyzed the educational needs of at-risk children, and determined for at-risk children to have an equal opportunity for a sound basic education, the State should provide quality pre-kindergarten programs for at-risk children.

Part II of this Court's decision stated in pertinent part: **The Court further finds and concludes as a matter of law that at the present time, the State of North Carolina lacks sufficient quality pre-**

kindergarten educational programs to meet the needs of its at-risk children. As a result, those at-risk children, who are not presently in quality pre-kindergarten educational programs, are being denied their fundamental constitutional right to receive the opportunity to a sound basic education.....

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

This is so because Leandro instructs the Court to grant deference to those branches of Government in terms of the implementation of such programs if a constitutional deficit is found to exist. (October 26, 2000 Memorandum of Decision, pp. 42-43.)

The third Memorandum of Decision entered on March 26, 2001 was originally intended to focus on two issues relating to the Hoke County Schools. First, whether children in Hoke County are receiving a sound basic education? Second, if children are not receiving a sound basic education, is it because of lack of sufficient funding as the plaintiffs contend, or for some other reason(s)?

In analyzing whether or not Hoke County students were obtaining a sound basic education, the Court examined the Hoke County students' performance and compared Hoke with other school systems student performance.

This comparison showed that there were at-risk students failing to achieve a sound basic education statewide, as well as in Hoke County, and that the low

performance of at-risk students was similar regardless of the wealth and resources of the school system attended.

Taking all of the evidence into account, the Court determined that the at-risk children in North Carolina were not obtaining a sound basic education and that the reason appeared to be the lack of a coordinated, effective educational strategy for at-risk children statewide. Excerpts from the March 26 Memorandum follow:

The bottom line is simply this. It is undisputed that the at-risk group of children is harder to educate and that the at-risk child requires more resources and attention to succeed. It is undisputed that the at-risk child has the same Constitutional guarantee of an equal opportunity to obtain a sound basic education as the non at-risk child. Therefore, within the parameters of providing each and every child with an equal opportunity to obtain a sound basic education, the money available must be allocated towards reaching the constitutional goal of providing each child with equal opportunity.

The result of the Leandro mandate with respect to funding as it is a part of providing equal opportunity, is that the State and each LEA must apply their resources towards the sound basic opportunity curriculum first, and within that application, provide adequate strategic allocation of resources and funding to assist the at-risk population of children in having an equal opportunity to obtain a sound basic education.

Put another way, the Court is not yet convinced by the evidence that the State of North Carolina is not presently putting sufficient funds in place to provide each child with the equal opportunity to obtain a sound basic education, at-risk or not. The Court is, however, convinced that neither the State nor all of its LEAs,

including HCSS, the other plaintiffs or the plaintiff-intervenors, are strategically allocating the available resources to see that at-risk children have the equal opportunity to obtain a sound basic education. When the strategic and focused allocation of available resources is done, at-risk children do improve and obtain a sound basic education in the core subjects.

However, the present record does not reflect that the State of North Carolina, nor the plaintiff or plaintiff-intervenor LEAs, have adopted or put into practice the type of strategic allocation of resources towards the at-risk population. Merely throwing more money into the pot does not satisfy the Constitutional requirement that the children be provided an equal opportunity.

It's how the resources are allocated that count. Palatial central offices and high salaries for non teaching administrators and staff are not constitutionally mandated. The tax money that is spent must first be spent to properly educate the at-risk children that are failing to achieve grade level proficiency. (March 26,2000 Memorandum of Decision, pp. 78,79,82)

The Court was not convinced that the lack of a coordinated, effective educational strategy was based on the lack of sufficient funding by the State. Instead, the Court believed that the funds appropriated and otherwise available were not being effectively and strategically applied so as to meet the following principles from **Leandro**:

- 1. All children have an equal opportunity to receive a sound basic education and an equal opportunity is all the State is required to provide.*

2. *The sound basic education is qualitatively defined and an appropriate educational strategy to provide children with the opportunity to receive a sound basic education is required.*
3. *In the event that children are not being provided the equal opportunity to obtain a sound basic education because of inadequate educational programs and strategy, the educational programs and strategy must be changed to accomplish the constitutional mandate.*
4. *In the event there is not sufficient funding to provide the educational programs, more funding must be appropriated to meet the constitutional mandate.*
5. *Funds appropriated and applied to education, from whatever source, are first to be used for the purpose of providing children with the equal opportunity to receive a sound basic education.*
6. *In the event of a deficit in the sound basic education component, funds that are being used for the purpose of providing educational programs not part of the sound basic education must be re-allocated and applied to the sound basic education until any deficit in that program is abolished. (3/26/00 Synopsis p.2)*

In summary, the Court found that the individual school systems and the State must first put in place programs that provide all children with the equal opportunity to obtain a sound basic education and that if the funding that is appropriated from whatever source is being used for any other educational purpose than to meet the constitutional mandate, then those funds must be reallocated to satisfy the constitutional mandate first and foremost. Because the Court was not convinced of the precise cause(s) of the large numbers of at-risk children throughout the State, the Court ordered:

I. *The State of North Carolina and the plaintiff, plaintiff-intervenors, to conduct self-examinations of the present allocation of resources and to produce a rational, comprehensive plan which strategically focuses available resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children to obtain a sound basic education using common sense methods that work and are directed towards each child's particular need. The system and allocation should be flexible.*

The nuts and bolts of how this should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government and to the educators who are paid to have knowledge and expertise with which to conduct a self-examination of the present allocation of resources and to produce a rational comprehensive plan to strategically focus available resources and funds consistent with the goal of providing the opportunity for all children, including those at-risk of obtaining a sound basic education.

In directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best re-allocate and strategically apply funds, modify or change existing programs and, if needed, create new programs and approaches to remove the barriers to an equal opportunity to a sound basic education. Throwing money, either local or state, at the problem without

strategic and effective planning accompanied by accountability for results will not be acceptable.

This process should be accomplished without undue delay and certainly it can be done within twelve months. This is not an overwhelming task given the amount of educational experts and staff available to the DPI, the Legislature, and the fact that some schools have already found the keys to success. Consider going to Clay and Cherokee Counties and find out what they are doing to achieve such success. Go observe the five examples set out in this Memorandum of Decision. The Court encourages the parties to entertain input from excellent resources as The Public School Forum and other non-profit organizations interested in the welfare of all of North Carolina's students.

III. The Court would like progress reports on a quarterly basis as this case is still active and a work in progress as the work directed is undertaken. (March 26, 2001 Memorandum of Decision pp. 83-84)

The Court's direction that the parties meet together to analyze educational strategies, focus and if necessary re-allocate funds did not sit well with the State. The Court's analysis of **Leandro** to include **the requirement that at-risk children should be the recipients of strategically allocated available resources before non constitutionally mandated programs were funded** ignited a virtual "firestorm" in political and educational circles. On April 24, 2001, the State announced it would appeal the Court's decision requiring the State and the plaintiffs to come up with a plan to re-allocate resources.

The portion of this Court's opinion that ignited the "firestorm" follows:

.....the right to the equal opportunity to a sound basic education, is only to the sound basic education, not the frills and whistles. The State Constitution does not require that children be provided a prep school education, nor that children be provided the courses and experiences to enable them to go to Yale or Harvard. While there is no restriction on high-level electives, modern dance, advanced computer courses and multiple foreign language courses being taught or paid for by tax dollars in the public schools, the Constitutional guarantee of a sound basic education for each child must first be met. (March 26,2001 Memorandum of Decision p. 77)

The political and educational "leadership" apparently were terrified that being required to consider successful at-risk educational practices, and if necessary, re-allocate existing resources from programs **not mandated** by the constitutional requirement as amplified by the **Leandro** doctrine would, according to Phil Kirk, chairman of the State Board of Education, *.....drive more of the brighter students away from public schools into private education."* ...

This statement, and others like it, reflected a fundamental misconception about **Leandro's guarantee of an equal opportunity to obtain a sound basic education to each and every child in the State. The North Carolina Constitution's right to a sound basic education for each and every child extends to all children, including the "best and the brightest."**

It has become clear to the Court that it was the State's "minimalist" vision of what the North Carolina Supreme Court expected a student to obtain within the definition of a sound basic education that caused the educational and olitical leadership to fail to appreciate the fact that **Leandro's** guarantee of a sound

basic education applies to all students, including the "best and brightest." The Court believes that it is appropriate to set the record straight on this point, once and for all. ***Leandro's guarantee of an equal opportunity for a sound basic education applies to all students, not just at-risk students and not just the smartest.***

The State's position that the equal opportunity to receive a sound basic education has been provided when a child performs at a level of minimal mediocrity (Level II-below grade level) and is barely scraping by obtain a high school diploma is just plain wrong. Here's why.

The description of what constitutes the minimum sound basic education set forth in ***Leandro*** has been in print since July 24, 1997. Despite the plain language of ***Leandro*** and the State's ABC system's measurement of acceptable academic achievement being set at Level III, or above, the State has consistently argued that the sound basic education constitutionally mandated is only a "fundamental" and "sufficient" minimal education which, when aligned with the student achievement levels under the ABCs, fits within the definition of achievement at Level II-below grade level.

The State's position has been, and still is, that when a child achieves Level II (below grade level) academic performance, then the child has been provided with a sufficient, fundamental basic education that meets constitutional muster. The State's position is that Level III and IV (grade level and above) academic performance are only goals that the State would like to have all children aspire to and reach.

A review of statements made by Special Deputy Attorney Tom Ziko during a Court hearing on August 18, 2000, explains the State's position on this issue best:

Ziko:.... and the proper standard to look at when determining whether a child has achieved a sound basic education, level two. Court: So the position is---your position is that the sound --- the constitutional requirement of the sound basic education is a minimum education? Ziko: Yes. Court: A basic education? Ziko: Fundamental.....
Ziko: Level two is described as students performing at this level demonstrate inconsistent mastery of knowledge and skills in the subject, and are minimally prepared to be successful at the next grade, minimally prepared. That's consistent with sufficient. That's consistent with fundamental. That's consistent with you know just enough to move ahead. Court: So the child under your.. with your position, the child is to have mastered enough fundamental skills, although the State's goals in the ABCs and elsewhere to get, to educate our children are far greater?

Ziko: The State has far higher goals and always has had higher goals than providing a system which does nothing but provide a sound basic education.

Court: So the child who.. it's the difference between a moped and a Cadillac. The goals are a Cadillac goal and the minimum standard, the minimum standard you're talking about provides that child with a moped, and if they can really achieve they get a Cadillac. Ziko: Yes.

Court: But the Constitution doesn't demand more than a moped. Ziko: Right. I think that was clear in the Supreme Court's opinion where it consistently talks about sufficient fundamental knowledge.....

Ziko..... our proposed finding that level two is a constitutional standard is not only aligned with the language of the standards themselves, but also the history of education in this State and to my knowledge every other state that C's and D's are

passing courses, are passing grades..... What is the floor below which the Legislature and the Board of Education cannot fall? That floor has to be something less than what we aspired. It has to be no more than level two..... The test the Supreme Court has indicated is good evidence, and the best evidence in this case is that the vast majority of students in Hoke County are scoring at or above level two, which is the best aligned standard with a sound basic education. (Tr. 8/18/2000 pp 23-29)

This Court, in Section I, rejected the State's position and found that Level III (grade level academic performance) was the minimum level of academic performance under Leandro. *(October 12, 2000 Memorandum of Decision)*

Clear evidence that the educational and political leadership were continuing, in March, 2001, to rely on the Attorney General's flawed "vision" of **a sound basic education as being fundamental, minimal, Level II performance and more importantly, the misconception that Leandro's guarantee of a sound basic education did not apply to each and every child, including the smartest child**, poured out in their response to the Court's March 26, 2001 direction that the State meet with the plaintiff parties, determine effective educational strategies for at-risk children and if necessary, re-allocate resources to address the needs of at-risk children who were failing to obtain a sound basic education.

Chairman Phil Kirk:

"We'll continue to emphasize helping at-risk students," Kirk said, **"but we emphatically reject any notion that it be done at the expense of brighter students..."** (N&O, 4/24/01 pp. 1A, 8A)

Attorney General Cooper:

" Every child in North Carolina deserves a sound basic education, but that is a floor rather than a ceiling." (N&O, 4/24/01 p. 1A)

Governor Mike Easley:

"Our children deserve educational opportunities that go far beyond the minimal constitutional standards that are the focus of the Leandro case." "Our goal must be twofold,... to make certain that all students have the opportunity to pass 'sound, basic' courses and to excel in superior, competitive academic programs that prepare them to meet the demands of today's knowledge-based, global economy." (N&O, 4/24/01 p. 1A)

At the same time, Governor Easley announced that he was appointing a study group task force to focus on making North Carolina's schools " superior and competitive."

House Speaker James Black:

" I also stand ready to help the governor's task force build on our efforts to give all of our children a quality education, especially those considered at risk of failure." (N&O, 4/24/01 p.8A)

Contrary to what the State and its Educational and Political Leadership believes, **Leandro's** sound basic education mandates a quality education **for all children, sufficient for those who wish to go into the work force, to vocational school, to college, and to be able to meaningfully compete with others in those endeavors.**

It is not necessary for this Court to try to reinvent the wheel. **Leandro provides the answer and has resolved the issue:**

The principal question presented by this argument is whether the people's constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate..... Leandro, p 345.

..... The General Assembly also seems to have recognized the constitutional right to a sound basic education and to have embraced that right in Chapter 115C of the General Statutes. For example, in a statute governing the use of funds under the control of the State Board of Education, the General Assembly has stated:

(a) It is the policy of the State of North Carolina to create a public school system that generates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner.....

(b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study. N.C.G.S. 115C-408 (1994)

In addition, the legislature has required local boards of education to 'provide adequate school systems within their respective local school administrative units, as directed by law.' N.C.G.S. 115C-47(1) (Supp. 1996)

We conclude that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least: (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundatmental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or upon vocational training and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society. (Leandro p. 346)

Make no mistake. *Leandro* clearly holds that **all** children are entitled to the equal opportunity to obtain a sound basic education consistent with their individual abilities, to and including a sound basic education sufficient (a) to be prepared at the end of high school to be able to enter the workforce and obtain meaningful employment; (b) to be prepared to attend a vocational/technical school and succeed

academically; or (c) to be prepared to attend a college or university and at the end of each, to be compete with others on an equal basis in higher education or gainful employment.

The opportunity to a sound basic education, depending on the abilities and desires of each child, encompasses a meaningful and substantial education that at a minimum, prepares each student with the tools to achieve at work, at a vocational training course, or at an institution of higher learning. In short, a sound basic education has to prepare one to succeed in the real world, not just scrape by with C's and D's.

That being the case, there was not then, and is not now, anything to fear from being required to assess, analyze, review and if needed, re-allocate non-constitutionally mandated resources to meet the constitutionally mandated needs of all children, including those at-risk. Academically gifted courses in core high school subjects required for admission to the University system, including AP courses that prepare students who wish to go to college, are just as much a part of a sound basic education as are courses in shop, mechanical engineering, auto mechanics, that prepare students to enter the work-force. Once again, let there be no mistake. **Leandro guarantees a sound basic educational opportunity to all children sufficiently substantial to permit those who can, including Chairman Kirk's "best and brightest" to go to college.**

Reduced to essentials, the Court finds that the State of North Carolina's continued insistence that **Leandro's** guarantee of the opportunity for sound basic education has been met when a student performs below grade level and that performance at grade level or above is merely a non-constitutionally mandated goal to which all should aspire, is merely a shell game played to avoid accepting the responsibility imposed by

Leandro and mandated by the North Carolina Constitution.

HAVING PUT THE MISCONCEPTION THAT LEANDRO'S GUARANTEE OF A SOUND BASIC EDUCATION DOES NOT APPLY TO ALL CHILDREN, INCLUDING THE BEST AND THE BRIGHTEST, TO REST, THE COURT WILL CONTINUE WITH THE PROCEDURAL BACKGROUND AT THE TIME OF THE STATE'S APPEAL IN APRIL, 2001.

The State's Notice of Appeal was accompanied by a Motion For a Stay of the Court's Order pending the outcome of the appeal. The Plaintiff-parties filed "protective notice of appeals." After a hearing on April 25, 2001, the Court denied the State's Motion for Stay. The Court prepared and entered an Order Denying Defendants' Motion For Stay on May 1, 2001.

