

before funds are spent for educational purposes not required for a sound basic education.

SYNOPSIS OF THE DECISION

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 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.

The third Memorandum of Decision 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 are not obtaining a sound basic education and that the reason appears to be the lack of a coordinated, effective educational strategy for at-risk children statewide.

The Court is not convinced that the lack of a coordinated, effective educational strategy is based on the lack of sufficient funding by the State. Instead, the Court believes that the funds presently appropriated and otherwise available are 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.*

In summary, 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 constitution.

The State and its school systems are directed to assess the present educational programs as they are applied to the at-risk student group, and adopt a coordinated, uniform strategy for improving the educational opportunities for at-risk students and as a part of the process, re-assess and re-allocate the available funding, if needed, to meet this goal with respect to at-risk children within the parameters of the Constitution. Upon completion of this task, they are to report to the Court the results of their

undertaking. Pending this undertaking, no Final Judgment will be entered.

HOKE COUNTY, N.C.

Hoke County, North Carolina, is located in the Sandhills region of our State. Farming is a major economic activity there. Poultry processing, textiles, cosmetics and light manufacturing are among its primary industries. As of 1996 the county had an estimated population of 28,144 and Raeford, its only municipality and the county seat, had an estimated population of 4,029.

In Hoke County, there are no universities, no museums, and no major shopping centers. Aside from football games on Friday nights in the fall, there are few things for young people to do. Hoke County does not have a hospital. The latest data from the North Carolina Child Advocacy Institute shows that there are no pediatricians in Hoke County.

The business and employment opportunities in Hoke County are limited. The two largest private employers are the House of Raeford poultry plant and Burlington Industries plant. The largest non-manufacturing employer is the North Carolina Department of Corrections, followed by the public school system and county government.

The main civic event of the year in Hoke County is the North Carolina Turkey Festival. Over three days, it features such activities as a turkey cooking contest, some performances by local people, and a craft fair. In the last two years there have been major layoffs and plant closings in Hoke County including ones by Burlington Industries and Spanco. Hoke County has found it difficult to recruit new industries.

HOKE COUNTY PUBLIC SCHOOLS - AN OVERVIEW

HCSS is governed by a locally elected board of education. The Hoke County Board of Education has the duties and responsibilities prescribed by law, including the duty and responsibility for "general control and supervision of all matters pertaining to the public schools" in Hoke County, N.C.G.S. § 115C-40, to implement the Standard Course of Study, N.C.G.S. § 115C-89(c) and to select and evaluate all employees. N.C.G.S. § 115C-47. No present or former member of the board was called to testify by plaintiffs at the trial of this matter. Defendants did, however, introduce portions of the deposition of the present chairman of the board, Mr. McAllister.

The superintendent of HCSS at the time of trial was Donald L. Steed. Mr. Steed retired at the end of June, 2000. The Superintendent is chief administrative officer of the HCSS and has the duties, *inter alia*, to recommend the employment of all principals and teachers, to implement all State policies and standards and to prepare and recommend a budget. N.C.G.S. §§ 115C-276, -427.

Pursuant to N.C.G.S. § 115C-27(a), the Hoke County Board of Education has "the duty . . . to elect a superintendent who is qualified." Mr. Steed was not called to testify by plaintiffs at the trial of this matter. Defendants did, however, introduce portions of the deposition of Mr. Steed.

There are 11 schools in Hoke County at the present time. These include seven elementary schools (McLauchlin Elementary, Scurlock Elementary, South Hoke Elementary, West Hoke Elementary, Rockfish Hoke Elementary, Upchurch Elementary, and Shady Grove Elementary), two middle schools (West Hoke Middle School

and East Hoke Middle School), one high school (Hoke County High School) and one alternative school (Turlington School). Sandy Grove Elementary opened in time for the 1999-2000 school year and is a "state of the art" elementary school. Ironically, this brand new sparkling jewel of an elementary school failed to meet the ABC standards for expected growth/gain, received no recognition whatsoever and posted a performance composite score of 62.5, meaning that 37.5% of the EOC tests taken by students in Grades 3-5 were below grade level. This poor performance fell right in line with the academic performance of several other Hoke elementary schools housed in older and allegedly out-dated buildings. This is strong evidence that even a brand new building does not ensure high academic achievement, or as one saying goes, "you can dress them up but you can't take them out."

