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March 17, 2015

FAX ONLY MEMO

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Subject: Hoke County Board of Education v. N.C.
("Leandro") 95 CVS 1158 Wake County Superior Court

Re: Notice of Hearing & Order for April 8 -9, 2015

Ladies and Gentleman:

Enclosed is Notice of Hearing & Order for April 8-9, 2015.

This Fax Only Memo constitutes the Certificate of Service.

15 TOTAL PAGES

NORTH CAROLINA:

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

WAKE COUNTY:

HOKE COUNTY BOARD
OF EDUCATION, et al,
Plaintiffs,

and

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
Plaintiff-Intervenor,

and

RAFAEL PENN; CLIFTON JONES, et al.,
Plaintiff - Intervenor,
v.

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

and

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
Realigned Defendant

APR 17 2015
10:51 AM
CLERK

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, April 8, 2015 at 10:00 a.m. in Courtroom 10A (or such other Courtroom in the Wake County Courthouse as is available), Wake County Courthouse and to continue on Thursday, April 9, 2015.

The purpose of this hearing is for the State of North Carolina, acting through its Executive Branch, including but not limited to the State Board of Education and The Department of Public Instruction, and the Legislative Branch, to report to the Court regarding any efforts, proposals, or plans to: ONE: (a) reduce, diminish or eliminate any educational standards in any subject taught in the public schools of North Carolina, present or in progress, including the Read to Achieve program which seeks to have all children reading at grade level (level 4) by the end of the third grade; (b) reduce, diminish or eliminate any assessments, EOG, EOC, or ACTs (formative, benchmark, or summative) now required in the public schools of North Carolina; (c) reduce, diminish or eliminate accountability standards now in effect for measuring a student's equal opportunity to obtain a sound basic education as set forth in the Leandro decisions; (d) reduce, diminish or eliminate any accountability measures in place to evaluate superintendent, principal and teacher performance in delivering a sound basic education to the school children of North Carolina; and

TWO: (a) review the results of the 2013-14 EOC, EOG and ACT tests from the public schools of North Carolina, which indicate that in way too many school districts across the state, thousands

of children in the public schools have failed to obtain, and are not now obtaining a sound basic education as defined by and required by the *Leandro* decisions. A short report on the 2012-2013 and 2013-2014 EOG results statewide in reading and math for grades 3 and 8 and on the 2012-2013 and 2013-2014 EOC results statewide in Math I and Biology which are high school level courses follows:

Statewide EOG results for Grade 3 and 8 Reading and Math for 2012-13 and 2013-14 school years.

Reading Results – Grade 3 2012-13 All Students
107,424 students tested. 54.8% - 58,868 3rd graders were below grade level.

Reading Results - Grade 8 2012-13 All Students 52.3% - 60,344 8th graders were below grade level.

Reading Results – Grade 3 2013-14 All Students
115,381 students tested. 52.3% - 60,344 3rd graders were below grade level. (Level 4 –CCR)

Reading Results- Grade 8 2013 -14 All Students
116,626 students tested. 57.7% - 67,293 8th graders were below grade level. (Level 4-CCR)

Math Results – Grade 3 2012-13 - All Students.
107,427 students tested. 53.2% - 57,151 3rd graders were below grade level.

Math Results – Grade 8 2012-13 – All Students.
113,987 students tested. 65.8% - 75,003 8th graders were below grade level.

Math Results – Grade 3 2013-14 – All Students.
115,407 students tested. 51.7% - 59,665 3rd graders were below grade level. (Level 4-CCR)

Math Results – Grade 8 2013-14 – All Students.
116,649 students tested. 65.4% - 76,288 8th graders were below grade level. (Level 4-CCR)

Statewide EOC results for Math 1 and Biology for 2012-13 and 2013-14 school years.

Math I Results – 2012-13 – All Students.
155,604 students tested. 57.4% - 89,317 students were below grade level.

Math 1 Results – 2013-14 – All Students.
154,435 students tested. 53.1% - 82,005 students were below grade level. (CCR)

Biology Results- 2012-13 – All Students.
109,897 students tested. 54.5% - 59,894 students were below grade level.