The State next filed a Petition for Writ of Supersedeas in the North Carolina Court of Appeals on May 10, 2001. The Court of Appeals granted a temporary stay on May 14, 2001. The Plaintiff-parties filed written responses opposing the State's Petition for Writ of Supersedeas.

One of the State's chief complaints about the Order contained in the March 26, 2001 Memorandum of Decision **was based on premise that the State had not been found by the Court to be responsible for the failure of so many at-risk students in North Carolina to obtain a sound basic education.** The State contended that the Court, by requiring the State to meet with the Plaintiff-parties, review educational practices, and if needed, re-allocate and re-structure resources, coupled with the absence of a finding of liability on the State's part, constituted a "usurpation" of the power of the Legislative and Executive Branches of Government.

Simply put, absent a finding by this Court that the large numbers of children at-risk of academic failure are the State's responsibility, the State did not want to have to participate in or come up with a plan to look at educationally effective methods to teach at-risk children that were cost-effective and if necessary, re-allocate resources to meet the constitutional mandate. The State was also rocking along under the false premise that to have to re-allocate resources to help at-risk children, it would have to take away constitutionally mandated resources to provide the equal opportunity to obtain a sound basic education as defined by **Leandro** for the group of students that Chairman Kirk termed the "best and brightest."

This "best and brightest" pronouncement was a cruel scare tactic designed to sit well with the majority of the public at large whose children were performing at grade level or above and being successful in obtaining a sound basic education by being prepared to attend colleges and universities and therein, to compete with others in furtherance of their formal educations.

The State's objection to looking at successful educational methods and programs to help at-risk children was in direct contravention of the legislatively mandated policy to create a public school system that graduates students with the skills demanded in the workforce using educational funds in a cost-effective manner, a policy cited by the Supreme Court in **Leandro**. Balking at being directed to focus on known, cost-effective educational programs that are successful with at-risk children was in direct contravention of the announced policy of the State of North Carolina set forth in N.C.G.S. 115C-408(a): ***It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society using***

State, local and other funds in the most COST EFFECTIVE MANNER. (emphasis added). This is not educational policy set by this Court. It is educational policy set by the State of North Carolina itself enacted into law.

All this Court had asked the State and the plaintiffs to do was precisely what the legislative branch of government had enacted as policy and directed the Educational establishment to do---- create a public school system that graduates good citizens with the skills necessary to function in today's society, using all funds, in the most cost effective manner.

Despite disagreement with what the Court had ordered, Governor Easley, on May 23, 2001, announced that he had assembled a thirty (30) member task force to develop a long range plan to improve the state's public schools. One member of the task force was quoted in the **News & Observer**:

" Gilchrist said he envisions pulling a lot of successful classroom strategies together. 'Many wonderful things are going on in our schools... but we've been working in isolation,' he said." Governor Easley was reported as saying that, "Our schools are not what they should be and we cannot be satisfied with mediocrity," and that "the group will explore innovative programs that have helped poor children, as recommended in the court order." He also indicated that the group will share its work with the Court should the state lose its appeal in this lawsuit. (News & Observer, p. 3A, 5/23/01.) (emphasis added.)

On May 24, 2001, the North Carolina Court of Appeals entered the an Order denying the State's petition for a writ of supersedeas and dissolving the stay:

The petition for writ of supersedeas filed in this cause by defendants on 10 May 2001 is denied. The

temporary stay granted by this Court on 14 May 2001 is hereby dissolved.
By Order of the Court this the 24th day of May, 2001.

Notwithstanding the denial of the Stay, the pendency of an appeal of interlocutory orders in the middle of this Court's fact-finding process was distracting.

The Court wanted to get about its task of answering the critical question as to whether or not the failure of at-risk children to obtain a sound basic education is based on lack of funding or lack of implementation of similar successful, cost-effective programs as discussed in the March 26 Memorandum of Decision.

The Court also thought that the Governor's voluntary establishment of the task force to develop a long range plan to improve the state's public schools, as recommended by this Court in its Order, was commendable and was action consistent with the Court's Order of March 26, 2001, although the task force had a broader mandate.

Taking into account the fact that the Governor's task force was in place and the action taken by the North Carolina Court of Appeals **denying** the State's Petition for Writ of Supersedeas, the Court reassessed the exigencies of this case as it then stood.

With the Governor's voluntarily established task force in operation, and the freedom to move ahead despite the appeal, the Court believed that it could more quickly, and with less disruption, address the question of whether or not the at-risk students within the plaintiff-parties' school districts are failing to obtain a sound basic education because of lack of funding, or because of a lack of sound, cost-effective

educational programs being implemented in low performing schools, or a combination of those factors.

By taking responsibility for focusing and deciding the critical question(s), the Court believed the case would move faster and at the same time, the Governor's task force could move concurrently to benefit the children of North Carolina by recommending improvements in education.

In consideration of this voluntary action by the Governor consistent with the Court's Order and the Court's decision to move forward, the Court determined that there was no real need for the Court, at that time, to Order the State to undertake any massive form of self-examination and re-allocation.

By Order entered on May 29, 2001, the Court, in its discretion and as authorized by Rule 54(b), North Carolina Rules of Civil Procedure, amended the Memorandum of Decision of March 26, 2001, and vacated **only** that portion which Ordered and Directed the State of North Carolina, the plaintiff-parties to conduct self-examinations of the present allocation of resources and to produce a rational, comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children, to obtain a sound basic education using common sense and methods that work and are directed towards each child's particular need, specifically **Paragraphs Number I, II, and III, on pages 83 and 84 of the March 26, 2001 Memorandum of Decision**. Except as vacated, the March 26 Memorandum of Decision remained intact and unchanged.

The net result of the Order amending the **March 26, 2001 Memorandum of Decision** was to enable the Court, working independently, to move this case along while at the same time continuing to grant due deference to the Executive and Legislative Branches as they proceed in

their stated goal to improve education for all of North Carolina's children, including those at-risk.

On June 15, 2001, the State withdrew its appeal to the Court of Appeals. The Plaintiff-parties followed suit. Reduced to essentials, all appeals were withdrawn following the Court's Order of May 29, 2001. The Court, after consultation with the parties, scheduled another hearing to focus on evidence relating to successful educational strategies and programs for at-risk children and the answers to the questions posed in its Memorandum of Decision of March 26, as amended.

The evidentiary hearing took a total of ten days beginning on September 15, 2001, and concluding October 5, 2001. The Court heard evidence concerning the following schools and school districts:

- Winstead Elementary School in Wilson County (Robert Pope, principal; Larry Price, superintendent)
- Baskerville Elementary School in Nash-Rocky Mount (Ann Edge, principal; George Norris, superintendent)
- Gaston Middle School in Northampton County (Lucy Edwards, principal; Mary McDuffie, superintendent)
- West Hoke Middle School in Hoke County (Darlene Clark, principal; Mitch Tyler, superintendent)
- Kingswood Elementary School in Wake County (Sue Sisson, principal; Bill McNeal, superintendent)
- Mountain View Elementary School in Burke County (Teresa DeHart, principal)
- Hayesville Elementary, Middle, and High Schools in Clay County (Scott Penland, superintendent)

In addition, the Court heard evidence from Henry Johnson and Jennifer Bennett of the Department of Public Instruction, Josephine Baker of the Wake County

Schools, Steve Wrenn (plaintiffs' expert), and Carolyn Olivarez of the Hoke County Schools.

Before discussing what the evidence showed relating to effective educational practices, programs, strategies and resources required for at-risk students, it is appropriate to outline what the Court has previously found in its earlier Memoranda of Decision with respect to the issue of student achievement under the **Leandro** standard.

A. PRIOR FINDINGS ON STANDARDS AND OBJECTIVES

1. The Requirement of Grade Level Performance

[T]he Court finds that students who are performing at grade level or above as defined as Level III and Level IV on the EOC or EOG tests are demonstrating sufficient ability in the subject matters tested to be on track to receive a sound basic education, and those students that are performing below grade level at Level I or Level II are not on track to receive a sound basic education. (Oct. 12, 2000 Memorandum of Decision p.187)

A student who is performing below grade level (as defined by Level I or Level II) is not obtaining a sound basic education under the Leandro standard.

(Oct.12, 2000 Memorandum of Decision p.183)

High school drop-outs have not obtained a Sound Basic Education and this problem exists statewide. (Mar. 26,2001 Memorandum of Decision p. 17)

2. The Requirement of Proficiency for All Students

North Carolinians should expect no less for their children than an educational goal that seeks to have every child perform at Level III proficiency or above (Oct.12, 2000 Memorandum of Decision p. 183)

[E]very school in North Carolina is capable of having 90 percent of its students score at proficient levels (i.e., Level III or IV) on EOG and EOC tests (except for students with disabilities or LEP who are excused from the tests). (Oct.12, 2000 Memorandum of Decision pp. 187-88)

The fact that more than one-fourth of our children are academically at-risk in reading and math in the third grade is clear evidence that something more needs to be done to provide them with an equal opportunity to obtain a sound basic education. If they are not on track by the 3rd grade, a great many of these children are not going to be on track by the 8th grade. The evidence bears this out. (Oct.26, 2000 Memorandum of Decision p 25)

These results are unacceptable. They clearly and convincingly show that more than 25% of our third graders are at-risk of academic failure after four years of education in the public schools. The only logical conclusion that one can draw is that these children who are at-risk for academic failure in the third grade have "missed the boat" in their first (4) years in their respective schools. They are not on track to get a sound basic education. For reasons not their fault, they have not had the equal opportunity to receive a sound basic education. The evidence of educational "outputs" on the 3rd grade EOG tests and the Grade 3 Pretests clearly and convincingly proves this. (Oct. 26, 2000 Memorandum of Decision p. 24)

We know that when these [at-risk] children get to school, regardless of what county they live in, they are more likely to fail to achieve academically and they require more attention, time and effort to teach, and this is more expensive than for the non at -risk child coming from the 'ideal' home environment with two caring parents. (Mar.26, 2001 Memorandum of Decision p.73)

As the educators and education experts for all parties unanimously agreed at trial, given the proper resources, the educational needs of at-risk students (such as students living in poverty) can be met. All children can learn, even children with substantial disadvantages. Many disadvantaged children not only learn, but they break through the disadvantages and do well academically in spite of their at-risk factors. Unfortunately, there are way too many at-risk children who do not break out and continue to perform poorly and below grade level. It is these children's needs that must be addressed in order to attempt to break the cycle of poverty and disadvantage. (Oct.26, 2000 Memorandum of Decision pp. 15-16)

The evidence is clear and convincing that children from economically disadvantaged backgrounds can learn. However, in order for them to perform well in school it may take 'more time or different kinds of intervention' and more resources than those needed for children from middle class backgrounds. (Mar.26, 2001 Memorandum of Decision p. 71)

The Court is convinced that the answer to the question as to why these at-risk children are sorely lagging behind the majority is simple. When these children came to kindergarten at age 5, they were at-risk, already behind, not ready to learn and certainly not in a position to take advantage

of the opportunity to begin the process to obtain a sound basic education on an equal footing with their fellow five year old students who were not encumbered by outside at-risk factors. (Oct. 26, 2000 Memorandum of Decision p. 24)

The evidence is clear and convincing that at-risk students require additional help, programs and resources in order to perform at a level satisfactory for them to obtain a sound basic education and to perform at the same educational level as children who are not at risk for academic failure. (Oct.26, 2000 Memorandum of Decision p.15)

Economically disadvantaged children, more so than economically advantaged children, need opportunities and services over and above those provided to the general student population in order to put them in a position to obtain an equal opportunity to receive a sound basic education. These additional opportunities may include additional time on task, lower class sizes, early childhood education, individual tutoring, early intervention or supplementary instruction and materials. Enabling at-risk children to perform well in school requires more time and more resources. (Oct. 25, 2000 Memorandum of Decision p. 10)

The dropout problem in Hoke and other counties could be improved with early intervention and other programs. In 1994 the State Board of Education found that '[a] wide range of programs for dropout prevention and students at risk [was] needed within every school system.' (Mar.26, 2001 Memorandum of Decision p. 19)

The bottom line is simply this. It is undisputed that the at-risk group of children is harder to educate and that the at-risk child

requires more resources and attention to succeed. (Mar.26, 2001 Memorandum of Decision p. 78)

4. Effective Programs for Helping At-Risk Students

As a general premise, witnesses for all parties agreed as to a number of particular programs and interventions that are effective in improving the scholastic performance of at-risk students, either by increasing the time devoted to instruction or by increasing the intensity of instruction by lowering class size or providing expanded staff development programs. (Oct. 26, 2000 Memorandum of Decision p. 16)

Reducing class size. Witnesses for all parties agreed that reducing class size is an effective means of improving student achievement and performance for at-risk children. Smaller class sizes are particularly beneficial for at-risk children and in schools that serve a student population with a high percentage of at-risk students. (Oct.26, 2000 Memorandum of Decision p. 16)

Tutoring. Witnesses for all parties agreed that tutoring, especially when one-on-one with a trained tutor, is an effective means of increasing the academic performance of students, and especially at-risk students. (Oct.26, 2000 Memorandum of Decision p.16)

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

instructional time than other students to master the SCOS. (Oct.26, 2000 Memorandum of Decision pp. 16-17)

The evidence shows that with additional resources applied in a common-sense and practical manner, children with significant disadvantages can receive and take advantage of the equal opportunity for a sound basic education, including, but not limited to preschool programs, tutors and reduced class size. (Oct. 26, 2000 Memorandum of Decision p. 17)

DPI acknowledges that there are effective methods for improving student performance. According to DPI, preschool programs, use of trained tutors, improving teacher quality, lowering class size and supporting teachers' professional development are effective methods for improving student performance. A large and well-accepted body of research establishes that programs that substantially improve the academic performance of children from poverty and at risk backgrounds (of course these programs would improve any child's performance) include early childhood intervention, more instruction, tutoring and lower class size, and recruitment and retention of good teachers. (Oct.26, 2000 Memorandum of Decision p. 17)

Competent and well-trained teachers with updated professional development. It goes without saying that competent, well-trained teachers who are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above. (Oct.26, 2000 Memorandum of Decision p. 17)

Reduction in class size. Smaller classes make the greatest impact in early grades for disadvantaged and minority students. Also, class size is especially important where there is a school with a concentration of at-risk students. When a school has a high concentration of at-risk students, those students bring all the risk factors with them into the classroom, imposing additional demands on their teachers. Reducing class size for students who are below proficiency would permit one-on-one instruction. Small group teaching would assist those students in reaching proficiency. (Oct.26, 2000 Memorandum of Decision p. 18)

No one single program will meet all needs. The bottom line is that there is not necessarily one single program that is going to meet all the needs of at-risk students. Effective solutions are those that build upon one another as the child progresses through school. Having said that, however, the Court is convinced, by the greater weight of the evidence, that the earlier there is an opportunity to intervene in the at-risk child's educational ladder, the better chance that child will have to take advantage of its constitutional right to an equal opportunity to receive a sound basic education. (Oct.26, 2000 Memorandum of Decision p. 19)

NONE OF THE CREDIBLE EVIDENCE RECEIVED AT THE HEARINGS IN SEPTEMBER AND OCTOBER, NOR STUDENT PERFORMANCE RELATED DATA RECEIVED THEREAFTER, CONTROVERTED ANY OF THE FOREGOING FINDINGS BY THIS COURT, NOR PERSUADED THE COURT TO CHANGE OR AMEND ITS DETERMINATIONS AND FINDINGS CONTAINED IN THE FIRST THREE MEMORANDA OF DECISION.

DISCUSSION OF THE EVIDENCE PRESENTED AT THE SEPTEMBER AND OCTOBER, 2001 HEARINGS.

The focus of the hearings.