Hoke County Schools Physical Plants. It's not the building - It's what takes place inside that really matters.

The Court personally visited each elementary school(including state of the art Sandy Grove), the high school and one of the middle schools in January, 2000. The middle schools are "twins" and both came on line at the same time. The middle schools are state of the art, modern facilities. The Court also visited Turlington. Turlington, although an old building, shares its auditorium with the Town of Raeford. The auditorium is used for concerts and civic events by the public.

Although Turlington is old and its upper floors not used and in disrepair, the classrooms have high ceilings, good lighting and are very clean. The classrooms in use in Turlington are similar to the classrooms at Fred A. Olds Elementary School on Dixie Trail in Raleigh where the Court attended grades 1

through 3. Fred A. Olds Elementary School is still in use although it is now closed for renovations.

With respect to HCSS' facilities, the Court finds that the HCSS' facilities are sufficiently adequate, upon the completion of the science wing addition to Hoke County High School, to provide physical facilities so that the children of Hoke County can be provided with a sound basic education. Any expert witness testimony to the contrary is rejected and found not to be credible. In Utopia (which does not exist anywhere) every child would go to school in a modern school, but this is simply not a reality, nor does a sound basic education depend on such trappings.

Simply put, HCSS has a satisfactory blend of older schools and modern schools, similar to school systems all across the State of North Carolina, including Wake County and CMS. The critical component of whether or not the children are being provided with an equal opportunity to receive a sound basic education does not lie in a shiny new school or an older school, but rather, the critical component is the quality of instruction and leadership provided by the principal and the teachers who purport to educate the children who attend. Of critical importance to this process is the factor of parental involvement and support of those children in the educational process.

The chief administrative officer of each of these schools is its principal. Principals have the duty, *inter alia*, to grade and classify students, to recommend the employment of teachers, to evaluate the performance of teachers and to provide for discipline. N.C.G.S. § 115C-288.

Only one of these principals, Tona Jacobs, was called to testify by plaintiffs at the trial of this matter. Defendants, however, did introduce the

depositions of two other principals, Darlene Clark and Sam Queen. As of the 1997-98 school year, 679 persons were employed by the HCSS, 544 of whom were paid with State funds, 53 of whom were paid with federal funds and 82 of whom were paid with local funds. For that year the staff to student ratio was 1 to 9.

As of the 1997-98 school year 406 persons were employed by the HCSS in professional positions, 374 of whom were paid with State funds, 32 of whom were paid with federal funds and none of whom were paid with local funds. For that year the professional staff to student ratio was 1 to 14.8.

As of the 1997-98 school year, 334 persons were employed by the HCSS as classroom teachers, 304 of whom were paid with State funds, 30 of whom were paid with federal funds and none of whom were paid with local funds. For that year the classroom teacher to student ratio was 1 to 18. Only six classroom teachers were called to testify by plaintiffs at the trial of this matter.

As of the 1997-98 school year, 132 persons were employed by the HCSS as teacher assistants, 113 of whom were paid with State funds, 19 of whom were paid with federal funds and none of whom were paid with local funds. For that year the teacher assistant to classroom teacher ratio was 1 to 2.53. No teacher assistant was called by plaintiffs to testify at the trial of this matter.

As of the 1997-98 school year, 6,002 students were enrolled in the HCSS. Only 2 of these 6,002 students are plaintiffs in this matter, Randell Hasty and Andrew Sunkel. Mr. Hasty and Mr. Sunkel were called as witnesses by plaintiffs, but plaintiffs did not call any other student in the HCSS or any graduate of Hoke

County High School to testify regarding their opportunities in the HCSS.