Biology Results – 2013-14 – All Students.
111,830 students tested. 54.9% - 65,238 students were below grade level. (CCR)

If this information isn't dismal enough, in 2013-14 there were 348 public schools, including charters, in which fewer than 50% of the students' test scores were at or above the new Level 3 (which is not CCR grade level) and the school had an EVAAS growth status of does not meet

Expected Growth. The cost of maintaining these schools is staggering and yet, there is no student academic success or growth for 50% of the children that attend.

At this hearing, the Court and the State of North Carolina will schedule another hearing at which the State of North Carolina will propose a definite plan of action as to how the State of North Carolina intends to correct the educational deficiencies in the student population as evidenced by the measures of output extant in the K-3 assessments, not reading on grade level by the third grade, and the other measures of student achievement evidenced by the EOG, EOC and ACT tests.

This is necessary to meet the requirements and duties of the State of North Carolina with regard to its children having the equal opportunity to obtain a sound basic education as mandated the Constitution of North Carolina and mandated by the North Carolina Supreme Court in *Leandro*.

The Law -- Excerpts from *Leandro I* and *Leandro II* follow:

FIRST: We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least:

1. sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
2. sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community state and nation;
3. sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and
4. sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society..." *Leandro I*, p 347.

Note: It is crystal clear that the *Leandro* "sound basic education" is supposed to provide each student with **at least sufficient** academic and vocational skills to enable the student to **successfully engage in college and community college education and training so as to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.**

As of today, the language utilized within the N.C. K-12 education administration bureaucracy to describe what *Leandro* (and the North Carolina Constitution) requires in regard to standards 3 and 4 above--is "college and career ready" or CCR in shorthand.

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

1. 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.

2. Second, that every school be led by a well-trained competent principal with the leadership skills and the ability to hire 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.
3. 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. ***Leandro II, 358 NC 636.***

FOURTH: That a child who is showing Level III (grade level) or above proficiency on the State's ABC tests, End of Grade (EOG) or End of Course (EOC), is obtaining a sound basic education in that subject matter and that a child who is not showing Level III proficiency (performing below grade level) on the ABC tests is not obtaining a sound basic education in that subject matter. ***Leandro II, 358 NC 624, 625.*** (Level III is now called Level 4 or College and Career Ready (CCR).

The foregoing has been the law since April 4, 2002, when the Final Judgment was entered on the liability phase of this case. The North Carolina Supreme Court set the law in stone on July 30, 2004, over ten (10) years ago. Since that time, this Court has undertaken to monitor the State's progress with respect to carrying out its constitutionally mandated requirement that each and every child be afforded the equal opportunity to obtain a sound basic education. **The North Carolina Supreme Court, over one year ago, declared that its mandates in this case remain "in full force and effect."** *Hoke County Bd. of Educ. v. State, 367 NC 156 (2013)*

Despite the North Carolina Supreme Court's declaration that its mandates in Leandro remain in full force and effect, in March, 2014 - less than five months after the Supreme Court's affirmation of *Leandro's* mandates - The SBE and DPI, elected to "redefine" the Achievement Levels for EOG and EOC standardized assessments by administratively eliminating Level I, Level II, Level III and Level IV as the four levels of academic achievement for the EOG and EOC assessments and in their place, created 5 "new" Achievement Levels numbered 1,2,3,4 and adding a "new" Level 5.

The Court views the intended/or unintended purpose behind this "change" was to water down the definition of grade level academic achievement which -- under the *Leandro* decision is Level III, grade level performance, and substitute in its place a lower standard of academic achievement (new Level 3) which was to be characterized as the "new" standard of satisfactory academic achievement, which standard is less than the constitutional standard for grade level academic achievement (Level III) as defined in *Leandro*. The Level III standard definition has been approved by the Supreme Court and has been used for more than a decade by this Court to measure actual academic achievement in the EOC and EOG assessments for determining if the children of North Carolina are performing at grade level and thus obtaining a sound basic education.