*The hearings focused on determining the cause(s) for the large numbers of at-risk children failing to obtain a sound basic education in the plaintiffs' and plaintiff-intervenors' ("plaintiff-parties'") school districts and in other school districts throughout the State. The critical questions that the Court wanted to focus on were: **WHETHER OR NOT THE AT-RISK CHILDREN WERE FAILING TO OBTAIN A SOUND BASIC EDUCATION BECAUSE OF (A) A LACK OF SUFFICIENT FUNDING FOR EDUCATIONAL PROGRAMS? (B) A LACK OF EFFECTIVE LEADERSHIP IMPLEMENTATING EFFECTIVE EDUCATIONAL PROGRAMS FOR AT-RISK CHILDREN? OR (C) A COMBINATION OF LACK OF SUFFICIENT FUNDING AND LACK OF LEADERSHIP IMPLEMENTING EFFECTIVE EDUCATIONAL PROGRAMS FOR AT-RISK CHILDREN?***

The net result of the Court's inquiry is that there is no single, simple educational program that meets the needs of at-risk children. The answer is that there are many effective educational programs that are successful in educating at-risk children.

Not surprisingly, the evidence presented at the hearings fits squarely with what this Court has found, from the evidence previously presented, are necessary criteria of effective schools that teach children at-risk of educational failure.

While the evidence clearly and convincingly showed that schools with effective leadership and hard work can, and do, accomplish the goal of providing children with the opportunity for a sound basic education using different educational strategies, all successful schools strive to meet similar criteria to enable them to provide their students, especially those at-risk, with the equal opportunity to obtain a sound basic education. These criteria are:

An Effective, Competent and Motivated Principal is Key to a School's success.

It is undisputed that an effective, energetic, motivated Principal is the key to the success of any school, especially one with a high percentage of at-risk children. An effective Principal (a) has high expectations of the faculty and students; (b) has in place an instructional program that is effective and provides individualized and differentiated instruction so that each child learns the Standard Course of Study; (c) has a faculty of dedicated, competent and caring teachers who have "bought in" to the instructional program implemented by the Principal are trained to carry out that program, and who communicate each day to the children the high expectations expected of them.

The evidence clearly demonstrated, once again, that an effective principal can improve the performance of at-risk students by using a variety of policies, educational practices and programs in combination with high expectations, dedication, commitment, proper staff development with proper funding, strong leadership and competent teachers who effectively teach the Standard Course of Study to all of their students using individualized and differentiated instruction.

High Quality, Full Time Teachers Who Teach in Their Fields of Expertise is Essential and Mandatory.

During the first round of evidentiary hearings in this case, the North Carolina Department of Public Instruction (DPI) singled out policies to improve teacher quality and to support teachers' professional development as especially effective steps toward higher student performance. Based on the credible evidence presented at the first round of evidentiary hearings, the Court found and concluded in its October 26th Decision at 17:

It goes without saying that competent, well-trained teachers who are kept abreast of their subject matter through professional development are essential to dealing with the needs of at-risk children. Teachers who undertake the task of helping at-risk children must have high expectations of their students and believe that those students, with their help, can succeed in school and perform at Level III or above.

This finding remains undisputed and there was no credible evidence to the contrary presented by any party during the September hearings. Instead, the evidence received from principals and superintendents in the schools that were the focus of the September 17th hearings consistently affirmed the essential role that competent, well-trained teachers play in obtaining student success, whether at-risk or not.

Principals and Superintendents who testified all agreed that that teachers who bring to school high expectations—that all of their students can learn—are able to lead their students to academic success. The common theme among the principals in these successful schools was that quality teachers *do* make a difference.

Likewise, there can be no dispute that the negative results of even one ineffective teacher can do significant damage to a student's achievement not only in the year in which the student has to suffer through mediocrity but afterward.

The North Carolina Commission on Raising Achievement and Closing Gaps ("**The Bridges Commission**") released a report on student achievement in December of 2001. The Court requested a copy of the report be added to the record and this report is now in evidence.

The Bridges Commission was appointed in the summer of 2000 to advise the State Board of Education, the

State Superintendent, and local school systems on ways to raise achievement for all students and close the minority student achievement gap.

In its report, the Bridges Commission concluded:

Most policymakers, parents, educators, and researchers now generally agree that nothing is more closely tied to student achievement and underachievement than the preparation, support and quality of classroom teachers. It follows then, that nothing is more critical to our efforts to close the achievement gap than making certain that every student, especially those who have been traditionally underserved by public schools, has access to competent, caring, qualified teachers in schools organized for success. (Report p. 10)

Reduced to essentials, teacher quality is of determinative importance in raising student achievement levels, especially those at-risk. All of the credible evidence shows this to be the case. A caring, qualified, competent teacher effectively teaching the SCOS in each classroom is necessary to provide each child with the opportunity to obtain a sound basic education through individualized and differentiated instruction.

Safe and orderly environment in the School is essential in order for students to learn.

The following facts are not in dispute. Good Principals ensure good discipline in their schools. Schools must have and maintain good discipline because without good discipline and a safe environment, learning is not going to take place. With good discipline comes an environment that is conducive to learning. Successful principals agree that in the event there is good teaching going on at the school, the discipline problem is diminished such that

discipline almost takes care of itself. " ***The best discipline you can ever have or deterrent to misbehave is just to have good teaching.***" (DeHart, 9/20/01, Tr.p. 146)

Clear and focused school mission- Teaching the Standard Course of Study in a focused and effective manner.

It is undisputed that successful Principals and teachers focus on teaching the Standard Course of Study(SCOS)to their students and constantly assess and monitor the progress of their students as they work through the SCOS.

All the principals who testified stressed the fact that they expected and demanded their teachers teach the SCOS. Not every principal's methods of seeing that the SCOS is being taught are the same. To the contrary, the evidence is clear and convincing that successfully teaching the SCOS to children, especially at-risk children, can be accomplished through a wide variety of educational practices, programs and teaching methods.

In short, no one educational method is mandated and competent Principals should have the flexibility within their own schools to provide differing instructional leadership and methods - so long as they are cost effective and get the job of educating children done.

Instructional leadership from the Principal which is effectively implemented by the classroom teachers and staff.

Focused, competent Principals are necessary for any school, but especially schools with high populations of at-risk students. Traits that one expects to find in good, competent Principal are (a) energy; (b) experience in working with people; (c) good communication skills; (d) leadership skills - inspire

the faculty and students to follow the educational programs and methods for academic success; (e) knowledge of the mission for the school and be able to effectively communicate what the school should be doing and have the teachers and parents buy into the programs at the school; (f) people skills and the ability to recognize talents in teachers and to hire good teachers Focused, competent Principals provide the instructional leadership for the school so that the focused mission - teaching the Standard Course of Study - is effectively carried out by the teaching staff and (g) maintain order and discipline for a safe environment.

Effective Principals ensure that their teachers provide their students with individualized, differentiated instruction. Principal Pope succinctly defined individualized and differentiated instruction.

When you individualize and differentiate instruction, number one, you find out where the student is and when you differentiate, you may teach him differently than you teach the students sitting in the desk beside him. The days of staying in front of the ...class and giving everybody the same lesson is not proven to be successful with today's students. Through our assessments and working with students, we should know where every student is and then we should be able to give every student what he needs to be successful. (Tr. Pp 123-24; 9/17/01)

With respect to at-risk students, it is undisputed that individualized, differentiated instruction is essential for success. All the successful principals who testified agreed that individualized, differentiated instruction was important, but all followed different instructional methods to get reach that goal consistent with their own educational philosophy and the resources available to them.

Regardless of their differences in instructional methods, the evidence is clear and convincing that effective Principals are those who can and do implement instructional programs and policies to ensure that their teachers are teaching the SCOS, are assessing the students' mastery of the objective of the SCOS and are progressing on a track to cover the objectives of the SCOS for each period of the school year.

High expectations of teachers and students.

Good Principals demand high expectations of their teachers and students while seeing to it that the SCOS is being effectively taught in each and every classroom. This is especially true with at-risk student populations.

So -- but I think the lessons of poverty are that we can overcome poverty through education. And the only way to do that is to understand where we are going and to set our expectations higher than they have been set before. T. 9/19/01, at 70 (McDuffie). . . "[w]e expect every child to learn, every child to give the best that they have to give. We expect you to reach your goals when you set them. Our children, at the beginning of every nine weeks, we have a reader program where they set their own goals so that they have set their own expectations." T. 9/18/01, at 43 (Edge).

Consistent with a good Principal's goal of high expectations of students is the expectation that the teachers will work hard. The bottom line is that high expectations of students, but especially at-risk students, are essential and necessary. Having high expectations of a child costs nothing. Having high expectations of an at-risk child from a poverty background is, however, absolutely necessary.

The consensus of opinion was overwhelming that for at-risk populations, teachers must recognize that there is a different set of challenges with these children, and that these children do not come to school with all of the equipment that other children bring.

The Principals agreed that they wanted teachers who were interested in these children, had a lot of energy, focus on educational issues and willing to work with the students and parents. In addition, the teachers had to expect and believe that the students could do well.

Staff Development and on-going Training for teachers is essential and necessary - unfortunately, due to an admitted system of low expectations for some groups of children, many veteran teachers will have to be retrained in order to effectively reach at-risk children.

There was uniform and consistent agreement from the Principals who testified that meaningful staff development, especially training new teachers how to teach at-risk children is essential to a successful school. Staff development also enhances and improves teacher quality among veteran teachers. Staff development should be ongoing and occur during the school day.

Good Principals meet with their teaching staff frequently and assist them in planning and implementing the process of teaching the SCOS. Good Principals provide in-house staff development on an on-going basis.

The Bridges Commission also concluded, based upon its review of educational research, that professional staff development is an essential tool for developing highly competent, caring teachers for all children, especially for those who teach at-risk children:

But assuming that new professional development is based on national models and standards and centered on the achievement problems that teachers face each day, one measure of sufficiency will be when teachers are successful in teaching groups of diverse learners, as outlined in the six core standards developed and adopted by the North Carolina Teaching Standards Board and the North Carolina Association of Educators representing the teachers of our state. The State Board of Education adopted these same standards for North Carolina's teachers in November 1999. (Report p.11)

The Bridges Commission included professional development as important parts of the program to reduce and close the achievement gap:

RECOMMENDATION FIVE

That the State Board of Education and the Superintendent immediately make a public commitment to design and fund a required, but flexible, professional development initiative that will ensure that classroom teachers acquire the knowledge, skills, and dispositions needed to be successful in teaching a diverse population of students.

RECOMMENDATION SIX

That the state provide the substantial TIME [sic] that classroom teachers need to update their skills and gain new skills in working with diverse populations by requiring that veteran classroom teachers accept paid 11-month contracts once during every four-year period. (Report, pp 12,13)

One would wonder why in the world would veteran classroom teachers need new training to "update their skills and gain new skills in working with diverse

populations"? The Court interprets diverse populations to be at-risk, minority students.

Strangely enough, the answer to this question was provided by the North Carolina Association of Educators (NCAE) in its Amicus Brief filed with the Court. In the Amicus Brief, the NCAE made some troubling, but candid, admissions about how teachers have failed to reach at-risk children in the past due to "recently discredited educational theory."

As a result of having taught certain children using a "discredited educational theory", the NCAE admits that some children were grouped and tracked by teachers. Children on lower tracks received poorer quality curriculum, less experienced teachers and were the subject of low expectations. The reason for this "discredited" educational approach is best explained in the NCAE's Amicus Brief which states in pertinent part:

The Court has observed that low-expectations undermine achievement for at-risk students, and that too many teachers expect too little of students, with understandable consequences. NCAE supports the following findings of the Court as critical to the problem of teaching at-risk students.

The students who come to public schools of North Carolina arrive from diverse and varied economic and cultural backgrounds. The students arrive with different learning abilities, different social skills and different levels of maturity. Based on these factors and others, children will learn at different paces and at different levels. It is undisputed that all children can learn.

Memorandum of Decision, Section One, p. 152.

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

Memorandum of Decision, Section One, p. 122-23

Independent of this litigation, NCAE and the National Educator's Association have recognized the need to raise the expectations of educators who teach at-risk students... But teachers do not raise expectations because they are told to do so -- they must be part of a comprehensive response to this issue that includes a major commitment to staff development. In order to understand how the phenomenon of low expectations can be resolved, one must first understand that it has a pedagogical origin. (emphasis added)

**1. Traditional Grouping/Tracking Strategies
Assumed Low Expectations for At-Risk
Students**

For decades American public education was built around the notion that educators should group and track students by perceived ability levels and adjust expectations accordingly. In fact, the sorting of students into homogenous ability and achievement groups is nearly as old as universal compulsory education in the United States. Ability grouping enjoyed wide professional and public acceptance beginning in the heyday of the "scientific" movement in education and continuing through the post-Sputnik era of emphasis on enriching curriculum for the gifted. Most people 30 or older remember, for example, reading groups in elementary school with names like "bluebirds,"

"cardinals" or "robins," which were simply the pleasant exterior of a system that stratified students by perceived ability.

2. Research has shown that "tracking" students by ability has had far-reaching consequences beyond serving as a means to organize instruction.

Elementary students in lower tracks not only were less likely to attend college, but also regularly received poorer quality curriculum. These students also had less experienced teachers who were trained to have lower expectations of them. The low expectations construct continued in middle and high school, where tracking grouped students for most of their day, determined what higher level classes (such as biology, physics and calculus) they were allowed to take, and so on. In the "old" economic order of what was then largely a rural and agricultural state where the primary industry was textile production, the pedagogy was understandable. As we move to an information-based economy, and a society that places greater value on equal educational opportunities, its limitations have become sorely evident. The critical importance of excising these old approaches has been recently reiterated in the *First Report* from the North Carolina Commission on Raising Achievement and Closing Gaps, Dr. Robert E. Bridges, Chair, December, 2001 (hereafter "Bridges Report") The new paradigm expects educators to challenge all students with rigorous curricula and high expectations -a dramatic shift from our previous orientation to student learning and student abilities. The shift leaves many teachers with the tasks of achieving to high levels of learning for all students when their training and teacher preparation prepared them for a much different approach. Thus, while some blame teachers for low expectations, the real need is the

retraining of educators to reassess the basic assumptions of recently discredited educational theory. (emphasis added). NCAE Amicus Brief pp 19-22.

The NCAE's solution to this acknowledged mistake and discredited method of teaching children is to have the State of North Carolina pay for it:

North Carolina must invest resources in solving this problem. We need to retrain teachers on working with at-risk students, particularly those students from different economic, cultural and/or racial backgrounds. This is a key recommendation of the Bridges Report. Additionally, we must also restructure our staff development programs generally so they provide meaningful, ongoing training. (Brief p. 23)

Like it or not, this "mistake" is not the fault of the school children who are entitled to an opportunity to obtain a sound basic education which includes, as a primary objective, a competent, qualified teacher who has high expectations of each child, especially those at-risk.

Despite the NCAE's admission that for years many of our children have been the victims of the academic community's low expectations and the harm that was done as a result, the evidence is clear and convincing that meaningful staff development for teachers is necessary for teachers to be able to keep up and effectively teach all children, especially at-risk children.

The State of North Carolina acknowledges that staff development is important because it funds staff development for teachers who teach in smaller classes in grades K-5.

Section 28.28 requires the "Teacher Academy" to spend 10% of its budget for 2001-02 to fund staff development for teachers that are assigned to teach smaller classes in kindergarten through fifth grade. While there were no additional monies allocated for this requirement, the important fact here is that the State admits and acknowledges that staff development of those teachers is necessary so that they can be trained to teach effectively in a small class environment.

In enacting **Section 29.1**, the State of North Carolina recognized that staff development is necessary for teachers of children who are in low performing, "high priority" elementary schools require instruction on "methods to individualize instruction in smaller classes." This legislation provided for extension of teacher contracts for 5 days to obtain that staff development on methods to individualize instruction in the smaller classes prior to the opening of school last fall.

While the amount of money allocated to staff development of teachers in the lowest performing elementary schools was less than \$9,000,000, for 2001-2, the importance of the legislation is not just the money. The enactment of the legislation to assist "high priority" elementary schools by funding staff development for teachers to learn how to teach small classes of at-risk children constitutes an irrefutable admission by the State of North Carolina that teachers of at-risk children in sorry elementary schools need re-training in order to teach a diverse at-risk population.

It logically follows that if staff development is a State recognized requirement for the "bottom of the barrel" schools, staff development for individual teachers who are teaching groups of at-risk children performing below grade level in large numbers, is just as important a requirement for the teachers of high

numbers at-risk children in other schools where high concentrations of at-risk children are present and not achieving acceptable grade level performance.

Principals, not just Teachers need to receive regular, high-quality professional staff development.