The student enrollment in the Hoke County schools at the time of trial was 6,157. Hoke enrollment has increased significantly from 1991-92 through 1998-99. Hoke administrators predict, based on births, that enrollment in the Hoke schools is likely to continue to increase substantially through 2003-04, to more than 7,300 students. T. 9/15, pp. 26-27 (Moss); PX 481.

Since 1991, the Hoke student population has grown at a faster rate than the state average. North Carolina average daily membership ("ADM") increased from 1,080,223 in 1991-92 to 1,229,929 in 1998-99, an increase of over 13%. Hoke County ADM increased from 4,997 in 1991-92 to 6,057 in 1998-99, an increase of over 17%.

In 1997-98, the Hoke student body was 32.6 percent white, 50.1 percent black, 13.9 percent Native American, 2.5 percent Hispanic and 0.8 percent Asian. Hoke's enrollment of black students in 1996-97 was proportionately nearly two-thirds greater than the State's 30.7 percent black average and its Native American students represented a proportion of the system's enrollment more than 8 times greater than the State's average of 1.5%. Of that population, 73.8% were eligible for free and/or reduced price lunch. The statewide average was 39.9%. Only students from low income families are eligible for this program.

In 1998-99, 61.8% of HCSS students were eligible for free and reduced lunch. The racial composition for that year was 32.7% white, 50.0% black, 13.4% American Indian, 3.0% Hispanic and .09% Asian.

HOKE COUNTY STUDENTS ARE ABOVE AVERAGE IN BEING FROM ECONOMICALLY DEPRIVED HOUSEHOLDS

The students who attend the Hoke County Schools are from more economically deprived backgrounds than the average LEA in North Carolina. In order to put the HCSS in proper perspective, data about the low economic status from whence many of Hoke's school children come is necessary. This is because it is common for children from economically disadvantaged backgrounds to have particular difficulties in gaining proficiency in school. "There's certainly a high correlation between poverty and lower [academic] performance." T. 11/23, p. 128 (Triplett). Much of this can be explained because of the low levels of adult education and the economic status of many of Hoke County's population.

The level of adult education in Hoke County is low. About half the population lacks a high school diploma. T. 9/15, pp. 19-20 (Moss); PX 198, pp. 6, 11 (Table 1, Panel D) (citing U.S. Department of Commerce, 1990 US Census, Database); PX 371 (U.S. Census Data); PX 449, p. H008865; PX 293. For 1996, less than 9 percent of Hoke county adults over 25 were college graduates. PX 371 (U.S. Census Data). The percentage of adults in Hoke County with a college education is less than half the percentage for the State as a whole. T. 9/15, p. 21 (Moss).

According to census data, 11.1 percent of children in Hoke County were living in households in which no parent was participating in the labor force. PX 198, pp. 6, 13 (Table 1, Panel I) (citing U.S. Department of Commerce, 1990 US Census, Database). In 1990, the percentage of Hoke County children living in single parent households was 48.2 percent, compared to 30.4 percent statewide. PX 320, pp. 58, 122. See also PX 198, pp. 6, 10 (Table 1, Panel C) (citing U.S. Department of Commerce, 1990 US Census, Database); T. 9/28 [Agnew], pp. 53-54 (Natriello) (referencing PX 320, pp. 58, 122). In 1993-97, over 41 percent of Hoke

County births were out of wedlock. PX 372, p. 4-47 (N.C. Vital Statistics, NCPH). As stated before in Section II of the Court's decision, illegitimacy results from irresponsible behavior on the part of the child's parents. Illegitimacy is a root cause of the societal problems that create the environments in which at-risk children live and arrive at the schoolhouse ill prepared to learn or to succeed.