On January 21 and 22 of this year, the Court held a hearing, after due notice, in which the Executive Branch, through the State Board of Education ("SBE") and the Department of Public Instruction ("DPI") were provided with the opportunity to report concerning matters relating to the academic progress that our children in the public schools of North Carolina had made during the 2013-2014 school year and an explanation of the SBE's redefining and relabeling the standards

for academic achievement into levels 1-5 for purposes of defining academic achievement in grades 3-8 and in certain high school courses. In addition, the SBE and DPI were to report on the results of the 3 ACT tests given in the 8th, 10th and 11th grades to all children in the public schools of North Carolina.

The Court, after listening to the testimony concerning the reason(s) for redefine and relabeling the standards for academic achievement into levels 1-5 for purposes of defining academic achievement in grades 3-8 and in certain high school courses, will continue to review EOG and EOC course scores at the "old" level III (grade level) which is now level 4 ("college and career ready" or "CCR") in determining whether the children of North Carolina have obtained a sound basic education in that course or subject for the previous year.

The Court is concerned, as a result of the actions of the SBE and DPI regarding the relabeling and redefinition of the academic levels to create a new level 3 and publicly label academic achievement in that level as GLP (grade level performance) that the State of North Carolina acting through either the Executive or Legislative branch, or both, will press for reduced academic standards and for the reduction or elimination of assessments and EOC and EOG tests rather than face the fact of academic weaknesses of thousands of children and attack the problem head on to provide the children with an equal opportunity to obtain a sound basic education.

Regardless of whatever excuse or reason reducing or eliminating academic standards and assessments may be based on, including educational leaders and parent pressure, politics or an unconstitutional desire to reduce children's equal opportunities to obtain a sound basic education, the reduction of academic standards and elimination of assessments and EOC and EOG tests would be a direct violation of the *Leandro* mandates regarding assessments and testing to determine whether each child is obtaining a sound basic education.

The bottom line is that in 2014, the SBE and DPI through their actions in redefining achievement levels, has begun to nibble away at accountability and academic standards so that parents and educators can "feel good" when their child is performing at the "new grade level performance" and yet has **not achieved mastery of the subject matter so that they can perform on grade level in the next grade without some extra help from the next year's teacher.**

In regards to any further erosion and elimination of standards and assessments which would screen out the children's actual academic level of performance so that no one can know if the child is obtaining a sound basic education, it is time to go back over *Leandro's* mandates once again and explain in detail: (1) the critical importance of employing valid, transparent assessments to measure whether each child's opportunity to obtain a sound basic education is being met and (2) the requirement that the public schools, principals and teachers are accountable for providing each child an equal opportunity to obtain a sound basic education each day in every classroom.

No matter how many times the Court has issued Notices of Hearings and Orders regarding unacceptable academic performance, and even after the North Carolina Supreme Court plainly stated that the mandates of *Leandro* remain "in full force and effect" many adults involved in education, educators and school board members and others, still seem unable to understand that **the constitutional right to have an equal opportunity to obtain a sound basic education is a right vested in each and every child in North Carolina regardless of their respective age or educational needs.**

The children of North Carolina are our state's most valuable renewable resource. 358 NC 616. Each and every child in North Carolina is vested with the constitutional right to have an equal opportunity to obtain a sound basic education. This constitutional right does not belong to educators or to adults, including parents – the right belongs to the children.

"In *Leandro*, this Court held that the state's Constitution 'guarantees every child of this state an opportunity to receive a sound basic education in our public schools.' 346 NC 347, 358 NC 619

We read *Leandro* and our state Constitution, as argued by plaintiffs, as according the right at issue (an opportunity to receive a sound basic education) to all children of North Carolina, regardless of their respective ages or needs. Whether it be the infant Zoe, the toddler Riley, the preschooler Nathaniel, the "at-risk" middle-schooler Jerome, or the not "at-risk" seventh-grader Louise, the constitutional right articulated in *Leandro* is vested in them all. *Leandro II*, 358 NC 620.

In *Leandro*, this Court decreed that the children of the state enjoy the right to avail themselves of the opportunity for a sound basic education. 346 NC 347 The Court then proceeded to declare that "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 I*, 346 NC 345.

