

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

March 26, 2010

FROM: HOWARD E. MANNING, JR. *HEM*

TO: ROBERT W. SPEARMAN,	(919-834-4564)
TOM ZIKO	(919-716-6764)
ANN MAJESTIC	(919-546-0489)
JACK BOGER/JULIUS CHAMBERS	(919-962-1170)
At UNC Center for Civil Rights	

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING & ORDER MAY 4, 2010

Lady and Gentlemen:

Enclosed is NOTICE OF HEARING & ORDER FOR MAY 4, 2010.
THIS FAX ONLY MEMO CONSTITUTES THE CERTIFICATE OF SERVICE.

The Fax Memo and NOTICE OF HEARING consists of 28 pages.

CC: Governor Perdue c/o Eddie Speas at 733-2120
President Pro Tem Marc Basnight and Speaker Joe Hackney
c/o Elizabeth Braswell, Senate General Counsel
at 733-8740
Chairman Bill Harrison/Superintendent Atkinson at 807-
3198

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

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

And

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

Vs.

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

MAR 26 PM 2:41
WAKE COUNTY CSC

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 Tuesday, May 4, 2009 at 10:00 a.m. in Courtroom 5A, Wake County Courthouse.

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

Leandro Tenets and Minimal Compliance Standards

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

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

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

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

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

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

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

THIRD: 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.

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

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

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

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

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

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

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

*This Court now remands to the lower court and ultimately into the hands of the legislature and executive branches, one more installment in the 200-plus year effort to provide an education to the children of North Carolina. Today's challenges are perhaps more difficult in many ways than when Adams articulated his vision for what was then a fledgling agrarian nation. The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in *Leandro*, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount. Whether the State meets this challenge remains to be determined. (358 N.C. 605,649)*

This has been the law since April 4, 2002, when the Final Judgment was entered on the liability phase of this case. The North Carolina Supreme Court set the law in stone on July 30, 2004, over four and one-half 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.

For the past several years, the Court has held hearings and has carefully reviewed the academic performance of every school in this State. In conducting this review, the Court has, for the past two years, reviewed the EOC performance in reading and math and the EOG performance in each high school by course.

Following its review, the Court has reported on various aspects of poor academic performance to the Chairman of the State Board of Education, and the Governor. Also, from time to time, the Court has reported this information to members of the General Assembly.

There is no need to rehash these efforts here. Suffice it to say that poor academic performance remains a problem in a host of elementary, middle and high schools throughout North Carolina and as a result, the children in those schools who are blessed with the right to the equal opportunity to obtain a sound basic education as guaranteed by the Constitution and as set out in Leandro, are being deprived of their constitutional right to that opportunity on a daily basis.

During 2009, it was brought to the Court's attention that although there are no ABC End of Grade assessments given in K-2, there are Literacy and Math Assessments in place that are required to be used and implemented for each child in those grades. The basis for this is that continual assessment of a child's academic progress is a critical component of a child's educational process regardless of the grade the child is in. Everyone knows that early childhood education is critical in providing the child a baseline of academic progress in literacy and fundamental mathematical skills.

On-going assessment in literacy and mathematics instruction throughout the school year in grades K-2 is necessary and critical for each child's academic growth in reading and math. Assessment guides instruction and the K-2 assessments consist of formative, benchmark and summative.

Accordingly, the Court held a hearing on August 26, 2009 to put on the record information about the K-2 Assessments, their importance in guiding instruction in literacy and math in the early grades and the requirements of the State Board of Education with respect to the use and effective implementation of the K-2 Assessments in each and every elementary school.

The evidence presented at that hearing clearly and convincingly showed that the proper application and use of the K-2 Assessments in Kindergarten through grades 1 and 2 in reading and mathematics, should result in all children being able to perform in reading and mathematics at grade level or above so that they enter the 3rd grade reading at a proficient level and doing grade level mathematics. Teachers who do not effectively use the K-2 Assessments, which

were upgraded in 2005 and again in 2009, are not providing their students with the equal opportunity to obtain a sound basic education.

The bottom line is children should not be getting to the third grade unable to read at grade level or above, nor should they be getting to the third grade not prepared in mathematics. The failure of children to be prepared for reading and math so that by the end of grade 3, they are performing at grade level can be traced, in large measure, to the elementary school's failure to properly use and implement the K-2 Assessments appropriately, if at all.

Based on the abysmal results on the 2007- 2008, 2008-2009 reading end of grade tests in many elementary schools and abysmal mathematics end of grade tests in many elementary schools, including those in Halifax County, it would appear at this time that the K-2 Assessments are not being properly utilized or implemented in the early grades. If they were it would seem logical to infer, at this point, that the children in the 3rd grade would not be tanking in reading and math after four (4) years in elementary school.

The Court, in the course of its review of the statewide 2008-2009 reading end of grade tests in grades 3 – 8, focused on elementary and middle schools where the 2008-2009 reading end of grade test scores for grades 3 through 5 and 6 through 8 were fifty percent (50%) proficient or less in all three grades in the school, or where two out of the three grades test scores in reading were 50% proficient or less.

An elementary school or middle school where the children in all three grades, or 2 out of 3 grades, were reading at 50% or less proficiency is a school where the equal opportunity to obtain a sound basic education is simply not happening. Five out of ten children not being proficient in reading is evidence of a failure in classroom instruction and school leadership, nothing more, nothing less.

Realizing that there are major academic problems in small rural school systems in the Northeast such as Halifax, the Court decided to look at reading scores for 2008-2009 in three large urban districts to determine if academic disasters in reading similar to those in Halifax and other rural counties in the Northeast were present. The urban school districts are **Durham, Forsyth and Guilford.**

The results of the Court's examination of DPI student accountability data for 2008-2009 in reading are attached as Exhibit A to this Notice of Hearing and Order. A summary of the results follows here:

Durham-

Elementary Schools -15 out of 29 (51.7%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at

50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 63.4% of third graders were not proficient in reading, 61.4% of fourth graders were not proficient in reading and 46.5% of fifth graders were not proficient in reading. For all 3 grades combined in these 15 elementary schools there were **2170 children not proficient in reading or 57.3% not proficient.**

Middle Schools - 4 out of 9 (44.4%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 59.4% of sixth graders were not proficient in reading, 60.5% of seventh graders were not proficient in reading, and 64.4% of eighth graders were not proficient in reading. For all three grades combined in these 4 middle schools **there were 1609 children not proficient in reading or 61.4% not proficient.**

Forsyth

Elementary Schools - 13 out of 43 (30.0%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 62.8% of third graders were not proficient in reading, 57.3% of fourth graders were not proficient in reading and **66.7% of fifth graders were not proficient in reading.** For all 3 grades combined in these 13 elementary schools there were **1742 children not proficient in reading or 62.05% not proficient.**

Middle Schools - 4 out of 15 (26.6%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 57.5% of sixth graders were not proficient in reading, 63.0% of seventh graders were not proficient in reading, and **63.6% of eighth graders were not proficient in reading.** For all three grades combined in these 4 middle schools **there were 817 children not proficient in reading or 61.2% not proficient.**

Guilford

Elementary Schools - 21 out of 66 (31.8%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 55.4% of third graders were not proficient in reading, 59.2% of fourth graders were not proficient in reading and **58.7% of fifth graders were not proficient in reading.** For all 3 grades combined in these 21 elementary schools there were **2448 children not proficient in reading or 57.6% not proficient.**

Middle Schools - 3 out of 20 (15.0%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or