Fifty-nine (59%) percent of all children in Hoke are children of mothers served by "WIC," or the federal nutritional assistance program for women, infants, and children. PX 198, pp. 6, 8-9 (citing North Carolina Center for Health Statistics, North Carolina Health Statistics Pocket Guide); T. 9/28 [Agnew], p. 51 (Natriello). Again, this reflects the low level of education, the high rate of irresponsible sexual behavior resulting in illegitimacy and explains in great measure why many of HCSS children fail to perform well academically.

"Racial and/or ethnic minority group membership is perhaps the best known factor associated with being educationally disadvantaged." [Agnew], pp. 5-6 (Natriello).

As discussed in Part II of the Court's Decision dealing with at-risk children, statistics show that children from poverty backgrounds tend to achieve less well in school than children who come from middle class backgrounds. Low family income often places students at risk of academic failure. Many low-performing schools have high percentages of low-income students who are at-risk of educational failure. Those factors have been discussed in detail in Section II of this Court's decision. An unusually high number of Hoke County students have factors that put them at-risk of educational failure according to the State's analysis

used to calculate allotments for at-risk student services.

The analysis was devised by the State and is used to calculate allotments for at-risk student services. This analysis allocates funds based not only on a certain number of dollars per student, but also a certain number of dollars (50 percent) under a weighting formula. This weighting formula factors in the school districts' end-of-grade test failures, the absence rate, the non-promotion rate, the dropout count, the poverty index, and the graduation rate. HCSS ranked near the bottom of all school districts on a number of these factors.

A study conducted by DPI in the 1990s entitled "Improving Schools Study" concluded that the most important factor related to student performance was socioeconomic status. Economic status and educational achievement are significantly linked; thus, poor children typically do less well in school than children from families that have better or additional resources. Specifically, "[c]hildren living in families with incomes below the poverty line are nearly twice as likely to be retained in a grade" as are children from more affluent families, and they are more likely to drop out of high school. The income level of one's community is also related to educational performance.

State statistics for Hoke County show that over one-sixth of families in the county are below poverty level; over one-fourth of the children in the county live in poverty; and nearly two-thirds of the students in the Hoke County Public Schools receive free and reduced price meals. There are proportionately many more children in Hoke statewide below the poverty level (29.6 %), than is true statewide (16.2 %).

DPI statistics for the 1997-98 school year show a strong correlation between high performance on ABCs tests in a school and the number of needy children in that school. As the percentage of needy students in the school increases, the composite ABCs test score falls. The composite average ABCs score was only 45 for children attending schools in which 90 percent or more of the students were eligible for free or reduced lunch; the average score was 88, almost double, in schools where free or reduced lunch eligibility was 10 percent or less.

North Carolina students receiving free lunch, on average, attain a scale score of 156.3 on the eighth-grade reading end-of-grade test. This score falls between the average fifth and sixth-grade scale scores for non-FRPL students.

North Carolina students receiving free or reduced price lunch (FRPL), on average, attain a scale score of 167.5 on the eighth-grade math end-of-grade test. This score is approximately equal to the average sixth-grade scale score for non-FRPL students.

In Hoke County elementary schools the percentage of children on free/reduced price lunch is inversely related to the percent of children performing at or above grade level. That is, the higher the percentage of children in a school on free/reduced price lunch, the lower the percentage who are performing at grade level.

Associate Superintendent Moss analyzed the performance of Hoke students based on their economic circumstances. As previously noted, the numbers of Hoke elementary and middle students performing below Level III (that is, below the State's proficiency standard) is substantial. In the 1998-99 school year

at the third, fifth, and eighth grade levels, between 40% and 45% of students were below Level III.

The great majority of these students below the proficient level were eligible for free or reduced price lunch. PX 465 (Gateway Implications by Lunch Status). These students would have been retained (rather than promoted) under the State's soon-to-be-implemented Gateway policy. T. 9/17, pp. 253-57 (Moss). This would impose substantial additional financial burdens on the Hoke schools, including additional personnel for remediation and additional facilities to house students retained. T. 9/17, p. 257 (Moss).