***Leandro II* affirmed the trial court's determination that a child who is showing Level III (grade level) or above proficiency on the State's ABC tests, End of Grade (EOG) or End of Course (EOC), is obtaining a sound basic education in that subject matter AND that a child who is not showing Level III proficiency (performing below grade level) on the ABC tests is not obtaining a sound basic education in that subject matter and established Level III proficiency as the standard bearer for test score evidence. 358 NC 624,625, *supra*.**

"After considering the evidence and arguments from both sides, the trial court ruled that Level III proficiency (*EOG and EOC test scores*) was the required standard. The trial court rejected the State's argument that Level II proficiency more closely describes the 'minimal level of performance which is indicative of a student being on track to acquire' a *Leandro*-comporting education and concluded that: (1)'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'; and (2)'a student who is performing at grade level or above (as defined by Level III or Level IV) is obtaining a sound basic education under the *Leandro* standard.'

On appeal, although the State assigned error to the trial court's conclusion concerning the Level III standard, it made no argument to that effect in its brief. As a consequence, the issue is considered abandoned under the appellate rules, N.C. R. App. P. 28(b)(6). In addition, our own examination of the issue reveals no grounds to disturb the trial court's findings and preliminary conclusions pertaining to the question of which test score standard should be used. As a consequence, we find no error in the trial court's ruling that a showing of Level III proficiency is the proper standard for demonstrating compliance with the *Leandro* decision.

"With Level III proficiency established as the standard-bearer for test-score evidence, we turn our attention to whether the number of Hoke County students failing to achieve Level III proficiency is inordinate enough to be considered an appropriate factor in the trial court's

determination that a large number of Hoke County students had been improperly denied their opportunity to obtain a sound basic education.

At trial, EOG and EOC test scores from across the state and from Hoke County were submitted into evidence. In addition, education and testing experts were called to testify about what the scores mean, how statewide scores compare to those of Hoke County, and what such comparisons might indicate. In its third memorandum of decision, the trial court initially assessed the quantitative elements of the test score evidence and concluded that it clearly shows that Hoke County students are failing to achieve Level III proficiency in numbers far beyond the state average. In turn, the trial court then proceeded to conclude that the failure of such a large contingent of Hoke County students to achieve Level III proficiency is **indicative that they are not obtaining a sound basic education in the subjects tested. In other words, evidence tending to show Hoke County students were failing poorly in such standardized test subject areas as mathematics, English and history was relevant to the primary inquiry:**

Were Hoke County students being denied the opportunity to obtain an education that comports with the *Leandro* mandate --- one in which students gain sufficient knowledge of **fundamental math, science, English and history in order to function in society and/or engage in post-secondary education or vocational training.** 346 N.C. 347, *supra*." We agree with the trial court's assessment that test score evidence indicating Hoke County student performance in **subject areas that correspond to the very core of this Court's definition of a sound basic education is relevant to the inquiry at issue.** *Leandro II*, 358 N.C. 624, 625

"Footnote: 11. We note that the test score evidence, in and of itself, addresses the question of whether students are obtaining a sound basic education rather than the question of whether they were afforded their opportunity to obtain one. This distinction is important. While a clear showing of a failure to obtain a sound basic education is a prerequisite for demonstrating a legal basis for the designated plaintiff school children's case, the failure to obtain such an education is not the ultimate issue in dispute." 358 NC 625, 626

In *Leandro II*, the Supreme Court also affirmed the trial court's determination that the State of North Carolina was ultimately responsible for providing the children with the equal opportunity to obtain a sound basic education and when that right was not properly provided, **the State must assume responsibility for, and correct, those educational methods and practices that contribute to the failure to provide children with a constitutionally – conforming education.** When the State assesses and implements plans to correct educational obligations in the face of a constitutional deficiency in an LEA, or particular school, **the solution proposed must ensure competent teachers in classrooms, competent principals in schools and adequate resources to support the instructional and support programs in that school so as to be Leandro compliant.** *Leandro II*, 358NC 635, 636.

Assessments and Tests ensure that there is Accountability for students and educators and the billions of dollars spent for the purpose of providing our children with the equal opportunity to obtain a sound basic education.

a. Student accountability.