Just as teachers need meaningful staff development, the requirement for staff development for principals and administrators to keep abreast of techniques and programs is just as important. Principals and administrators must be provided with the opportunity for on-going professional development to that they can properly supervise their teaching faculty and administer the educational process and programs in their schools in an educationally effective manner and in a cost-effective manner using their resources properly and efficiently.

Students should be provided with the opportunity to learn and high time on task coupled with an effective educational program and strategy- Students should be provided the opportunity to learn in the classroom and to spend high time on the task of learning the Standard Course of Study. The evidence shows that there are multiple strategies and programs which achieve success with at-risk students and that no one program fits all schools.

Effective Principals with populations of at-risk children are creative in finding many strategies and programs that will provide opportunities to learn. All the Principals who testified used a wide variety of policies, practices and educational programs in achieving success with their at-risk students. The evidence is clear that no one program or instructional technique is required.

Good Principals can be flexible and must be allowed to carry out their own ideas and policies provided they

are successful in doing so. Having said that, however, all the Principals who testified provided their students with the opportunity to learn the curriculum and included in that opportunity, high time on task. Each Principal's method differed, but in terms of opportunity to learn and high time on task, all were similar in meeting those two objectives for their at-risk students.

The various strategies consisted, in part, but not all, of (a) small class size (b) small group instruction during the day using media and teacher assistants (c) tutoring (d) differentiated instruction (e) individualized instruction (f) homogeneous grouping for multi-age reading instruction based on reading levels (g) night school (h) multiplication school (i) before and after school instruction (j) weekend tutoring (k) remediation sessions during breaks in year round schools (l) Project Achieve (m) summer break instruction (n) Baldrige/Covey (o) Cooperative Learning Groups and more.

Regardless of what educational method or program each Principal employed, the goals were the same - to provide each student with the opportunity to learn and sufficient time on task to accomplish the goal of mastering the SCOS.

The Principals also utilized a wide variety of prepared educational programs, such as Accelerated Learning; Math Blaster; Excel Math; Reading Renaissance; SACS Evaluation Phonics and SACS Evaluation Math; A Plus Program; Skills Bank; Reading Recovery; Accelerated Math; Success for All and more.

It is clear that imposing the same kind of program in every school will not work. Principals must know their school and use appropriate strategies. T. 9/21/01, at 123 (McNeal).

The evidence presented verifies Superintendent McNeal's testimony. There is no single program required for every school. However, every school must implement an effective and cost-efficient educational program.

Frequent monitoring of student progress - the teacher must always know where the child is in the instructional cycle and be prepared to help the child catch up if he or she is falling behind.

This necessary characteristic of a successful instructional program within a school fits hand and glove with the requirement that each child should receive individualized and differentiated instruction. When that is done, the teacher should always know where the child is and should be during the instructional period. As an explanation of this important factor, evidence of what a good school system provides in this regard is in the record.

The Court cites as an example of a common sense explanation as to how a teacher should keep up with each child's progress, the nuts and bolts of the Wake County Schools' Project Achieve. Project Achieve is a program designed to bolster at-risk student performance in schools that are not successful.

Project Achieve is now underway in several of the elementary and middle schools in the Wake County Public Schools, a system whose stated goal is to have 95% of its children tested to be performing at or above grade level EOG tests in grades 3 and 8 by 2003.

The Principals and teachers in those schools were "offered" the opportunity to embrace Project Achieve. Put another way, Wake County Public Schools made them an "offer they could not refuse" in an attempt to get the students' performance to acceptable levels.

By putting a school into Project Achieve, the Administration of the Wake County Public Schools is employing good management practices by stepping in and exercising centralized control over the educational practices in those schools so as to assert additional quality control on the lesson plans, instruction, and assessments performed by the classroom teachers.

The State, in its brief, cites Wake County's intervention through Project Achieve as an example of what the Superintendent and central office staff of a school system can do to step in and exercise control over educational practices within a particular school that lacks successful leadership and effective instruction to students. The State also contend that it is the duty of the central office staff of every school district to step in and provide instructional support to any school not meeting expected growth. (Defs' Br. Pp 42,44, 54-56)

Make no mistake, the Wake County Public Schools considered lesson plans and pacing guides to be important for improving student performance, especially at-risk student performance, long before deciding to implement Project Achieve in the 2001-2 school year.

Project Achieve is based on a successful instructional method developed in Brazzosport, Texas. The Brazzosport model, however, is based on similar principles as used by DPI assistance teams assigned to help low-performing schools across the State. These principles are the same used by good principals in good schools. The teacher must know the curriculum, teach the curriculum, assess the student's mastery of the curriculum with appropriate tests and provide focused remediation to students that have failed to master the subject matter in the curriculum.

Project Achieve offers scripted lesson plans and assessments based on the SCOS to teachers in specific

Wake County elementary and middle schools with high percentages of low performing students that have not achieve success on their own. The teachers (staff development is crucial here) are given instruction in how to deliver the lesson plans, conduct the assessments and implement the remediation. For thirty minutes each day, the Project Achieve method assists teachers in delivering the lesson aligned to the SCOS and assessing and monitoring the extent to which the child has mastered the lesson.

While successful teachers utilize different methods of monitoring their students' progress, it is undisputed that good, effective teachers monitor and stay abreast of each individual student's progress at all times and in doing so, keep the child from falling behind others.

In addition to focused lesson plans and assessment for at-risk students, is also important that the school provide intervention for at-risk children whose performance is not at grade level, to wit: timely and effective remediation.

At-Risk Children Need Adequately Targeted Remediation Services.

The record is replete with evidence that tutorial and expanded schedule programs are among the remediation strategies that have proven successful in raising performance levels for at-risk students.

The principals and administrators who testified during the September 17th hearings clearly and convincingly bolstered the undisputed evidence relating to the positive value of individual and small group tutoring as important tools for raising the achievement levels of at-risk students. Witnesses praised after-school tutorials in which teachers, and in some cases, trained volunteers, worked with individual students.

Some expressed frustration that limited funds often prevented their schools from serving all students, especially those whose academic performances were among the lowest.

As discussed above in more detail, some of the principals restructured their school's academic day to assure that more small-group and one-on-one instruction could be provided students who were struggling to master the material. While they restructured in different ways, the goal was the same, to get instruction delivered to their at-risk students in a more concentrated dose.

The evidence in this case is clear and convincing that focused and well-taught remediation is needed to keep moving at-risk students from failure to success.

The evidence also clearly and convincingly demonstrates that by strategically allocating resources effective principals can improve at-risk performance in an impressive fashion considering the level of resources available and the student population at their schools. Each of the Principals that testified, although using different educational methods, stressed the same necessary ingredients for success with at-risk children, to wit: high expectations, commitment, proper staff development with proper funding, strong leadership, and teaching the Standard Course of Study coupled with continuous evaluation and assessment of the students.

The State has recognized that focused educational intervention and remediation are effective tools for improving the performance of at-risk children by adopting policy and enacting Legislation in furtherance of the ABCs Accountability System with the stated educational goal of all LEAs implementing personal education (remediation) plans for individual children

in Grades Three through Eight who are not performing at grade level. N.C.G.S.115C-105.41

Leandro specifically authorizes and directs this Court to consider State educational goals and standards in considering whether or not the State is living up to its constitutional obligations.

Therefore, we must remand this case to the trial court to permit plaintiff-parties to proceed on these claims.

Educational goals and standards adopted by the Legislature are factors which may be considered on remand to the trial court for its determination as to whether any of the state's children are being denied their right to a sound basic education. (citations omitted) They will not be determinative on this issue, however. (Leandro p. 357)

The State has also acknowledged and recognized the educational goal of remedial intervention and preventative education for children who are not performing at grade level (Level III) or above by first adopting policies to require a plan for remediation and in 2001, enacting legislation to require a remediation plan all for children in grades three through eight who are not performing at grade level. Remediation is now required as one important component of the new Student Accountability Standards under the ABC's of Education.

Under the Student Accountability Standards, referred to on occasion as the No-Social Promotions Policy adopted by the State Board in April, 1999, local school officials were required to develop Personal Education Plans ("PEPs") for students in the Gateways grades-three, five and eight, who are not performing at or above grade level. In 2001, the General Assembly enacted legislation that goes further and **requires that all students who have not demonstrated grade level**

proficiency and are placed at risk of academic failure have a PEP. Sec. 28.17(e); N.C.G.S. 115C-105.41.

Sec 28.17(e) requires the PEP to include, as an educational goal, "**focused intervention and accelerated activities [which] should include research-based best practices**" and requires LEAs to provide **these services and transportation to participate in them free of charge.** The legislation, however, does not provide specific allocated funding to the LEAs to cover the cost of carrying out the PEPs for children who have failed to perform on the "Gateway" EOG test at grade level.

While the plaintiff-parties characterize the legislation as an un-funded mandate, **the importance of the legislation lies in the State's acknowledged educational goal to ensure that each child identified as at-risk of educational failure receives a PEP, additional intervention and remedial educational services. As a result of this acknowledged goal, those children who have failed to achieve grade level performance of subject matter on "Gateway" EOG tests are receiving additional intervention and remediation services.**

By enacting this legislation, the State irrefutably acknowledges that it is the State's educational policy to require that each failing student be offered "focused intervention," a remedial plan designed to address the child's demonstrated areas of weakness so that the child can be helped to achieve Level III or above and get on track to obtain a sound basic education.

The Legislature also mandated specific expenditures of funds to improve student accountability to complement the requirements of N.C.G.S. 115C-105.41. Section 28.33(a) requires, in part, that "**Funds appropriated for the 2001-2002 fiscal year and the**

2002-2003 fiscal year for Student Accountability Standards shall be used to assist students in performing at or above grade level in reading and mathematics in grades 3-8 as mandated by the State's end-of-grade tests..... Funds in this allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end of grades test in grades 3-8 and (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of- course tests.

The legislation is important in that the State has adopted a policy that mandates specific allocation of educational funding for increased educational opportunity to each student placed at risk of academic failure through the requirement of extra individual tutorial and remediation.

It is also important in that it constitutes an irrefutable admission by the State that each student at risk of academic failure who is performing below Level III on the EOG and EOC tests needs more focused assistance, intervention and that financial resources are necessary to accomplish the action mandated. North Carolina's ABCs accountability system is indeed driving more than just teachers and students.

Make no mistake about the pressing need for such action. The Gateways, no promotion-policy, "high-stakes" component of the ABC's has arrived. In the spring of 2002, all North Carolina students in the third, fifth, and eighth grades will face EOG tests that, by statute, will largely determine whether they can advance to the next grade. Principals must consider the EOG test scores when determining whether to promote or retain the student. N.C.G.S. 115C-288(a).

In 2001, in addition to the legislation already discussed, the General Assembly enacted what can be characterized as "preventitive" legislation to attempt to improve elementary reading performance **before** the students reach the first Gateway at the end of the 3rd Grade. Sec. 28.30(c); N.C.G.S. 115C-105.27 **requires every elementary school to prepare a plan for insuring that all children are reading on grade level by the time they enter the 2d grade.**

Positive Home-School Relations - Parents must be informed and take responsibility for their children

Good Principals encourage and foster home-school relations. This is important for all children, but is a tough goal to achieve with a lot of at-risk students. The Bridges Commission's First Report focused on this important relationship:

The Role of Home and Community

Parental involvement has been thoroughly recognized as a powerful force in a child's experience. Social and academic skills development are key elements of the overall development process. They must happen to varying degrees in both the home and school settings. This being the case, the serious case of disconnectedness that exists between a large percentage of minority families and their schools must be recognized as a significant root cause of the achievement gap between minority students and their white counterparts. Under the most strained nonrelationships examined by the Commission, both parents and school officials typically adopt an independent and sometimes hostile attitude toward each other while becoming convinced that better achievement outcomes can only be realized when the other party does his/her job. Even when

there is no significant friction or conflict, there is still enough discomfort with interaction to inhibit effective and productive communication.

Schools that have made substantial progress in closing the achievement gap have first been successful in closing the communication and interaction gap between home and school. School personnel are very clear about what middle class white parents can and wish to do to be involved in schools and in their students' education. They are not as clear about minority parents and are often reluctant to press for answers in this regard. In most cases, the absence of knowledge and understanding of minority cultures gives rise to this reluctance. (Bridges Commission Report, pp 7,8)

The Bridges Commission recommended a public information campaign statewide to get parents and local communities' attention, especially those with at-risk, underachieving students. The suggested "message" of the campaign included the following:

Parents must begin early and continue helping their children think and feel positively about themselves as academic achievers. They must be convincing in this effort by whatever means necessary.

Home and school must be on the "same page" with the child if the child is to read and compute well when it is time. When parents have a problem with the school, they should define it and "work it out" rather than withdrawing and becoming adversarial.

An overdose of TV time can be deadly where a child's development is concerned. Highly credible studies have shown that too much TV can negatively affect learning on the part of

children. African American children have been shown to be overexposed to TV at home. This minority group is experiencing the lowest achievement level of all ethnic groups.

School/community mentoring programs are providing adult partners for young people in need of guidance and someone who cares and is available to advise and encourage. (Bridges Report pp 8-9)

The importance of these suggestions and parent involvement in a child's learning are critical. The schools cannot be expected to shoulder the entire responsibility for parenting and education of children. Yet, with uneducated and irresponsible biological parents having illegitimate children by the thousands in North Carolina, the public schools will continue to have to attempt to educate an ever increasing number of children who come to the school house doors unprepared to enter the educational process and be successful.

Statistics published by the State Center for Health Statistics, North Carolina Department of Health and Human Services provide a grim picture of the future with respect to the numbers of illegitimate children being born in North Carolina:

1997 - There were 34,441 illegitimate births in N.C. Of these, 15,036 were white and 19,405 were minority. The 34,441 illegitimate births constituted 32.2% of all children born in North Carolina in 1997.

1998 - There were 36,592 illegitimate births in N.C. This was an increase of 2,151 from 1997. Of these, 16,495 were white and 20,097 were minority. The 36,592 illegitimate births constituted 32.8% of all children born in North Carolina in 1998.

1999 - There were 37,756 illegitimate births in N.C. Of these, 17,649 were white and 20,107 were minority. The 37,756 illegitimate births constituted 33.2% of all children born in North Carolina in 1999.

2000 - There were 40,090 illegitimate births in N.C. Of these, 19,430 (an increase of 4,394 over 1997) were white and 20,660 (an increase of 1,255 over 1997) were minority. The 40,090 illegitimate births constituted 33.3% of all children born in North Carolina in 2,000. (Source: NCPH CTR Health Statistics for 2000 and 1996-2000, 2-1).

To put in bluntly, the cause of 40,090 illegitimate births in North Carolina in 2000 was 80,180 irresponsible individuals engaging in unprotected sex without regard for the consequences of their actions. The sad result of that irresponsible behavior is children who are placed at-risk of academic failure from the day they are born. It is not their fault nor is it a result of anything they have done. It is the fault of their biological parents.

It is undisputed that one of the major causes of a child being at-risk is being born in an environment where the parent is not socially, economically or educationally equipped to assist the child in obtaining the early childhood development skills needed to come to school and be successful.

Unfortunately, illegitimacy as one of the major causes of putting a child into an environment where he or she is at-risk of academic failure is not receiving the attention it deserves, but instead is a subject not adequately addressed, uncomfortably ignored and getting worse each year. The consequences of the actions of these irresponsible biological parents does, however, cause great harm to the innocent children and places an unnecessarily heavy burden on the public schools that

are charged with providing each child with an equal opportunity to obtain a sound basic education.

These sobering statistics show that the numbers of future at-risk students who will come to school from non-traditional environments is steadily on the rise. That is why it is so important to get the parent who has the day-to-day responsibility for one or more of these children involved with the children's learning in the manner recommended by the Bridges Commission, regardless of race.

The statistics also show that illegitimacy is hardly a minority problem. Based on the rate of increase in white illegitimate births since 1997, it appears more than likely that there will be more white illegitimate children born in the future than minority. All of the 40,000 illegitimate children born in 2000 are headed for the schoolhouse door in at most five years, and those who are at-risk, a high number of them, are headed for **More at Four** or another Pre-K program in only four years.