For 1998-99, the scores on the end-of-grade tests for students in Hoke County were lowest for students from low-income families who received free or reduced price lunch. For the end-of-grade reading test for 1998-99, the percent of students scoring proficient on the test, disaggregated by income, was as follows:

| | Grade Level | | | | | |
|------------------------|-------------|-----|-----|-----|-----|-----|
| | 3 | 4 | 5 | 6 | 7 | 8 |
| Full Pay Students | 82% | 78% | 78% | 83% | 79% | 82% |
| Reduced Price Students | 65% | 64% | 70% | 57% | 65% | 77% |
| Free Lunch Students | 57% | 48% | 60% | 64% | 56% | 62% |

For the end-of-grade mathematics test for 1998-99, the percent of students scoring proficient on the test, disaggregated by income, was as follows:

| | Grade Level | | | | | |
|------------------------|-------------|-----|-----|-----|-----|-----|
| | 3 | 4 | 5 | 6 | 7 | 8 |
| Full Pay Students | 76% | 89% | 85% | 88% | 79% | 85% |
| Reduced Price Students | 66% | 85% | 87% | 76% | 60% | 77% |
| Free Lunch Students | 56% | 68% | 67% | 78% | 60% | 62% |

The ABCs test data for Hoke elementary and middle students shows that students who receive free or reduced price lunch generally have lower scores than

other students. In almost every grade and in both reading and math, scores varied predictably, with the economically advantaged students doing better and the most economically disadvantaged children doing worse. This is consistent with many studies showing that test results are related to students' socioeconomic status. The same applies to students statewide.

In all of these Hoke schools, the majority (and in some schools almost all) of students were eligible for free or reduced price lunch. Based on the record in this case, it can hardly be disputed that HCSS has a high "concentration" of students who are at-risk of academic failure. What is unique about Hoke is that the general socioeconomic condition of the County falls across all racial lines that provides an unusual "concentration" effect throughout the system as compared with large, urban districts or wealthier districts such as Charlotte-Mecklenburg, Durham, Forsyth, Guilford and Wake. In those counties, the "concentration" effect is found more along racial lines rather than across the board.

LARGE PERCENTAGES OF HOKE STUDENTS HAVE BEEN UNABLE TO MEET THE STATE'S PROFICIENCY STANDARD ON STANDARDIZED TESTS FOR YEARS PRIOR TO 1999-00.

There is a mass of evidence from the State's own testing program, including its compilations of results, that shows that large percentages of students in the Hoke County schools have failed to achieve the level of performance defined by the State Board, as adequate mastery of subject matter knowledge and skills, Level III and above, the level necessary to indicate the student is achieving a sound basic education in the subject matter. Level III and above has also been determined to be the performance standard under the *Leandro* test by this Court.

In 1998-99, the performance composite of students scoring at Level III or above in the ABC tests in Hoke High School was 38.4 %. In other words, in 1998-99, 61.6% of the Hoke High School students did not score at proficient levels in the tested subjects.

As previously noted, the ABCs testing program for high schools includes tests in some grades of areas that were specified as part of a sound basic education by the Supreme Court, including English, mathematics, physical science, geography, history, and basic economic and political systems.

Examination of each tested subject for 1998-99 shows that in most tested subjects, most Hoke high school students were below Level III. Hoke's scores at Level III or above, without disaggregating by ethnic group were dismal: Algebra I-45.8%; Algebra II-37%, Biology -37.4%, Chemistry-12.1%, English I-54.7%, English II-25.1%, Economic, Legal & Political Systems-60.9%("ELP"), Geometry-33.8%, Physical Science-26.7%, Physics-37.5%, U.S. History-32.2% percent.