What is the primary objective measurement to determine whether or not the child's right to have the opportunity to obtain sound basic education is being met in the first instance? The primary

objective measurement is how the child is performing on the End of Grade (EOG) or End of Course Tests (EOC) and ACT tests given statewide each year so that all children's academic progress is assessed on the same subject matter for each subject and course regardless of where they live.

The North Carolina Supreme Court has declared that a child who is performing at Level III grade level or above (now called CCR or new Level 4 or Level 5) proficiency on the standardized End of Grade and End of Course tests given statewide each year is **obtaining a sound basic education in that particular subject area or high school course and the reverse is also the case – when a child is performing at Level I, or Level II, (now new Levels 1,2 o3) below grade level on the End of Grade and End of Course tests, that the child is not obtaining a sound basic education.**

The Supreme Court has also declared that evidence tending to show large numbers of students failing to achieve Level III proficiency on the EOG and EOC tests is **relevant to the primary inquiry as to whether or not those students are obtaining a sound basic education. "We note that the test score evidence, in and of itself, addresses the question of whether students are obtaining a sound basic education...." Leandro II, 358 NC 626.**

It is **the child's constitutional right to be provided with the equal opportunity to obtain a sound basic education in the core subjects in grades K-12 so they can graduate from high school with sufficient academic and vocational skills to enable the child to compete with others in further formal education or gainful employment in contemporary society. 246 NC 347.** In order to determine if the child is obtaining those skills, the child's progress is measured by the EOG and EOC tests.

Specifically identified core subjects required by the constitution under Leandro are: **fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; fundamental knowledge of geography, history and basic economic and political systems; and sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training. 246 NC 347.**

In 2011, the North Carolina General Assembly enacted laws related to the North Carolina testing program that basically prohibited the State from giving high school End of Course (EOC) tests in all but three (3) subjects that were required by the federal government. This legislation essentially ended EOC tests in many of the *Leandro* subjects set out by the Supreme Court in *Leandro I*. These high school courses were civics and economics, Algebra II, physical science and American History. This Court objected to the deletion of the high school EOC tests because there was no longer any measurable statewide accountability for high schools in those subject areas and as a result, the Court was of the opinion, that it would be difficult, if not impossible to know whether or not high school students were obtaining a sound basic education in those Leandro subjects. Nevertheless, the legislation passed.

However, in the aftermath of this firestorm in February and March 2011, the General Assembly, thanks to the common sense efforts of Senator Rucho and others, elected to begin using the ACT, a nationally recognized testing company, to measure high school students against national standards and by using ACT tests that were nationally recognized and normed. The first two ACT tests adopted were the ACT and PLAN. The ACT, which is recognized as a valid instrument for college admissions was to be given to all eleventh graders (Juniors in high school) during the second semester of their junior year beginning in the school year 2011-2012.

The PLAN is a curriculum based test for 10th graders. The PLAN was also given to 10th graders statewide beginning in the school year 2011-2012. The EXPLORE test was adopted and used for 8th graders beginning in 2012-2013. 115C-174.11(c)(4); 115C-174.18; 115C-174.22.

Bottom line in 2012-2013, our 8th grade, 10th grade and 11th grade students were, with some statutory exception taking ACT tests, which covered English, math, science, reading comprehension and writing (ACT).

The ACT tests measure our North Carolina students against nationally normed standards. PLAN and ACT were given in 2011-12, 2012-13 and 2013-14. The results for far too many North Carolina high school students on PLAN and ACT in reading and math and science fall way short of the benchmark scores for those subjects. The adult excuse for these poor results can be summed up as there is no real motivation for the students to do well, or some other excuse.

b. Educator accountability.

The flip side is of using EOG and EOC and the ACT tests is obvious. If the student is **not tested in a subject** with the statewide, standardized EOG, EOC and ACT tests given to all students, **there is no objective measurement of that student's performance to determine if he or she is performing at Level III (now level 4) or above, or Level I or II (below grade level and not obtaining a sound basic education in that subject (now level 1, 2 and 3).**

Without an objective statewide measurement of a student's academic progress in a subject, there is no objective statewide measurement of an school, principal or classroom teacher's effectiveness in providing a child with the opportunity to obtain a sound basic education. In short, no means of holding an educator accountable for a failure in classroom instruction.