The economic impact of this ever-growing problem is staggering. Consider, as an example, that each kindergarten class has a maximum of 18 students, with one certified teacher and a teacher assistant. **The 40,000 children born out of wedlock in the year 2000 will fill 2,222 classrooms, and require the employment of 2,222 certified teachers and 2,222 teacher assistants.**

Regardless of the causes of the problem between some parent(s) and the schools, the need for good parent-school communication and relationships cannot be down played. Good parent-school communication and relationships are a necessary component of helping children, especially those at-risk, achieve a sound basic education.

Good Principals involve parents in the school as volunteers. They invite parents to school meetings, including PTA/PTO events. They also find different ways to contact and inform parents about the progress of their children. Lucy Edwards expressed the need to communicate with parents and students:

I always let them (parents and students) know where we are, but this is not where we are going to be. We need to hold our heads up, we need to work hard and get out of this (low performing school). And that's what I presented to everyone.. we can do better. And what we did with our students, we always say to them that you are smart. You are just as smart as anybody. So you can do better. You will do better. (Tr.9/19/01 pp. 240-241)

In addition to these necessary criteria required for parents, communities, schools and faculty to be successful in teaching children and especially at-risk children, evidence was presented which corroborated and re-affirmed that reduction of class size in the early elementary grades, a technique already identified by the Court as helpful in providing at-risk children with the opportunity to obtain a sound basic education.

At-risk children need smaller classes in early grades.

Witnesses for all parties who testified during the first hearings in this case agreed that lowering class size is an effective means of improving performance for at-risk students.

Thus, it came as no surprise to the Court that witnesses called to testify during the September 17th hearings agreed with this premise as well. In fact, the class sizes in all of the schools and/or districts examined by the Court during the September 17th evidentiary hearings—where test scores indicated that

the programs were succeeding— were well below the state average.

The State of North Carolina presented evidence that it has enacted additional legislation which affirms the importance of small class size for at-risk children in low performing schools as well as other legislation acknowledging the importance of many of the criteria discussed above as essential for the education of at-risk children.

In addition to the recent legislation adopted and discussed above, the State also presented evidence about legislation enacted to assist at-risk children in schools that are really low performing by State standards, as well as other legislation that the State contends demonstrates its on-going commitment to see that all children have an opportunity to receive a sound basic education.

Immediate assistance and intervention for the 37 lowest performing elementary schools.

The State has also recognized the need for immediate assistance and intervention, including funds for smaller class sizes in the 37 lowest performing ("high priority") elementary schools in the State. To qualify for this immediate assistance, the elementary school had to had (a) **over 80% of the students qualified for Free and Reduced Lunch** and (b) **no more than 55% of the students performing at or above grade level.**

In Section 29.1, the sum of \$8,062,603 was allocated to reduce class size in the "high priority" elementary schools to **"ensure that no class in kindergarten through third grade has more than 15 students for 2001-2002 school year; and the same amount for 2002-2003.**

While the amount of money allocated to reducing class size to no more than 15 students in K-3 in the 37 lowest performing elementary schools was less than \$9,000,000, the importance of the reduction of class size component of the legislation, just like the staff development component, is not the money. The adoption of educational policy to assist "high priority" elementary schools by enacting legislation to fund at-risk class size reduction in K-3, constitutes an irrefutable admission by the State of North Carolina that at-risk children in elementary schools need smaller class size in order to have an improved learning environment, especially where many students are performing below grade level.

It logically follows that if small class size in K-3 is a requirement for at-risk children unlucky enough to be assigned to the "bottom of the barrel" schools, small class size, just like staff development for individual teachers who are teaching groups of at-risk children performing below grade level in large numbers, is just as important for at-risk children who attend schools that are not just the "bottom of the barrel."

Legislation focusing on closing the achievement gap between white students and minority students.

In 2001, the legislature amended N.C.G.S. 115C-105.35 to require the State Board to include in the ABC growth component measures, a "closing the achievement gap" component as well as legislation mandating the State Board to establish a model for an LEA to use as a guideline for establishing a local task force to attempt to close the achievement gap. N.C.G.S. 115C-12(30).

Legislation requiring State intervention and assistance to LEAs that have schools that are deemed continually low performing.

In schools which the State has determined are continually low performing, it is the educational policy of the State to require the State Board of Education to "provide a series of progressive assistance and intervention strategies" to those schools "whenever a local board of education, superintendent and principal have been unable to improve performance in that school. N.C.G.S. 115C-105.37A. This policy of intervention, when the LEA is unable to improve student performance on its own, subjects the LEA to increased State control of the LEA's assigned responsibilities.

The State, in its brief, characterized this recent legislation as evidence that **demonstrates that the State is continuing to appropriate additional funds and initiate new programs to assure that students enrolled in North Carolina public schools are receiving the opportunity to acquire a sound basic education. The legislation that specifically addresses low-performing schools demonstrates that the State is committed to provide those schools with the resources necessary to provide appropriate educational opportunities. Along with previously enacted legislation, (citation omitted), this legislation demonstrates that the State will not permit local board of education, superintendents or principals to endanger their students' constitutional right to the opportunity to acquire a sound basic education. (Brief, 1/31/01 pp 52-54)**

SUMMARY OF WHAT THE EVIDENCE PRESENTED AT THE HEARINGS DEMONSTRATED RELATING TO IMPROVING AT-RISK STUDENT PERFORMANCE:

The evidence presented at the hearings clearly demonstrates that at-risk children can be taught effectively when effective educational programs implemented by good leadership and competent, qualified classroom teachers, are made available to those children.

The evidence also demonstrated, as discussed in detail above, that there are certain essential ingredients necessary for any school to be successful:

Each school must have a good Principal who is an effective, energetic leader. An effective Principal can improve the performance of at-risk students by using a wide variety of policies, educational practices and programs in combination with high expectations, dedication, commitment, proper staff development with proper funding, strong leadership and competent teachers who effectively teach the Standard Course of Study to all of their students using individualized and differentiated instruction.

Each classroom must have a good teacher who is competent, certified, effective and energetic. An effective Teacher can improve the performance of at-risk students by having high expectations of each child in the classroom and by providing: (1) meaningful opportunity to learn and time on task; (2) lesson plans aligned with the SCOS; (3) effective delivery of individualized and differentiated instruction on the lesson plan for each child; (4) continued monitoring and assessment of the child's understanding and mastery of the lesson; and (5) individualized remediation for each child who has not demonstrated that they have mastered the lesson.

No single educational method or program is necessary so long as the educational program effectively encompasses the criteria that the Court has identified as essential for a successful school and so long as the program ensures that all students are being provided with the opportunity to learn and high time on task coupled with educational programs, methods and strategies that teach the Standard Course of Study in a focused and effective manner.

A Safe and orderly environment in the School is essential in order for students to learn.

High expectations of teachers and students are essential.

The State of North Carolina agrees and admits that a good principal is critical to a successful school with a high percentage of at-risk children. The State's Brief speaks for itself in this regard:

A. Experienced Leadership is Important but Not Essential. Whatever the value of experience, it is clear that good leaders in schools with a high percentage of at-risk students focus their energy and resources on achieving a few basic goals. (Brief 1/31/02, p 8,10) These Goals are:

B. Good Principals in Schools with High Percentage of At-risk Students Demand High Expectations. (Brief 1/31/02, p 10)

C. Good Principals Find a Way to Provide Differentiated Individualized Instruction to Their Students. (Brief 1/31/02, p 15)

D. Good Principals Use Available Technology to Enhance Individualized Instruction. (Brief 1/31/02, p 31)

E. Good Principals Ensure Good Discipline in Their Schools. (Brief 1/31/02, p 33)

F. Good Principals Require Their Teachers to Teach the Standard Course of Study. (Brief 1/31/02 p 37)

G. Good Principals Require Teachers to Work Hard. (Brief 1/31/02 p 43)

**H. Good Principals Need Flexibility to Succeed.
(Brief 1/31/02 p 46)**

The evidence presented during this phase of the proceedings clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the resources currently available to North Carolina public schools..... All the evidence shows that the keys to improving student performance are Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to the students; Continual assessment of the students' understanding of the lesson; and Individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means. (Brief 1/31/02, p 55)

There can be no question that the State of North Carolina has the educational expertise to implement educational policies that are effective in teaching all children, especially those at-risk of educational failure. There can also be no question that the State of North Carolina knows how critical and necessary these educational practices and policies are to an at-risk child's educational opportunity.

This is shown time and time again by the evidence presented throughout this case as well as by the evidence of educational policy enacted by the Legislature in the recent session and presented during the hearings.

The State, by enacting these legislative policies in support of education and at-risk children has admitted and acknowledged: (1) the effectiveness and importance of pre-kindergarten programs for at-risk

children; (2) the effectiveness of small class size for at-risk children in the early elementary grades; (3) the necessity for all children to be reading on grade level by the second grade (4) the necessity for focused intervention with children who are not performing at grade level; (5) the need to close the achievement gap between white students and minority students; and (6) the necessity for intervention in schools that are not successful with high populations of at-risk children.

Review of 2000-01 Student Performance on the ABCs, Statewide, in selected school districts and Hoke County.

In its ***March 26 Memorandum of Decision***, the Court, utilizing the Green Book and the ABC's data, conducted an analysis of statewide student performance data on the EOG and EOC tests administered by the State under its ABC's accountability system. The results of that analysis formed the basis for the Court's determination that there were at-risk children throughout North Carolina not obtaining a sound basic education based on their objective test scores under the ABCs. Those test results, while not the ultimate determining factor, are valid indicators that this Court can use to measure performance under ***Leandro***.

Accordingly, it is appropriate to review the performance of students on the 2000-2001 EOG and EOC tests in Hoke County and throughout North Carolina to see if there was any improvement in student achievement statewide and in the 14 selected school districts identified and analyzed by the Court in the decision. The Court has received into evidence the 2000-2001 school year testing results and relevant data from the Green Book and the ABC's Reports.

To remain consistent with the form and scope of the analysis conducted by the Court in the March 26 Memorandum of Decision, the Court reviewed the EOC and

EOG data for 2000-2001 and has incorporated that data into the same format utilized in the **March 26 Memorandum of Decision**. The Court has compiled data from the Green Books for the years 1995-96 updated through 2000-01 that show the numbers of white, black, Asian, Hispanic & American Indian students who are performing **below** grade level (below Level III) in the 8th grade reading and math and in 6 core high school courses, all of which are an essential component of the **Leandro** sound basic education. This data put the number of students by each percentage of student performance per ethnic group for those who **have failed to achieve grade level**.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In both Reading & Math in Grade 8 using composite scores for Reading and Math.

Year	White	Black	Asian	Hispanic	American Indian
95-96	15,751 (27.9%)	15,262 (63%)	331 (29.2%)	618 (49.7%)	857 (60.4%)
96-97	14,606 (25.5%)	15,197 (60%)	359 (29.6%)	760 (49.6%)	702 (54.3%)
97-98	11,410 (19.6%)	12,600 (50.9%)	366 (26.2%)	763 (43.5%)	597 (45.1%)
98-99	11,481 (19.4%)	12,747 (49.6%)	348 (23.2%)	889 (43.5%)	531 (41.4%)
99-00	9,336 (15.8%)	11,534 (44.6%)	300 (18.6%)	904 (38.6%)	454 (34.6%)
00-01	9,496 (16.0%)	12,170 (45.1%)	317 (19.5%)	1,196 (40.3%)	506 (36.4%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Algebra I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	24,020 (46.2%)	16,643 (76.6%)	396 (33.2%)	677 (61%)	966 (78.5%)
96-97	19,804 (35.4%)	15,409 (66.1%)	413 (28.9%)	648 (51.4%)	720 (67.4%)
97-98	16,588 (29.7%)	13,732 (60%)	367 (24.7%)	604 (42.5%)	494 (50.2%)
98-99	15,149 (26.3%)	13,430 (55.6%)	376 (21.1%)	630 (36.8%)	491 (43.6%)
99-00	13,306 (22.3%)	12,821 (52%)	369 (21%)	787 (37.6%)	586 (47.9%)
00-01	9,307 (15.4%)	11,391 (42.9%)	334 (17.4%)	779 (30.2%)	394 (32.3%)

NOTE: Algebra I is generally taken in the 9th and 10th grades by the majority of students. The students who take Algebra I in the 7th and 8th grades score at higher levels of proficiency (99-00 7th gr. 96.9%; 8th gr. 90.9%)

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In English I EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	20,379 (39.4%)	17,428 (73.1%)	446 (41.2%)	759 (62.5%)	957 (70.6%)
96-97	17,836 (39.8%)	16,773 (63.3%)	503 (35.9%)	847 (55.5%)	875 (66.7%)
97-98	16,568 (28.9%)	15,660 (60.2%)	503 (35.2%)	852 (52.4%)	839 (62.6%)
98-99	14,860 (25.6%)	14,508 (55.5%)	532 (34%)	931 (49.5%)	744 (53.4%)
99-00	13,415 (22.2%)	13,625 (51.7%)	473 (28.3%)	1134 (48.3%)	709 (51.7%)
00-01	13,277 (21.8%)	13,687 (50.6%)	503 (28.1%)	1300 (47.2%)	678 (48.6%)

NOTE: English I is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In ELP EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,786 (47.4%)	17,889 (80.1%)	568 (54.8%)	909 (70.7%)	872 (76.6%)
96-97	14,617 (27.1%)	13,866 (59.1%)	538 (34.6%)	769 (50.8%)	854 (55.6%)
97-98	11,718 (23.1%)	11,914 (54.2%)	516 (33.8%)	675 (44.8%)	540 (51.1%)
98-99	11,822 (23.0%)	11,423 (53.6%)	604 (36.0%)	780 (47.3%)	564 (53.2%)
99-00	11,505 (22.4%)	11,940 (54.1%)	556 (31.7%)	912 (46.7%)	686 (58.1%)
00-01	11,776 (20.0%)	12,994 (51.1%)	558 (29.4%)	1048 (43.5%)	503 (45.4%)

NOTE: ELP is taken in the 9th grade by the majority of students

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Biology EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	23,934 (51.2%)	17,578 (84.9%)	528 (51.3%)	757 (70.3%)	966 (80.0%)
96-97	16,155 (31.2%)	15,720 (69.1%)	421 (33.5%)	605 (50.6%)	580 (61.8%)
97-98	15,077 (29.1%)	15,287 (67.2%)	493 (34.1%)	685 (51.7%)	577 (57.6%)
98-99	15,145 (30.1%)	15,278 (68.7%)	579 (39.8%)	789 (54.4%)	512 (55.7%)
99-00	17,474 (31.4%)	14,630 (68.0%)	684 (41.0%)	984 (56.0%)	692 (63.4%)
00-01	14,199 (26.8%)	15,164 (65.0%)	644 (36.1%)	1,143 (52.8%)	528 (53.3%)

NOTE: Biology is taken in the 10th grade by the majority of students. It may also be taken as early as the 9th grade. In 1999-00 the 9th graders who took biology scored at a proficiency level of 70.4%.

*Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Physical Science EOG Tests * Physical Science EOG testing did not begin until 1998-99 **

Year	White	Black	Asian	Hispanic	American Indian
98-99	13,750 (32.0%)	13,885 (68.4%)	533 (47.3%)	880 (58.3%)	629 (65.4%)
99-00	13,010 (30.5%)	13,350 (67.0%)	450 (40.4%)	995 (57.4%)	764 (67.6%)
00-01	6,885 (28.0%)	7,507 (62.9%)	218 (34.9%)	649 (55.9%)	257 (59.8%)

NOTE: Physical Science is taken in the 9th grade by the majority of students.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In U.S. History EOG Tests

Year	White	Black	Asian	Hispanic	American Indian
95-96	22,610 (56.3%)	14,388 (84.4%)	488 (52.3%)	628 (81.9%)	819 (80.8%)
96-97	18,978 (41.3%)	13,804 (72.1%)	446 (40.1%)	523 (57.9%)	600 (69.9%)
97-98	18,866 (41.3%)	13,667 (71.5%)	524 (42.6%)	616 (58.3%)	603 (72.1%)
98-99	18,502 (39.6%)	13,788 (70.6%)	591 (41.3%)	684 (57.8%)	622 (70.5%)
99-00	20,598 (43.5%)	14,696 (75.4%)	714 (49.7%)	807 (61.4%)	634 (72.6%)
00-01	19,594 (39.9%)	14,202 (71.5%)	699 (43.9%)	958 (58.8%)	575 (64.7%)

NOTE: U.S. History is taken in the 11th grade by the majority of students. Of those taking the course whose post high school plans did not include a 4 year college, no group scored greater than 32% proficient. Of those who planned to go to a 4 year college, 59.6% scored at proficiency (Level III) in 1999-00.