In addition to the failure of the high school students in Hoke to meet the State's proficiency standard in subject areas that are central to a sound basic education, the testing results show that the HCSS students on average are not as high as the State Average. The Court notes, however, that the use of the State average without disaggregating the scores between ethnic groups, some more at risk than others, gives little more than an overview that a problem exists. Using the State averages there is a disparity between the average systemwide performance of HCSS students and the State average. This disparity will not continue to exist in such large measure once the scores are disaggregated between ethnic groups-a subject that will be discussed later in this decision.

The Green Book of State testing results contains a comprehensive presentation of the State's standardized test scores, including comparisons between the percentages of Hoke high school students who scored at the proficient level (Level III or higher) and the statewide percentages.

The 1997-98 Green Book shows the following:

For 1997-98, in Algebra I 46.9% of HCSS students scored at Level III or above, while the State average was 61.6%. For Biology, 44% of HCSS students scored at Level III or above, while the State average was 59%. For ELP, the Hoke percentage proficient was 65.8, while the State percentage was 66.9. For English I, 47.7% of HCSS students scored at Level III or above, while the State average was 60.7%. For U.S. History, 43.8% of HCSS students scored at Level III or above, while the State average was 49.6%. In prior years, the same pattern of low scores for HCSS exists. The 1998-99 & 1999-00 Green Books show some improvement but an average disparity continues to exist.

These disparities existed not only in high school but systemwide. Averages of ABCs test performances for Hoke students were substantially lower than those for comparable students (without adjusting for race and socio-economic status) in the State as a whole at every grade level. On every EOC and EOG test administered by the State, substantially higher percentages of Hoke students failed to meet the State's standard of adequate performance than did students statewide.

As with Hoke high school students, the standardized test scores of Hoke students in grades 3-8 persistently trail their peers in the State as a whole. The Green Book for 1997-98 also shows that the percentage proficient for Hoke (which ranged from 48.5 to 57.1) was behind the State average for every grade, with gaps ranging from 11.7% (for the 5th grade) to 15.1% (for the 8th grade). PX 59, pp. 112, 118, 124, 130, 136, 142. The Green Book reports for prior years show similar low proficiency rates and performance gaps for Hoke elementary and middle school students.

In 1996-97, the State reported that Hoke students passed the computer skills test at a much lower rate than did the State as a whole. In Hoke, 51.2% passed, while for the State 74.8% passed.

On the State's so called "high school" competency test (which, as discussed previously, is in substance the same as the eighth grade end-of grade tests of reading and mathematics), the results are similarly disturbing. In 1997-98, students in Hoke performed substantially below the State average on the State's high school competency standard. That year only 52.7% of HCSS 8th grade students passed the test, compared to 68.4% for the State as a whole. Neither percentage is satisfactory as statewide 31.6% (27,777) failed to score at a proficient level at the end of the 8th grade out of more than 87,900 students.

The HCSS results for the EOG tests generally show that Hoke students are more deficient in higher order thinking skills than in skills such as memorization. Educators distinguish higher order thinking skills from more basic skills such as memorization. Higher order thinking skills involve generating, evaluating, synthesizing, and applying information from a variety of sources to solve problems.

In 1998-99, the State sent a voluntary assistance team to South Hoke Elementary School. The team was led by Sharon Ward, and had two other members who were experienced teachers. This team was trained by the State in instructional strategies. The team did an analysis and made numerous reports on South Hoke Elementary.

The State assistance team that worked at South Hoke elementary school said, "Test data indicates that students are not effectively mastering higher order thinking strategies." (PX 9, p. S38819) The test scores analyzed by the team demonstrate this problem; South Hoke students were relatively strong in the reading area for identifying or collecting information and ideas, but weak in such areas as analyzing and synthesizing ideas and discovering related ideas.