Not only is the child entitled to be objectively measured to determine whether he or she is obtaining a sound basic education, it is of critical importance to have the statewide assessments and test scores available to ensure that LEAs, superintendents, principals and teachers in all schools, including high schools, **are held accountable for the lack of academic progress and growth of the children they are being paid to educate. Likewise, these same assessments and tests also provide important data showing successful schools, principals and classroom teachers whose students are clearly making academic progress and performing at grade level or above.**

These tests and assessments are also necessary to determine the child's weaknesses and for the educator to use the data obtained by the assessment or test to drive individual classroom instruction for the child.

The EOG, EOC and ACT tests provide the data on academic performance and are given statewide so all schools are measured against themselves and others in the state. Using valid rigorous assessments also form the basis for measuring academic growth for each child and for the entire school. What is growth?

Growth measures a child's expected academic progress in a subject.

A child's expected academic progress for each is measured using a growth formula. The growth formula predicts where each child should be academically at the end of the course. Put

another way, the growth formula predicts how far the child should grow academically by the end of the particular course.

The growth formula for each child in elementary, middle and high school is used to predict their academic growth for each core subject which is measured by assessments and testing.

The growth formula for each child expects each child to make academic progress each year even if the child is performing at Level 1 or Level 2. The growth for the entire school is reported in the ABCs report. However, the growth measurement is not part of the performance composite which simply reports on the academic success or failure of the students in a school by course or in grades 3-8, by reading, math and science EOG tests.

The assessment of academic performance by EOC and EOG tests is mandated by *Leandro* for each child as part of their vested constitutional right to have the opportunity to obtain a sound basic education and is an integral part of measuring and assessing their academic performance to determine if they are functioning at Level III (now 4) or above – ie – obtaining a sound basic education.

Furthermore, the fact that educators do not like the “tests” and assessments because **the results hold them accountable for the failure of their students to obtain a sound basic education in the subject matter they teach is not a rational or a valid ground upon which to lower academic standards or to simply eliminate EOC or EOG standardized testing under North Carolina’s accountability and testing system.**

Those educators who desire **not to be identified and held accountable** when their students fail to obtain a sound basic education in the course(s) taught is simply no excuse to eliminate assessments and testing, especially in K-8. To the contrary, the exposure to public accountability for academic results is necessary and legitimate in order to protect the children’s right to obtain a sound basic education and keep the public informed on the progress of the public schools in their county.

Today in North Carolina, assessment and test data drives classroom instruction and accountability. The DPI compiles Reading Assessment data for K-3 as well as EOG, EOC, and ACT test results on every single child (as well as growth where it can be legitimately measured) in the state and for every school in the state, down to the individual classroom and section of course taught. Upon proper request, the DPI can furnish the data on EOC and EOG tests results, including scale scores, on any educator, by class, by section, in any school in North Carolina. **In other words, an educator may no longer be “anonymous” when it comes to the data relating to the academic performance of his or her students on the K-3 assessments, EOG EOC and ACT tests. This data is available to the principal of the school, the Superintendent of the District and others. As a result, there is no place for a non Leandro compliant school, principal or educator to hide from the data revealed by test results** This is transparent public accountability and is also the accountability required by Leandro so that each child’s academic progress can be measured to determine if the child is obtaining a sound basic education and tailoring classroom instruction to overcome any deficiencies.

As a result of today’s heightened awareness and available data relating to individual school and student academic achievement in each classroom, the natural reaction by the affected adults who are in education, is to seek a way to eliminate the source of the data that holds them

accountable. The only way out from under the microscope of accountability is to eliminate the assessments and tests themselves.

Helping non Leandro compliant teachers and principals escape from public scrutiny and accountability by eliminating is invalid, simply wrong and in violation of the children's rights to obtain a sound basic education

Teaching to the test is a "red herring" phrase to draw attention away from the real problem – a failure of basic classroom instruction.

The tired old refrain and criticism from uninformed parents, politicians and educators who do not want to be accountable to the effect that K-3 assessments, EOG, EOC and ACT tests are a "distraction and waste of time" because the teachers spend their classroom time "Teaching to the Test" is a Red Herring and not a valid or permissible reason for eliminating assessments, tests and accountability in public schools in North Carolina.