While there was some improvement, there was also some slippage in some courses. The high school EOC results are dismal when looking at the sheer number of children below grade level in important courses. A thorough review of the data contained in The Green Book for each year from the 1995-96 edition to the 2000-2001 edition, shows that black, Hispanic, and Native American students in North Carolina consistently score lower percentage-wise than Asian and White students on EOC and EOG tests. However, the numbers of white students who are performing below grade level on the tests is actually higher than black students in some of the EOC subjects tested.

The Court has also reviewed the data for student performance on the EOG tests for 2000-2001 in grades 3 through 8 as shown below. While the white percentages of students scoring at or above grade level on the EOG tests is higher than other groups, the actual number of white students failing to achieve grade level or above is second only to the black students who are failing to achieve grade level or above on the EOC tests.

2000-01 Number and Percentage of N.C.'s public school children scoring below grade level in both reading and math, by race, in grades 3 through 8 on EOG tests. Table 14, Green Book.

Grade	White	Black	Asian	Hispanic	American Indian
3	13,002 (21.4%)	16,625 (53.3%)	488 (52.3%)	2,042 (45.0%)	604 (40.1%)
4	10,725 (17.6%)	13,957 (46.4%)	378 (22.5%)	1,500 (38.1%)	587 (40.8%)
5	8,121 (13.1%)	11,188 (38.0%)	257 (14.6%)	1,186 (32.6%)	483 (34.7%)
6	13,042 (21.0%)	16,301 (54.1%)	419 (24.1%)	1,660 (47.6%)	591 (44.1%)
7	11,622 (19.0%)	14,227 (50.7%)	375 (22.1%)	1,405 (43.8%)	534 (40.1%)
8	9,496 (16.0%)	12,170 (45.1%)	317 (19.5%)	1,196 (40.3%)	506 (36.4%)

The following tables show the performance data for three years for the 14 LEAs utilized by the Court in its March 26, Memorandum of Decision. The last comparison covers the school year 2000-01. Unfortunately, the Department of Public Instruction dropped the Statewide Comprehensive Test given at the end of the Tenth Grade to measure reading and mathematics comprehension of what a child should know by the end of the Tenth Grade. The 2000-01 comparison also substitutes U.S. History EOC tests for ELP EOC. All other comparisons remain the same as with the prior years.

Even without the inclusion of the N.C. Comprehensive Test results for 2000-2001, the data show little overall improvement in EOG and EOC scores for the students in the LEAs analyzed.

1998-99	Grade 3 (R&M)		Grade 8 (R&M)		NC COMPREHENSIVE TEST -			ALG I		ELP		ENG I				
	B	W	B	W	(R)	B	W	(M)	B	W	B	W	B	W		
ORANGE	43	78	41	81		41	70		35	74	56	77	51	79	40	78
CH/CA	41	92	60	97		43	94		47	93	46	88	47	94	55	95
HARNETT	50	73	55	79		37	69		37	68	48	67	60	82	47	70
WAKE	43	84	52	91		50	84		49	85	57	85	47	84	48	85
DURHAM	42	81	50	88		44	82		43	81	42	72	45	80	48	84
FORSYTH	35	77	50	82		40	79		40	79	68	82	44	79	49	80
GUILFORD	39	78	49	84		45	78		41	79	34	70	51	84	45	80
RANDOLPH	38	68	33	71		46	61		42	64	60	79	79(9)	90	39	66
N. HANOVER	42	81	50	88		45	79		38	77	42	73	42	80	49	82
ROBESON	45	69	43	73		27	58		26	54	54	69	41	74	40	64
HALIFAX	61	80	48	41		33	34(9stu.)		29	50	43	35	47	62	29	24(17st.)
PITT	40	77	53	89		45	79		42	82	65	85	58	86	46	82
CMS	40	83	42	83		34	75		32	77	28	63	38	81	39	82
HOKE	41	75	51	82		21	53		22	57	39	63	52	81	47	70

1998-99. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -			ALG I -		ELP - -		ENG I				
State %	B	W	B	W	Read	B	W	Math	B	W	B	W	B	W		
	42	75	51	82		39	72		37	72	46	74	47	77	45	75

1999-00	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -			ALG I -		ELP -		ENG I				
	B	W	B	W	Read	B	W	Math	B	W	B	W	B	W		
ORANGE	37	80	57	81		46	73		47	78	67	81	41	81	43	83
CH/CA	44	93	64	98		36	96		51	95	48	94	60	95	63	98
HARNETT	50	76	62	80		35	66		43	80	52	67	56	77	54	76
WAKE	45	89	60	92		50	86		50	87	60	88	51	89	53	90
DURHAM	47	85	54	89		44	80		46	84	38	76	40	79	52	86
FORSYTH	38	80	54	86		33	80		38	80	61	84	47	81	51	83
GUILFORD	43	80	56	87		44	78		43	80	43	77	54	85	50	84
RANDOLPH	40	65	59	78		33	62		35	66	55	78	64	86	31	67
N. HANOVER	40	84	56	88		47	82		45	82	43	72	37	79	46	83
ROBESON	43	71	47	73		34	67		33	67	41	64	33	52	40	60
HALIFAX	51	69	54	50		28	23(9stu)		42	84	30	36	44	45	32	43
PITT	41	78	57	88		41	80		33	45	58	86	58	90	52	86
CMS	43	82	45	87		37	79		39	81	30	71	40	79	47	86
HOKE	45	73	57	76		31	69		41	79	49	59	56	75	47	66

1999-00. R=reading M=math Statewide Results-Green Book

	GRADE 3 (R&M) -		GRADE 8 (R&M) -		NC COMPREHENSIVE TEST -			ALG I -		ELP -		ENG I				
State	B	W	B	W	Read	B	W	Math	B	W	B	W	B	W		
	44	77	56	85		40	72		41	75	48	78	46	78	50	78

2000-01	GRADE 3 (R&M)		GRADE 8 (R&M)		NC COMPREHENSIVE TEST				ALG I		U.S.HIST.		ENG I	
	B	W	B	W	Read	B	W	Math	B	W	B	W	B	W
ORANGE	39	80	55	80	Test dropped by DPI				73	91	46	74	41	75
CH/CA	50	94	63	98					56	94	22	83	59	95
HARNETT	50	77	57	80					56	80	27	62	48	76
WAKE	52	91	62	93					71	93	35	74	56	90
DURHAM	50	85	53	88					55	84	29	69	55	87
FORSYTH	40	80	52	86					67	89	29	64	49	81
GUILFORD	43	81	51	86					45	80	33	68	49	83
RANDOLPH	44	69	53	76					73	88	29	49	65	41
N. HANOVER	50	84	51	89					61	88	23	64	52	85
ROBESON	52	76	52	71					52	73	28	55	34	62
HALIFAX	43	63	54	62					46	69	48	29	39	53
PITT	48	82	59	92					75	91	29	69	54	86
CMS	46	86	48	87					35	75	31	70	47	85
HOKE	43	72	54	76					53	75	12	46	50	72

2000-01.	GRADE 3 (R&M)		GRADE 8 (R&M)		NC COMPREHENSIVE TEST				ALG I		U.S.HIST.		ENG I	
	B	W	B	W	Read	B	W	Math	B	W	B	W	B	W
State	47	79	55	84	Test dropped by DPI				57	85	29	60	50	78

The Court also reviewed the ABC scores for the schools whose principals testified at the hearings in September and October. The plaintiffs appropriately pointed out that several of the schools that had previously achieved success with at-risk populations, did not maintain the levels of success during 2000-2001.

The majority of successful schools whose principals testified at the hearings still have many Students below Grade Level and have not been able to maintain their levels of at-risk success in 2000-01

The schools whose principals testified have had some success as measured by an increase in their composite scores on the ABCs. Their composite scores for the 2000-01 school year, however, show that even at these "successful" schools, many students are not performing at the level the Court has determined is

reflective of a sound basic education. As shown by the following chart, at three of the schools, the school composite reflects that for one-third or greater of the tests taken, students at those schools performed below grade level. At a fourth school, Winstead Elementary, students performed below grade level on nearly 28% of the tests given. The performance composite *declined* from 1999-2000 to 2000-01 at four of the five schools identified by the Court as successful.

ABC Scores, 1997-98 to 2000-01

School	Composite				ABC Growth Status			
	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
Baskerville ES	59.3	62.1	72.0 0	66.4	Exm	Exm	Exm	NR
Gaston MS	74.4	81.6	79.2 0	63.9	Exm	Exm	Exp	NR
Kingswood ES	91.0	90.9	95.30	94.1	Exm	Exm	Exm	Exm
West Hoke MS	60.1	69.5	64.3 0	66.5	Exm	Exm	NR	NR
Winstead ES	61.6	72.7	75.7 0	72.6	Exm	Exm	Exp	NR
Mt. View ES (State-selected school)	52.8	59.6	78.6 0	86.8	Exp	NR	Exm	Exp

Status: **Exp**-Expected Growth/Gain; **Exm**-Exemplary Growth/Gain; **NR**-No Recognition

In addition, four of the five schools the Court identified as successful failed to meet even expected growth for 2000-01, receiving "no recognition" status. See Chart ABC Scores, 1997-98 to 2000-01, *supra*. Thus, at Baskerville Elementary, Gaston Middle, West Hoke Middle, and Winstead Elementary, the growth from past years was not sustained. These results were disappointing to the dedicated principals and their faculty.

Disappointing results for last year aside, the hearings in September and October provided the Court with valuable knowledge into the necessary and important leadership skills and teaching methods these Principals and their teachers utilize in order to get their composite percentages to the levels they achieved in 2000-2001 considering the demographics of the student populations they serve. Those schools serve high concentrations of at-risk children.

The disappointing ABC data simply highlights and reflects the difficulty in sustaining gains achieved with at-risk students concentrated in such high numbers and from poverty backgrounds where home support and resources are limited.

That these "exemplary" schools have been unable to sustain and build on the growth they have achieved, is not due to lack of hard work and effective educational leadership by the exceptionally dedicated principals and teachers in those schools.

A review of Hoke County ABC Scores show little improvement across the Board for the past four years, with some rare exceptions.

The following chart tells the continuing disappointing tale for HCSS. With only a few "bright" spots of improvement showing up sporadically in some of the HCSS schools, the overall trend shows that HCSS schools remain stuck in academic mediocrity from elementary school through high school. Each school's ABC Recognition Category for the years 98-99, 99-00 and 00-01 is set out **below** the performance composite for each year.

(EXM=Exemplary Growth; EXP=Expected Growth; NR=No Recognition; DST=School of Distinction)

	Reading				Math			
McLauchlin	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	58.2	77.3	62.9	63.5	58.2	86.4	61.1	67.3
4 th	52.8	47.4	67.5	47.2	56.6	63.8	82.5	61.1
5 th	53.1	59.6	51.2	65.1	57.1	73.6	47.7	69.8
Perf Composite					53.8	65	62.5	63
						EXM	NR	NR
Rockfish	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	77.8	73.8	81.4	87.1	75.9	63.6	74.6	77.4
4 th	83.8	82	81.4	72.6	86.5	90.9	89.9	91.8
5 th	74	83.3	87.2	77.9	68.3	91.7	93.6	89.7
Perf Composite					75	77.1	80	80.3
						EXM	EXMDST	NR-DST
Sandy Grove	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	N/A	N/A	56.4	55.4	N/A	N/A	54.4	44.6
4 th	N/A	N/A	48.9	47.4	N/A	N/A	85.1	77.6
5 th	N/A	N/A	73.2	69.8	N/A	N/A	82.9	71.9
Perf Composite					N/A	N/A	62.5	58.1
							NR	NR
Scurlock	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	60.7	65	65.2	57.8	52.5	61.3	59.2	48.4
4 th	58.6	56.4	54.7	60	58.6	76.4	73.8	75
5 th	53.4	72.7	78.2	75.8	65.5	75.8	80.4	77.4
Perf Composite					53.5	63.9	63.2	65.9
						EXM	EXM	EXP
South Hoke	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	52.5	57.4	74.5	76.1	45.6	71.3	78.4	69.4
4 th	52.4	46	69.4	61.2	54.2	76.4	92.5	78
5 th	61.5	60.5	50	57.4	61.8	67.9	57.1	75.9
Perf Composite					50	60.7	65.5	70
						EXM	NR	NR
Upchurch	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	58.4	75.9	71.7	69.8	63.7	63	78.8	71.6
4 th	63.3	60	67.2	72.6	70.6	78.4	81.8	78.2
5 th	73.8	69.4	82.7	76.4	86	82.9	85.6	84.3
Perf Composite					63.1	68.4	70.6	71.8
						EXM	EXP	EXP
West Hoke	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
3 rd	50	47.6	48	47.6	51.4	50	36.8	31.7
4 th	37.3	58	47.7	45.8	53.8	69	62.9	69.4
5 th	68.8	56.9	58.4	58	68.2	59.3	64.1	57.8
Perf Composite					54	55.4	52.8	53.7
						EXM	NR	NR
East Middle	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
6 th	62.4	70	63.7	65.5	69	80.9	79.7	83.8
7 th	61.4	66.9	70.3	67.9	68.1	65.3	78	75.2
8 th	70.5	71.7	72.4	73.9	62.3	74.3	69.4	68
Perf Composite					63.4	69.9	73.5	72.2
						EXM	NR	NR

West Middle	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
6 th	54.6	68.6	57.5	48.9	70.7	80.1	74.3	67.2
7 th	59.1	64.4	64.9	64.7	63.4	68.4	70.8	69.5
8 th	66.3	65.9	71.3	73.8	60.8	74.3	75.1	73.3
Perf Composite					60.1	69.5	64.3	66.5
						EXM	NR	NR
Turlington	97-98	98-99	99-00	00-01	97-98	98-99	99-00	00-01
7 th	None	66.7	25	25	25	100	25	37.5
8 th	50	None	28.6	50	None	None	14.3	None
Perf Composite								

Sandy Grove is a brand new school (Fall, 99). Sandy Grove has been a No Recognition School for the two years it has been in existence. Sandy Grove proves the point that it's not the physical plant that provides a sound basic education, it's the quality of leadership and presence of competent, qualified teachers in each classroom who know how to provide individualized and differentiated instruction to their students.

Hoke High

	97-98	98-99	99-00	00-01
Algebra I	42.4	37.8	48.6	51.9
Algebra II	32.6	37	46.5	45.6
Biology	44.3	38.3	36.6	40.8
Chemistry	23.3	12.1	16.4	46.2
ELPS	65	64.6	62	54.3
English I	48.4	55.7	54.8	60
Geometry	29.6	35	26.4	31.7
Physical Science	25.9	30.8	44.4	24
Physics	50	37.5	71.4	50
US History	43.8	33.6	30.4	25
English II	22.5	25.4	41.6	48.4
Performance Composite	41.2	38.4	43.5	46.7
		EXM	EXM	EXP

Turlington

	97-98	98-99	99-00	00-01
Algebra I	9.1	None	None	None
Algebra II	50	None	None	None
Biology	38.5	None	17.6	22.2
Chemistry	100	None	N/A	None
ELPS	100	21.1	48	33.3
English I	23.1	10	16.7	15
Geometry	None	None	None	None
Physical Science	16.7	None	20	35.7
Physics	N/A	N/A	N/A	N/A
US History	N/A	None	10	None
English II	16.7	12.5	28.6	None
Performance Composite		13.8	21.9	18.3

HCSS's ABC composite scores and growth/gain data show that as a system, HCSS' overall academic performance can only be described as dismal. There are way too many children within HCSS that are at-risk of academic failure today, just as they were four years ago despite the professed dedication of many of the teachers who testified at the original hearings.

