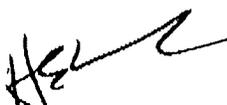


HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
(919)792-4960

FAX ONLY MEMO

May 20, 2011

FROM: HOWARD E. MANNING, JR. 

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 for June 22, 2011

Lady and Gentlemen:

Enclosed is NOTICE OF HEARING & ORDER FOR June 22, 2011.
THIS FAX ONLY MEMO CONSTITUTES THE CERTIFICATE OF SERVICE.

The Fax Memo and NOTICE OF HEARING consists of 8 pages.

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

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

And

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

Vs.

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

FILED
2011 MAY 20 PM 3:51
WAKE COUNTY C.S.C.
BY _____

NOTICE OF HEARING AND ORDER

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, June 22, 2011 at 10:00 a.m. in Courtroom 10-C, 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.

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.

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

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

SEVENTH: 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.

EIGHT: 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.

NINTH: 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.

TENTH: 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 six (6) 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, beginning in 2005 with the issue of poor performing high schools, the Court has held hearings and has carefully reviewed the academic performance of every school in this State as evidenced by each school's performance composite. Beginning in 2006, the Court has reviewed the individual schools' academic performance of its students by EOC scores 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 in elementary, middle and high schools statewide to the Chairman of the State Board of Education and the Governor. Also, from time to time, the Court has reported on poor academic performance in the public schools to the leadership in the General Assembly and prior to 2011, was invited to discuss the issues relating to poor academic performance and solutions to the issues and problems, including assessments with the leadership of the Senate and members of the educational subcommittee in the House of Representatives.

There is no need to rehash these efforts here. Suffice it to say that poor academic performance remains a serious problems in a host of elementary, middle and high schools throughout North Carolina and as a result, the children in those schools who are not performing at Level III on the EOC and EOG tests are being deprived of their individual constitutional right to have the opportunity to obtain a sound basic education on a daily basis.

To compound the problems of poor academic performance which is indicative of children not obtaining a sound basic education as is their constitutional right, the national economy has been, and remains, in a state of downturn. The economy of the State of North Carolina has been deeply affected as well. The state of the economy and its resulting lack of generating revenue streams is a serious problem which is being grappled with by the Legislative and Executive branches of government. Educational funding for North Carolina public schools from the Federal Government has likewise been reduced notwithstanding the receipt of federal funds for *Race to the Top*.

The financial crisis notwithstanding, the basic educational assets guaranteed to each and every child in the North Carolina Public Schools must remain in place in every school and classroom in the State of North Carolina.

Reduced to essentials, each child must have an equal opportunity to obtain a sound basic education in those subjects defined by *Leandro* as well as acquiring the educational skills necessary to meet today's 21st Century by achieving a sound basic education so that each child can possess

“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.”

In order to get to the finish line and graduate from high school, each child must have a school wherein there is a competent certified principal, competent certified teacher in each classroom, and the school must have sufficient resources to fund an effective instructional program within the school to meet the educational needs of all children, including those at-risk.

On May 10, 2011, the Plaintiffs' Hoke County Board of Education, et al. (“Plaintiffs”) filed a Motion For Hearing on Curtailment of Pre-kindergarten Services for At-Risk children, Elimination of EOC testing, and Defendants' (The State of North Carolina) Compliance with North Carolina's Constitutional Requirements under Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution as defined by the North Carolina Supreme Court's decisions in *Leandro I* (346 N.C. 336) and *Leandro II* (358 N.C. 605) and the continuation of the October 9, 2009, hearing on the State of North Carolina's compliance with *Leandro's* constitutional requirements for competent principals, competent, certified teachers and sufficient resources for every school and the impact of the proposed budget for the next biennium on such compliance.

The Court has reviewed the motion and the Court will conduct hearings on the various subjects raised in the motion. The first hearing will be a continuation of the October 2009 hearing relating to the proposed budget for the next biennium in terms of its compliance with *Leandro's* constitutional requirement that **each child has the equal opportunity to obtain a sound basic education and the resources to ensure that constitutional right in every school and classroom in this State.**

Included in this hearing will be an examination of the plaintiffs' claim that pre-kindergarten services for “at-risk” prospective enrollees are being curtailed and not adequately met under the proposed budget for the next biennium. On this issue, *Leandro II, Part V. 358 NC 640-645* is relevant by way of background and because the Supreme Court recognized and confirmed that **the State has “educational obligations for “at-risk” prospective enrollees (children not yet of age to go to public kindergarten). “The evidence shows that the State recognizes the extent of the problem — its deficiencies in affording “at-risk” prospective enrollees their guaranteed opportunity to obtain a sound basic education— and its (the State’s) obligation to address and correct it.” 358 NC 644.**

The Court will notice a separate hearing for a later date on the issue of assessments of student academic performance to determine whether or not they are performing at Level III (grade level), including high school EOC assessments,

all of which are required to assess student performance under the *Leandro* decisions.