To understand why this is so, one must have a basic understanding of how the educational process is designed to work in each classroom.

The State of North Carolina's curriculum for all of the subjects and courses offered to students in pre-K through 12th grade is known as the Standard Course of Study ("SCOS").

The SCOS prescribes the content of each course or subject. The content area for each course or subject to be taught contains critical standards that all students need to master during the length of the course that is being taught.

The SCOS for each course or subject is designed for the content area to be mastered over a period of 180 days of instruction, or hours if the course is a "block" course in high school. During this period of instruction, the student is expected to master the critical standards that build upon each other as the course goes on during the year.

As critical part of the teaching process of students in any course or subject, the SCOS must be taught at a deliberate but rational pace so that the students can master each critical standard in the course by the end of the year or the block.

In order to effectively accomplish the mastery of the content or subject matter of the course within the time period allotted, the classroom teacher must set the pace of the instruction so as to finish the SCOS critical standards for the course by the end of the school year or allotted hours in a block course.

This necessary function is accomplished by using what is commonly known as a **pacing guide**. **While pacing guides are not provided by DPI, each individual LEA and school typically have pacing guides in place for use by each classroom teacher. If pacing guides are not in use, the school principal is not doing his or her job in a Leandro compliant manner.**

In addition to teaching the SCOS in proper sequence and in a proper time frame, the classroom teacher should also be engaged in frequent assessments of his or her students to determine whether or not they are mastering the critical standards required to obtain a sound basic education in the particular course, to wit: Level III (now 4) or Level IV (now 5) (grade level or above).

What are assessments?

Formative Assessment- What classroom teachers should be using on a weekly basis to keep up with a child's progress in a subject. A process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to help students improve their achievement of intended instructional outcomes.

Formative assessment is found at the classroom level and happens minute-to-minute or in short cycles. Formative assessment is not graded or used in accountability systems. The feedback involved in formative assessment is descriptive in nature so that students know what they need to know next to improve learning. A formative assessment is not a test.

Interim/Benchmark Assessment.

Interim/benchmark assessments are given to students periodically throughout the year or course to determine how much learning has taken place up to a particular point in time (summative). These assessments provide information for programs and instructional support. The main users of this information are teacher teams, curriculum coordinators, and principals.

Summative Assessment – End of Grade Tests/ End of Course Tests. ACT tests.

A measure of student learning to provide evidence of student competence or program effectiveness. Summative assessments are found at the classroom, district and state level and can be graded and used in accountability systems. The information gathered from summative assessments is evaluative and is used to categorize students so performance among students can be compared.

Classroom assessments should promote learning (formative) and help determine how much learning has taken place at a particular point in time (summative). Both ways of assessing are essential to student learning and the information gathered is used to inform students, teachers and parents. An important feature is to measure student growth which should be a major factor in determining teacher effectiveness.

A teacher who is competent and knows how to differentiate instruction among the students in the classroom will utilize formative assessments to determine if a child is mastering the critical standard being taught at that point in the course which is supposed to align with the pacing guide for the course.

By engaging in proper classroom instruction, which includes following the pacing guide, using frequent formative assessments, and properly prepared common benchmark assessments and targeted interventions to assist students master the critical standards during the course of the school year or block period, there is no excuse for any student not to be properly prepared to take the summative assessment (EOG or EOC) at the end of the course. This is not "teaching to the test" but rather proper, competent instruction that should be the standard in every single school and classroom. This is so because when students are properly instructed during the length of the course, they have mastered the curriculum to the extent that when they take the EOG or EOC summative assessments they will be prepared to show that they have mastered the course critical content as Level III (4) or above.

The same is true for K-2 assessments now in place in North Carolina. Refer to *Report from the Court re: The Reading Problem* for the K-2 assessment process. (filed May 5, 2014)

The bottom line is that the SCOS contains critical standards that should be taught with the use of pacing guides utilizing formative assessments and benchmark assessments throughout the length of the course to ensure that the student has mastered the course material. If properly utilized, each student should be prepared to succeed on the EOG or EOC or to meet the benchmarks on the ACT tests. This procedure is not "teaching to the test."