Unfortunately, when the 2000-2001 ABC results are factored in with all the evidence and the ABC results from the prior years, nothing has occurred to cause the Court to change its prior findings and the Court finds that in 2002:

THERE ARE STILL TWO DISTINCT GROUPS OF STUDENTS IN NORTH CAROLINA'S PUBLIC SCHOOLS, INCLUDING HOKE COUNTY'S PUBLIC SCHOOLS - THOSE AT-RISK AND THOSE NOT AT-RISK OF FAILING TO OBTAIN A SOUND BASIC EDUCATION.

Make no mistake as to this finding. *Leandro's* guarantee is only one of equal opportunity to obtain a sound basic education. However, the numbers of students whose performance on the ABCs EOG and EOC tests show that they are failing to obtain a sound basic education, combined with the other credible evidence in the record, constitutes strong evidence that the equal opportunity to obtain a sound basic education is not being provided to at-risk children throughout North Carolina.

The Court initiated the September and October 2001 hearings to focus on successful educational programs and strategies and the answer as to why those programs and strategies have not been implemented by the plaintiff-parties' LEAS in schools with low performing at-risk populations.

The purpose of the hearings was to assist the Court in seeking the answer to the question of whether the failure to implement successful educational programs and strategies in schools with low performing at-risk populations is due to (a) lack of funding; (b) the lack of proper allocation of resources with the LEA; (c) lack of cost-effective implementation of successful strategies because of a lack of leadership and effort; or (d) a combination of two or more of these factors?

VERDICT

THE COURT, HAVING CONSIDERED ALL OF THE EVIDENCE PRESENTED, AND THE LAW AS SET FORTH IN THE LEANDRO DECISION AND THE CONSTITUTION OF THE STATE OF NORTH CAROLINA, ANSWERS THE QUESTION AS FOLLOWS:

The clear and convincing credible evidence presented in this case shows that:

1. At-risk children can learn with effective, individualized and differentiated instruction delivered by a certified, well-trained, competent teacher with high expectations.
2. At-risk children require more resources, time and focused intervention in order to learn.
3. A certified, well-trained, competent teacher who knows how to reach at-risk children can produce results and at-risk children can perform at or above grade level.
4. There are many different, but effective, teaching methods that are successful for all children, including at-risk children.
5. A well-trained, competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers, can

implement an effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

6. When at-risk children are not being taught by a competent, certified and well-trained teacher who knows how to teach them, many do not achieve grade level or above academic performance and thus, the Court concludes that they are not receiving the equal opportunity to obtain a sound basic education mandated by *Leandro* and the North Carolina Constitution.

The Constitutional right to the opportunity to receive a sound basic education belongs to each and every child in North Carolina. *Leandro, at 354.*

***Leandro's* guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a school which has the following educational resources, at a minimum:**

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational method(s) that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

THAT MAY BE WELL AND GOOD IN PRINT, BUT WHO IS RESPONSIBLE FOR SEEING THAT THESE BASIC EDUCATIONAL NEEDS OF ALL CHILDREN ARE MET IN EACH CLASSROOM AND SCHOOL IN NORTH CAROLINA? THE ANSWER IS FOUND IN *LEANDRO*.

Because we conclude that the General Assembly, under Article IX, Section 2(1), has the duty of providing the children of every school district with access to a sound basic education, we also conclude that it has inherent power to do those things reasonably related to meeting that constitutionally prescribed duty. Leandro, p. 353.

THE STATE OF NORTH CAROLINA IS ULTIMATELY RESPONSIBLE TO ENSURE THAT THE CONSTITUTIONAL GUARANTEE TO EACH CHILD OF THE OPPORTUNITY TO RECEIVE A SOUND BASIC EDUCATION IS MET. THE STATE OF NORTH CAROLINA ALSO HAS THE INHERENT POWER TO DO THOSE THINGS REASONABLY RELATED TO MEETING THAT CONSTITUTIONAL DUTY.

In attempting to meet its constitutional duty to provide each child with the equal opportunity to obtain a sound basic education and to provide a General and Uniform System of schools, the Legislature has enacted legislation creating a system for delivering educational services to children, governance for that system, and has delegated responsibilities to local boards of education. The Legislature has also adopted educational goals and standards that this Court may properly consider in determining whether any children

are being denied their right to a sound basic education. *Leandro, p. 355.*

Chapter 115C of the North Carolina General Statutes is home to many educational goals and polices, as well as the structure of the general and uniform system of schools. The Court has previously discussed newly enacted and recent legislation. Additional, pertinent sections of Chapter 115C follow and provide additional, clear and convincing evidence that the State of North Carolina is in fact, and in law, ultimately responsible for providing every child with the equal opportunity to obtain a sound basic education and that the educational goals adopted as policy closely align with the constitutional definition of a sound basic education:

N.C.G.S. 115C-1. General and uniform system of schools.

A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with Article IX of the Constitution.

STATE BOARD OF EDUCATION

N.C.G.S. 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

C1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student

performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

C4. To develop guidelines, procedures and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

9(a) Power to Develop Content Standards.--- The Board shall develop a comprehensive plan to revise contents standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography and civics..... **The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, wherever possible, in a reliable, valid and efficient manner for accountability purposes.**

High school course content standards shall include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of the University of North Carolina. The Board shall develop and implement a

plan for end-of-course tests for the minimum courses required for admission to the constituent institutions of the University of North Carolina..... (emphasis added)

9(b) Power to Develop Exit Exams.— The Board shall develop a plan to implement high school exit exams, grade level student proficiency benchmarks, student proficiency benchmarks for academic courses required for admission to constituent institutions of the University of North Carolina, and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce..... The high school exit exams and student proficiency benchmarks shall be aligned with G.S.115C-9(a) and may contain pertinent components of the school-based accountability annual performance goals.

LOCAL BOARDS OF EDUCATION

115C-35, et seq.

115-36. Designation of board.

All powers and duties expressly conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

115C-47. Powers and duties generally.

In addition to the powers and duties designated by G.S. 115C-36, the local boards of education shall have the power or duty:

- (1) **To Provide an Adequate School System.**—It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units as directed by law.

GENERAL EDUCATION

115C-81. Basic Education Program.

(a) **The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential... It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.**

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communications skills, physical education and personal health and safety, science, second languages, social studies, and vocational and technical education..

115C-81.2. Comprehensive plan for reading achievement.

(a) The State Board of Education shall develop a comprehensive plan to improve reading achievement in the public schools. The plan shall be fully integrated with State Board plans to improve student performance and promote local flexibility and efficiency. The plan shall be based on reading instructional practices for which there is strong

evidence of effectiveness in existing empirical scientific research studies on reading development. (emphasis added)

SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

115C-105.20. School-Based Management and Accountability Program.

(a) The General Assembly believes all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to enhance student performance. (emphasis added)

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to: (3) recognize low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37.....

N.C.G.S. 115C-105.21. Local participation in the Program.

(a) Local school administrative units shall participate in the School-Based Management and Accountability Program..... (c) The School-Based Management and Accountability Program shall be based upon an accountability, recognition, assistance, and intervention process in order to hold each school and the school's personnel

accountable for improved student performance in the school. (emphasis added)

N.C.G.S. 115C-105.27. Development and approval of school improvement plans.

In order to improve student performance each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans..... The strategies for improving student performance:

(1) shall include a plan for the use of staff development funds that may be made available to the school.....

(2) Shall include a plan to address school safety and discipline in accordance with the safe school plan developed under Article 8C of this Chapter.-----

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school..... (emphasis added)

N.C.G.S. 115C-105.37. Identification of low-performing schools.

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards as defined by the State Board, and a majority of

students are performing below grade level. (emphasis added)

COMPREHENSIVE ASSISTANCE TO CONTINUALLY LOW PERFORMING SCHOOLS.

N.C.G.S. 115c-105.37A. Continually low-performing schools; definition; assistance and intervention; reassignment of students.

-- (c) The State Board of Education shall develop and implement a series of actions for providing assistance and intervention to schools that have previously received State-mandated assistance and have been designated by the State Board as low performing for three or more consecutive years or for at least three out of four years. These actions shall be the least intrusive actions that are consistent with the need to improve student achievement at each such school and shall be adapted to the unique characteristics of each such school and the effectiveness of other actions developed or implemented to improve student achievement at each such school.

N.C.G.S. 115C-105.38. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. -----

----- (c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance

continues or that the State Board take further action under G.S.115C-39. (emphasis added)

N.C.G.S. 115C-105.38A. Teacher competency assurance.

To assure teacher competency at low-performing schools, teachers, after evaluation by the assistance team and designated as Category 3 teachers, may be required to take a general knowledge test upon recommendation. Certified teachers who do not pass the test shall undergo remediation and have a remediation plan at state expense. If the teacher fails to pass the general knowledge test a second time, the State Board is authorized to start dismissal proceedings.

N.C.G.S. 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.

This section authorizes a process whereby the principal of a low-performing school can be transferred or dismissed and provides for the appointment of an interim superintendent in an LEA where more than one-half of the schools are low-performing.

N.C.G.S. 115C-105.40. Student academic performance standards.

The State Board of Education shall develop a plan to create rigorous student academic performance standards for kindergarten through eighth grade and student academic performance standards for courses in grades 9-12. -----
(emphasis added)

**SAFE SCHOOLS - MAINTAINING SAFE & ORDERLY SCHOOLS.
Article 8C.**

N.C.G.S. 115C-105.45. Legislative findings.

The General Assembly finds that all schools should be safe, secure, and orderly. If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons. All school must have plans, policies and procedures for dealing with disorderly and disruptive behavior. All schools and school units must have effective measures for assisting students who are at risk of academic failure or engaging in disruptive and disorderly behavior. (emphasis added)

ACADEMICALLY OR INTELLECTUALLY GIFTED STUDENTS.

Article 9B.

115C-150.5. Academically or intellectually gifted students.

The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. ----- (emphasis added)

Section 28.3 of the Budget provides:

FUNDS FOR ACADEMICALLY GIFTED STUDENTS. Section 28.3

The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of eight hundred seventy-nine dollars and ten cents (\$879.10) per child. A local administrative unit shall receive funds for a maximum of four percent (4%) of its 2001-2002 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 52,042 children for the 2001-2002 academic year.

(52,042 x \$879.10 = \$45,750,122)

FINANCIAL POLICY OF THE STATE OF NORTH CAROLINA AS IT RELATES TO THE PUBLIC SCHOOL SYSTEM.

N.C.G.S. 115C-408. Funds under the control of the State Board of Education.

(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner.-----

----- (b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study.-----

- (emphasis added)

Under Chapter 115C's statutory scheme, the responsibility for administering and operating a

general and uniform system of public schools is delegated to the State Board of Education, and the local boards of education (LEAs). Thus, by law, each LEA is statutorily responsible for providing the children within the district with the constitutionally mandated opportunity to receive the sound basic education.

Under the Constitution, however, the obligation to provide each child with the equal opportunity to obtain a sound basic education may not be abdicated by the State of North Carolina nor may the ultimate responsibility be transferred to and placed on the LEAs.

The State acknowledges that it may not abdicate its obligation to assure that every child has the opportunity to acquire a sound basic education in its brief. "But, while emphasizing local control, the General Assembly, the State Board of Education and the Department of Public Instruction are not abdicating their constitutional responsibility to provide every student with the opportunity to acquire a sound basic education." (Brief 1/31/02, p. 49) (emphasis added)

It is, therefore, undisputed that the constitutional responsibility to provide each child with the equal opportunity to obtain a sound basic education remains with the State of North Carolina acting through its General Assembly. *Leandro*, p 353.

Accordingly, where there are children in a classroom, or in an entire school or school district, who are not being taught by competent, qualified caring teachers, led by competent, qualified, caring principals, using targeted, effective and valid educational methods and programs that work with the particular group of children, at-risk, or not, then the constitutional

rights of the children in that classroom, school or school district are being violated.

The State of North Carolina, while acknowledging its constitutional obligation, has denied any liability for the poor academic performance of at-risk students. Instead, the State has continually engaged in placing the blame for at-risk children not receiving the equal opportunity for a sound basic education on the individual LEA, its central office staff, finance officer, teachers and principals.

ZIKO: The State of North Carolina does not fund its school system on a one size fits all basis. In partnership with local boards of education, the State provides sufficient funding for every child and every school system to have the opportunity to acquire a sound basic education. If the local school board is irresponsible, ignores it's constitutional duties and fails to apply the money where constitutional need exists, that's not—that will not support a claim that the State system of general and uniform free public schools is unconstitutional. (Tr. 8/18/99)

"The evidence presented during this phase of the proceedings clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the resources currently available to North Carolina public schools. In light of that fact, Defendant submit that if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can only be due to lack of leadership and sustained effort..... In fact, Defendants contend that it is the duty of the central office staff in the LEA's to provide that type of instructional support whenever there is evidence that the students in a particular school are not achieving expected growth. (citation

omitted) One program is not necessary for all schools and one program will not work for all schools..... Based on all the evidence, Defendants contend that Plaintiffs have failed to prove that the State is responsible for any alleged constitutional deficiencies in HCSS." (Brief 1/31/02, pp. 55-56)

This argument will not let the State off the hook where there are children at-risk of educational failure not receiving a sound basic education because of the failures of LEAs to carry out their legislatively mandated duties effectively and efficiently.

While there may be multiple explanations and excuses offered as to why an LEA cannot put a competent, certified, well-trained and qualified teacher who is employing targeted, effective educational methods and programs that work with the particular group of children in each and every classroom, there is no legally justifiable excuse for the absence of a competent, certified, well-trained teacher in each classroom.

In classrooms, schools and school districts where all the children are not being taught by competent, certified, well-trained teachers, such as in Hoke and the other low-wealth counties, the State cannot escape its constitutional obligation and ultimate responsibility by blaming the circumstances on lack of educational leadership and inefficient allocation of educational resources. Put another way, the State cannot escape by arguing that it has sent the LEA sufficient funds and it is the LEA's fault for not being able, for whatever reason, to put competent, certified, well-trained and qualified teachers in every classroom who are actually capable of teaching all the children, including at-risk children, using effective, focused and appropriate teaching methods.

Likewise, the State cannot escape its constitutional responsibility by creating and then hiding behind its own self styled burden of proof:

State's Proposed Finding 708. However, it is not defendants' burden to show whether the funds allotted for any particular purpose are sufficient. Rather, plaintiffs have the burden to prove by clear evidence that a particular educational program is a necessary component of the opportunity for a sound basic education; that the program is not provided; and that all available financial resources-State, federal and local-have been exhausted to provide other programs necessary to provide the opportunity to obtain a sound basic education. Otherwise, there is no basis to complain that a particular State allotment is insufficient.

Note to State's proposed finding 628. HCSS alleges that it does not currently have the resources to provide these programs and practices. If the Court finds that students in HCSS do not currently have the opportunity to obtain a sound basic education, then the Court will need to address the question of whether HCSS can provide the opportunity for a sound basic education within its currently available resources. How to best spend additional resources to improve student performance in HCSS becomes relevant only after the Court finds that HCSS cannot provide constitutionally required educational opportunities within its available resources.

The prima facie burden of proof that children are not obtaining a sound basic education in a classroom, school or entire district has been met when the ABC scores are published and show that children are at-risk of academic failure by failing to perform at grade level or above on the EOG and EOC tests. The ABC scores

for Hoke County, as well as the many other LEAs analyzed by the Court in this case clearly and convincingly demonstrate that there are way too many at-risk children not obtaining a sound basic education in this State.

The State cannot escape or deny the importance of the ABC system as proof of the failure of thousands of students to obtain a sound basic education by failing to perform at or above grade level all the way through high school.

As convincing evidence of the reliability and importance the State of North Carolina places on the ABC scores and data, consider the undisputed fact that the State has, and still relies on, the ABC system to pay millions of dollars in teacher bonuses each year, to publicly report the success or failure of student performance in every single school and to determine when a school is so "low performing" to the point it requires state intervention.

More importantly, for purposes of determining whether or not children are receiving a sound basic education, the ABCs are a valid and reliable indicator of an educational problem in a classroom, an entire school, or school district or with a segment of the student population within a classroom, school or school district.

What has been going on in **Leandro** is a shell game between the LEAs and the State of North Carolina as to which governmental unit is at fault when the fact remains, they are both at fault. The LEA is at fault for failing to provide the appropriate level of instruction. The fault is the failure to provide and administer effective, targeted educational programs for an LEA's at-risk students administered in a cost effective manner.