Subject Matter of the June 22, 2011 Hearing:

The purpose of this hearing will be to provide the parties, including, the State of North Carolina, including, but not limited to, the State Board of Education and The Department of Public Instruction the opportunity to report to the Court concerning the following in order for the Court to be able to assess the present state of *Leandro* compliance of the State of North Carolina under the proposed State Budget for the next biennium, to receive the preliminary student academic performance on EOC and EOG tests for the 2010 and 2011 school year and to report on the status of other matters critical to the educational opportunities for children guaranteed by the North Carolina Constitution as declared by *Leandro* :

1. Pre-Kindergarten services to "at-risk" prospective enrollees:

The hearing on this subject shall include, without limitation, evidence relating to (1) the number of "at-risk" children being served by pre-kindergarten services, including the More at Four pre-kindergarten program; (2) the number of "at-risk" children estimated to be eligible to receive pre-kindergarten services, including the More at Four pre-kindergarten program in the 2011-2012 school year; (3) the number of children who are "at-risk" and eligible for pre-kindergarten services but are not being provided those services this year and for whom those services are not available in the forthcoming year, if available; (4) the obligation of the State of North Carolina, as set forth in *Leandro II*, Section V, to afford "at-risk" prospective enrollees their guaranteed opportunity to obtain a sound basic education; 358 NC 644; (5) the proven effectiveness of pre-kindergarten services in addressing the needs of "at-risk" prospective enrollees from 2002 through 2010; (6) the State's plan to ensure that "at-risk" prospective enrollees continue to be provided the pre-kindergarten services that have been selected by the State to meet its obligation to those children under the current financial budget situation.

2. *Leandro* Compliance in light of budget woes.

The current financial difficulties of the State do not relieve, justify or excuse the State of North Carolina from its constitutional obligation to provide each and every child in North Carolina an equal opportunity to obtain a sound basic education that is *Leandro* compliant in that every school must have a competent, certified principal, every classroom must have a competent, certified teacher and that each school must have the resources sufficient to provide all its students with the opportunity to obtain a sound basic education. 346 NC 347, 358 NC 616, 619, 624,625, 636,

The hearing on this subject shall be to take evidence on the State's plan to ensure that the children's constitutional right to the equal opportunity to obtain a sound basic education in a *Leandro* compliant public school is fulfilled despite the present budget problems and cuts. This will be a continuance of the October 9, 2009, hearing on the same issue of compliance with the constitutional right of the children of North Carolina to have the equal opportunity to obtain a sound basic education.

3. Preliminary Student Academic Performance Data for 2010-2011 school year to be placed in evidence:

The 2010-2011 preliminary End of Grade Mathematics Scores in Grades 3-8 by school for each grade 3,4,5,6,7 & 8 by LEA, statewide after re-tests.

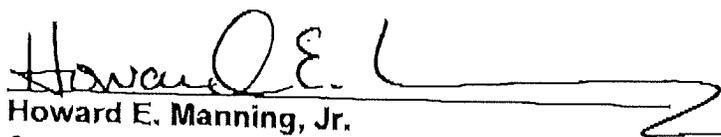
The 2010-2011 preliminary End of Grade Reading Scores in Grades 3-8 by school for each grade 3,4,5,6,7 & 8 by LEA, statewide after re-tests.

The 2010-2011 preliminary End of Course Mathematics Scores in Algebra 1, Algebra 2 and Geometry by school, by LEA, statewide after re-tests.

The 2010-2011 preliminary End of Course Scores in all high schools, by LEA, statewide which data shows the number of students in each EOC subject that were proficient in the subject in each high school and shows whether or not growth standards (state) were met or not met in each EOC subject in that high school.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this ^{20th} day of May, 2011.


Howard E. Manning, Jr.
Superior Court Judge