The problem comes when the teacher does not properly use formative assessments, benchmark assessments and the children in the class do not know the subject's critical standards because they have not been properly and timely taught and/or remediated during the course of the school year. **"Teaching to the test" is just another excuse by adults who have not properly instructed the children in the classroom over the length of the course.**

- c. Educational costs to the taxpayer is in the billions. When assessments and tests are eliminated or standards diminished, the billions spent on public schools will be spent without the taxpayers knowing whether or not the money is spent on educating children effectively and to meet the sound basic education requirements.**

Another important factor in being able to use EOC test data, in addition to providing objective academic results on student and school academic performance, is accountability to the public so that the public may know, not only the level of academic achievement, but also whether that academic achievement justifies the cost to taxpayers of maintaining public schools wherein the test data indicates that students are not obtaining a sound basic education. This applies to all schools - elementary, middle and high schools.

It is inconceivable that any responsible business enterprise would spend billions of dollars a year in salaries without knowing whether its employees are doing their jobs in a proper manner. The business of education should be treated no differently considering that the bulk of the expense to maintain any school, especially high schools, is salaries and benefits to the employees who are supposed to be Leandro compliant, to wit: competent, certified professionals.

The bottom line is that the valid assessments of student achievement in North Carolina show that many thousands of children in K-12 are not performing at grade level in multiple subject areas and thus, are not obtaining a sound basic education. This is an ongoing problem that needs to be dealt with and corrected.

Accordingly, The State of North Carolina, acting through its Executive Branch, including but not limited to the State Board of Education and the Department of Public Instruction, and its Legislative Branch, is directed to appear for a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, April 8, 2015 at 10:00 a.m. in Courtroom 10A (or such other Courtroom in the Wake County Courthouse as is available), Wake County Courthouse and to continue on Thursday, April 9, 2015.

The purpose of this hearing is for the State of North Carolina, acting through its Executive Branch, including but not limited to the State Board of Education and The Department of Public Instruction, and its Legislative Branch, to disclose and fully report to the Court regarding any efforts, proposals, or plans to: ONE: (a) reduce, diminish or eliminate any educational standards in any subject taught in the public schools of North Carolina, present or in progress, including the Read to Achieve program which seeks to have all children reading at grade level (level 4) by the end of the third grade; (b) reduce, diminish or eliminate any assessments, EOG,

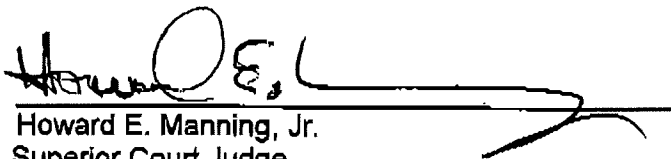
EOC, or ACTs (formative, benchmark, or summative) now required in the public schools of North Carolina; (c) reduce, diminish or eliminate accountability standards now in effect for measuring a student's equal opportunity to obtain a sound basic education as set forth in the Leandro decisions; (d) reduce, diminish or eliminate any accountability measures in place to evaluate superintendent, principal and teacher performance in delivering a sound basic education to the school children of North Carolina; and

TWO: (a) review the results of the 2013-14 EOC, EOG and ACT tests from the public schools of North Carolina, which indicate in way too many school districts across the state that thousands of children in the public schools have failed to obtain and are not now obtaining a sound basic education as defined by and required by the *Leandro* decisions.

At this hearing, the Court and the State of North Carolina will schedule another hearing at which the State of North Carolina will propose a definite plan of action as to how the State of North Carolina intends to correct the educational deficiencies in the student population as evidenced by the measures of output extant in the K-3 assessments, not reading on grade level by the third grade, and the other measures of student achievement evidenced by the EOG, EOC and ACT tests.

This is necessary to meet the requirements and duties of the State of North Carolina with regard to its children having the equal opportunity to obtain a sound basic education as mandated the Constitution of North Carolina and defined by Leandro I and Leandro II and to maintain the mandates of Leandro in "full force and effect."

SO ORDERED, this the 17th day of March, 2015.


Howard E. Manning, Jr.
Superior Court Judge