The root causes of the failure of an LEA to provide and administer effective, targeted educational programs for its children, including at-risk children, may vary from LEA to LEA. The root causes may be varied and in combination such as:

1. The failure of the LEA to have an effective superintendent who has good leadership and management skills.

2. The failure of the LEA to employ and provide effective, capable principals that are able to provide the instructional leadership, programs and high expectations of all teachers and students within the school so that academic achievement can flourish and each student is offered the equal opportunity to obtain a sound basic education.

3. The failure of the LEA to employ and provide effective, capable classroom teachers that have high expectations of their individual children, that have the qualifications, competency and educational know how to provide each child in their classroom with individual and differentiated instruction which is undisputedly necessary for the child to have the opportunity to learn and obtain a sound basic education.

4. The failure of the LEA to manage and cost-effectively administer the funding provided by the State of North Carolina for education within the LEA so that each and every child within the LEA is provided with a competent, qualified, caring teacher who is giving each child individualized and differentiated instruction needed for the child to succeed academically.

5. The failure of an LEA to exercise the flexibility provided by the State of North Carolina within the school district so as to cost-effectively allocate or

re-allocate its existing resources in an educationally effective manner so that all children are provided with the equal opportunity to obtain a sound basic education.

6. The failure of the LEA's superintendent and/or its governing board to exercise the political will power to make unpopular choices in teacher, student and principal assignments, or reallocation of funding so that all children will be reached effectively.

7. The failure of the LEA, after utilizing its funding in a cost-effective and properly allocated manner to provide educational services to each child sufficient to provide each child with the equal opportunity to obtain a sound basic education, to lack sufficient funds to carry out the constitutional mandate for each child.

The particular failure, or combination of failures, notwithstanding, if the failure results in one child, or a group of children, not receiving effective, focused, individualized and differentiated instruction from a competent, well-trained teacher in a school with an effective educational program receiving sufficient resources then the child or a group of children are not receiving the opportunity for a sound basic education.

In any such event, the constitutional mandate of **Leandro** has been violated and action must be taken by both the LEA and the State to remedy the violation.

Hoke County's ABC scores are terrible and have been terrible for years. The clear and convincing evidence shows that many children in Hoke County are not receiving the equal opportunity to receive a sound basic education. It is also patently clear that HCSS is not getting the job done in terms of providing each and every child with the opportunity to receive a sound basic education. There are many children in Hoke

County, as well as throughout North Carolina in the same boat. The bottom line is that those children's constitutional right to a sound basic education are being violated. That is as far as this Court needs to go. It is not the Court's responsibility to referee and conduct hearings to determine the precise causes of the educational breakdown in Hoke County or any other county for that matter.

Children at-risk of not obtaining a sound basic education are not being afforded their constitutional right to receive that education be it the fault of the classroom teacher, the LEA, or the State by not providing sufficient educational resources to the LEA.

The North Carolina Constitution clearly provides that it is the obligation of the State to provide each and every child with the equal opportunity to obtain a sound basic education. That obligation includes not only funding, but providing assistance to LEAs who are not carrying out their duties in regard to the sound basic education.

HCSS cannot be allowed to "sink or swim" on its own by the State of North Carolina when the ABC scores show consistently that large numbers of its students, at all grades, are not performing at or above grade level. Remember, the constitutional right to receive the opportunity belongs to the children, not to the LEA or to the State of North Carolina.

The same principle applies to any other school districts such as Wilson, Halifax, Northampton, Charlotte-Mecklenburg, Robeson, Harnett, Guilford and Forsyth, Chapel Hill/Carrboro where particular groups of students are failing to achieve academically because they are not receiving the constitutionally mandated level of educational support.

This is so because the root causes for the failure of at-risk children to achieve academically are the same whether the school district is low wealth, or wealthy. Whatever the particular root cause or causes are in a particular LEA is irrelevant to the fact that at-risk children, black, white, Hispanic or Native American, are not being provided with an effective, targeted educational program that reaches those children and helps them obtain grade level proficiency.

What is important is that whatever the cause, the failure of the State of North Carolina's educational establishment to provide such an effective, targeted educational program is a violation of those children's constitutional right to the equal opportunity to obtain a sound basic education. The violation of those rights must be remedied by the State of North Carolina. That is not an impossible task.

The State of North Carolina has clearly and repeatedly demonstrated through legislation and otherwise, that the State knows what steps should be taken and how local resources should be allocated to improve at-risk academic performance in an LEA or in an individual school where students are failing to obtain a sound basic education.

There is no question that the State of North Carolina has the educational expertise and fiscal know-how to be able to analyze and evaluate the effectiveness of classroom teachers, Principals and instructional strategies in an LEA that has numbers of low performing at-risk students and individual schools that are having problems with academic performance as shown through the ABC's data each year.

The State of North Carolina also has the educational expertise and fiscal knowledge to weigh, evaluate and assess whether each LEA is effectively

utilizing its available resources to provide each child with the equal opportunity to receive a sound basic education.

The State has been unwilling to step in and provide that assistance unless and until the performance of children in a school is so bad that the school is, for all intents and purposes, academically dead. The State accomplished this by adopting a "hands-off" policy for the sake of "local control and flexibility," by sending a check to the LEA and by letting the LEA, sink or swim, until one of its schools became "low-performing" or "high-priority." The State consciously set the alarm threshold too low.

As a result of this flawed policy, the State of North Carolina, from the beginning of this lawsuit through today, has not voluntarily elected to apply its awesome educational knowledge and authority to assist local boards of education, such as Hoke County, or individual schools located within "wealthy systems" that have students floundering in the educational basement.

Instead, in this case, as the Court has earlier pointed out, the State has elected, through its education and political leadership, to justify its hands off policy by hiding behind two legally untenable arguments with respect to a child's right to the equal opportunity to receive a sound basic education:

First, that where at-risk students are not obtaining a sound basic education, an LEA has the burden of proving that the LEA is utilizing all of its resources in a cost-effective, educationally sound manner, and then and only then, if more resources are required to provide children with the equal opportunity for a sound basic education, does the State have to provide those necessary resources.

Second, that the State of North Carolina has no responsibility to the children who are being deprived of their constitutional right to the opportunity to receive a sound basic education if there are constitutional deficiencies that are the fault of the LEA to properly provide the educational opportunity.

When all is said and done, the truth is that the ultimate responsibility to see that all children are provided with an equal opportunity to obtain a sound basic education by providing competent, qualified administrators, principals and classroom teachers who teach effectively belongs to the State of North Carolina.

Because we conclude that the General Assembly, under Article IX, Section 2(1) has the duty of providing the children of every school district with access to a sound basic education..... Leandro, p. 353.

HAVING FOUND THAT THERE ARE AT-RISK CHILDREN IN HOKE COUNTY AND THROUGHOUT THE STATE THAT ARE NOT OBTAINING A SOUND BASIC EDUCATION AND HAVING ESTABLISHED THAT THERE IS NO EXCUSE FOR NOT PROVIDING EACH CHILD WITH THE OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION THROUGH MANY SUCCESSFUL EDUCATIONAL STRATEGIES AND PROGRAMS AND HAVING DETERMINED THAT THE STATE OF NORTH CAROLINA IS ULTIMATELY RESPONSIBLE FOR CHILDREN NOT RECEIVING THE EQUAL OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION, WHAT IS THE COURT NOW REQUIRED TO DO?

The Supreme Court has provided the answer to this question:

If on remand of this case to the trial court, the court makes findings and conclusions from competent evidence to the effect that the defendants in this case are denying children of the state a sound

basic education...it will then be the duty of the court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government. Corum v. University of N.C., 330 N.C. 761, 784, cert. denied, 506 U.S. 985. Leandro, p. 357.

The Supreme Court of North Carolina has determined as a matter of law that:

The Constitutional right to the opportunity to receive a sound basic education belongs to each and every child in North Carolina. **Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution; Leandro, at 347, 354.**

On remand, this Court has determined from **Leandro** and clear and convincing credible evidence that **Leandro's** guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers, can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

The clear and convincing evidence also shows that there are children in HCSS, and in other LEAs throughout North Carolina who are at-risk of academic failure and not receiving an equal opportunity to a sound basic education because the State, through its LEAs, is not providing the minimum necessary educational resources described above and beginning with a classroom teacher who is competent, certified, and well-trained and who is teaching the Standard Course of Study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to those children.

Make no mistake, the evidence shows that North Carolina is making steady progress in education and that the vast majority of students are being provided with the equal opportunity to obtain a sound basic education.

Unfortunately, the clear and convincing evidence also shows that there are thousands of children scattered throughout the State in low-wealth counties, such as Hoke, Northampton, and Halifax, and "wealthy" counties, such as Guilford, Charlotte-Mecklenburg and Forsyth, who are not being provided with the minimum educational resources necessary for them to have the equal opportunity to receive a sound basic education.

It is these children whose constitutional rights are being violated by the lack of the equal opportunity to receive a sound basic education that must be the focus of the State's efforts and methods to locate and remedy the constitutionally deficient educational opportunities being provided to them.

The solution to this problem is properly left to the State working with its LEAs, including the plaintiff-parties. The solution lies first in the hands of the General Assembly and the State Board of Education. The solution may or may not require the expenditure of additional funds so long as the **Leandro** mandate is followed.

DISCUSSION

The State of North Carolina admits that the evidence presented during the September and October hearings "clearly demonstrates that there are a wide variety of successful educational programs and strategies that can be implemented with the current resources available to North Carolina public schools."

The State of North Carolina admits that "all the evidence shows that the keys to improving student performance are: Lesson plans aligned with the Standard Course of Study; Effective delivery of individualized instruction on those lessons to students; Continual assessment of the students' understanding of the lesson; and Individualized remediation for those students who do not demonstrate mastery of the lesson. These principals demonstrated that within a well disciplined school, these objectives can be accomplished by a variety of means." (Br. 1/31/02, pp 54-56)

The clear, convincing and credible evidence presented in this case, for the reasons set forth in

this Memorandum of Decision and in Sections One, Two and Three (as amended) of the prior Memoranda of Decision, demonstrates that the State of North Carolina knows full well what needs to be done to effectively provide each child with an equal opportunity to obtain a sound basic education.

The clear, convincing and credible evidence presented in this case also demonstrates that there are many children at-risk of academic failure who are not being provided with the equal opportunity to obtain a sound basic education as mandated by the Constitution of this State. These children are located in Hoke County, as well as throughout the State. The primary provider of their education, in each instance, is the LEA in whose district they reside.

Up until now (except for the most grievous schools) when the at-risk children in an LEA, such as HCSS, are not being provided with the equal opportunity to obtain a sound basic education, the State of North Carolina stands back and points the finger of blame at the LEA for the failure of the children to obtain a sound basic education.

In the case of HCSS, the State argued that due to the fact that there are successful educational programs and strategies that can be implemented with the resources the State provides, then and in that event, "if HCSS is failing to provide at-risk students with the opportunity for a sound basic education, then it can only be due to lack of leadership and sustained effort." (Br. 1/31/02)

The bottom line is that the State of North Carolina has consistently tried to avoid responsibility for the failures to provide at-risk students with the equal opportunity for a sound basic education in LEAs throughout the state by blaming the failures on lack of leadership and effort by the individual LEAs.

The Supreme Court in Leandro clearly and unmistakably held to the contrary and found that the North Carolina Constitution provides every child with the right to receive an equal opportunity to a sound basic education and that it was the General Assembly, under Article IX, Section 2(1) that "has the duty of providing the children of every school district with access to a sound basic education." (Leandro p. 353)

This Court, following Leandro's mandate, has rejected the State of North Carolina's flawed argument that "it" is not responsible for educational failures in LEAs that are not providing their at-risk children with the equal opportunity to receive a sound basic education and has determined, just like the Supreme Court did on July 24, 1997, that the State is ultimately responsible and cannot abdicate its responsibility to the LEA.

That having been said, the State's denial of responsibility fails as a matter of law. It is now, and always has been, the ultimate responsibility of the State to provide the equal opportunity to a sound basic education to all children. (Article I, Section 15; Article IX, Section 2(1), North Carolina Constitution)

This Court has, in accordance with Leandro, Ordered the State, not the LEAs, to fix the deficiencies that exist with at-risk children. This is so because the LEAs, like the counties themselves, are mere subdivisions of the State. The LEAs were created by the State for its own convenience in order to assist the State in performing its constitutional duty to provide each and every child with the equal opportunity to obtain a sound basic education through its free public school system. It is up to the Executive and Legislative Branches to provide the solution to the constitutional deficits with at-risk children. These branches can no longer stand back and point their

fingers at individual LEAs, such as HCSS, and escape responsibility for lack of leadership and effort, lack of effective implementation of educational strategies, the lack of competent, certified, well-trained teachers effectively teaching children, or the lack of effective management of the resources that the State is providing to each LEA.

The State of North Carolina must roll up its sleeves, step in, and utilizing its constitutional authority and power over the LEAs, cause effective educational change when and where required. It does not matter whether the lack of an equal opportunity to obtain a sound basic education is caused by teachers, principals, lack of instructional materials or other resources, or a lack of leadership and effort.

The State must step in with an iron hand and get the mess straight. If it takes removing an ineffective Superintendent, Principal, teacher, or group of teachers and putting effective, competent ones in their place, so be it. If the deficiencies are due to a lack of effective management practices, then it is the State's responsibility to see that effective management practices are put in place.

The State of North Carolina cannot shirk or delegate its ultimate responsibility to provide each and every child in the State with the equal opportunity to obtain a sound basic education, even if it requires the State to spend additional monies to do so.

The State of North Carolina has steadfastly represented to this Court and to the citizens of North Carolina that the State is "continuing to appropriate additional funds and initiate new programs to assure that students enrolled in North Carolina public schools are receiving the opportunity to acquire a sound basic education."

In the final analysis, if the State is true to its word about providing sufficient appropriate funding for each child to have the equal opportunity to obtain a sound basic education, the State should be able to correct the educational deficiencies which are denying at-risk children the equal opportunity to obtain a sound basic education by requiring LEAs that are not getting the job done to implement and maintain cost-effective, successful educational programs in their schools as required by Leandro. If not, then the State will have to look for other resources to get the job done.

Make no mistake. While the State can require the LEAs to take corrective action, it remains the State's responsibility, through forceful leadership and effective management, to show an ineffective LEA, or an ineffective school within an LEA: (1) how to get the job done if the LEA's leadership and educational staff is ineffective and inept; (2) how to cost-effectively manage and allocate the resources which the State contends it so adequately provides to support each child's equal opportunity to receive a sound basic education; and (3) how to implement effective educational programs, using competent, well-trained certified teachers and principals.

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

1. Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution, as interpreted by Leandro, guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is

teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

2. That there are children at-risk of educational failure who are not being provided the equal opportunity to obtain a sound basic education because their particular LEA, such as the Hoke County Public Schools, is not providing them with one or more of the basic educational services set out in paragraph 1, above.

3. That the State of North Carolina is ultimately responsible for providing each child with access to a sound basic education and that this ultimate responsibility cannot be abdicated by transferring responsibility to local boards of education.

Leandro pp. 347,351

4. That the State of North Carolina is ORDERED to remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in paragraph 1, whether they are in Hoke County, or another county within the State.

5. The nuts and bolts of how this task should be accomplished is not for the Court to do. Consistent with the direction of Leandro, this task belongs to the Executive and Legislative Branches of Government. By directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best to remedy the identified constitutional deficiencies.

6. This Court's prior Memoranda of Decisions entered on October 12, 2000 (Section One); October 26, 2000 (Section Two); March 26, 2001 (Section Three) as amended by Order entered May 29, 2001, are incorporated as part and parcel of this Memorandum of Decision and Judgment. All Four Memoranda of Decision constitute the Decision and Judgment of this Court.

7. The State of North Carolina is directed to keep the plaintiff-parties fully informed of the progress of its efforts to remedy the constitutional deficiencies identified and the plaintiff-parties are directed to fully cooperate with the State of North Carolina in accomplishing its task.

8. The State of North Carolina is directed to keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court.

9. This Court retains jurisdiction over this matter for purposes of resolving any remaining issues, including, but not limited to, enforcement of this Judgment as provided by Leandro.

This the _____ day of April, 2002.

*Howard E. Manning, Jr.
Superior Court Judge*