Similarly, in the math area, South Hoke students were relatively strong in numeration and measurement, but weak in problem solving. (PX 9, S38828)

Associate Superintendent Moss conducted an analysis of Hoke students' test results and compared achievement on higher order and lower order thinking skills. In general, questions testing lower order skills (such as knowledge and basic comprehension) made up about 30 percent of the end-of-grade tests, and Hoke students did relatively well on such portions of the test. On upper level thinking skills (such as analyzing, synthesizing and evaluating), which make up the remaining 70 percent of the test, Hoke students did poorly.

The low performance of HCSS students contributes to the general economic malaise of Hoke County and helps explain the low socioeconomic status of the community as a whole. In a large, wealthy urban area, poor

performing at-risk students are "masked" by students who are in the majority and from middle and upper middle income families with higher incomes and higher levels of parental education.

Regardless of where the student lives, low academic performance results from the same types of problems that face a higher percentage of the children in HCSS than in a wealthier county with a higher economic base and higher level of middle and upper middle income families.

A large percentage of HCSS students leave the system without graduating. They simply drop out. The drop out factor is one indicator of whether or not a school system is providing its students with the opportunity to obtain a sound basic education. HCSS, however, is not alone in terms of having a drop-out problem. High School drop-outs have not obtained a Sound Basic Education and this problem exists statewide.

In addition to test results as an indicator of whether or not students are obtaining a sound basic education in Hoke, or any LEA, another output measure of any school system is the students who leave school without graduating. Children who drop out of school are much less likely than those who remain to have or to acquire the skills they need in languages, mathematics and sciences to function in a changing society. Students who drop out of school are much less likely to engage successfully in post-secondary education and vocational training. They also are less likely to have sufficient academic and vocational skills to compete on an equal basis with others in the workplace. This is true for dropouts regardless of where they live or the color of their skin.

In 1992, school dropouts across the nation earned an annual income slightly under \$13,000 on average, "about

one-third less than high school graduates. With respect to lifetime wages, the gap between dropouts and more educated adults is widening steadily as opportunities expand for higher-skilled workers and disappear for the less skilled. [Researchers have] estimated that, overall, the 1993 dropout pool will earn \$212,000 less than high school graduates, and \$812,000 less than college graduates. Dropouts comprise nearly half of the heads of households on welfare." PX 177,p.64.

85% of the juveniles in the North Carolina court system are dropouts. 82% of prison inmates are high school dropouts. According to the Department of Public Instruction, "The dropout rate is a key indicator of school success; unfortunately, the numbers indicate that we are continuing to lose too many students." The State Board has adopted as policy the goal of reducing the dropout rate in North Carolina.

The dropout rate is one factor that should be looked at in evaluating the performance of schools. Similarly, according to the State, one of the measures of whether the State is succeeding in its goal of "mastery of essential knowledge and skills by every student" is the "percentage of ninth grade cohort graduating from high school within 4 years."

HCSS' dropout rate has fluctuated substantially from year-to-year in the years beginning 1988-89, with a high of 5.99 and a low of 2.50. In 1997, the dropout rate per 100 students among Native American students in Hoke County was 5.51%, compared to 3.61% countywide and 3.88% statewide. Tona Jacobs, principal of South Hoke Elementary School, testified that these figures are consistent with her observations in Hoke County.

The retention rate in Hoke County is extremely low. The retention rate compares the number of high school

graduates with the ninth grade enrollment four years earlier. In Hoke County in the mid-1990s, approximately 41% of those entering the 9th grade graduated from high school four years later. Statewide, in the same period, over 60% of 9th grade students graduated from high school four years later. HCSS' 41% retention rate was the worst in the State. As one high school teacher observed, students who make it to the senior level are survivors; he estimated that only about half of a freshman class make it to their senior year. T. 11/15, pp. 195-96 (Keim).

HCSS' dismal retention rate is explained in part by the fact that a great number of HCSS students are not well prepared for high school and come from families with low parental education and poor socioeconomic status. Students who do not do well in the early grades are more likely than other students to later drop out of school. T. 9/17, p. 325 (Moss). The State has found retention rates (keeping children in school) a critical component of a sound basic education. If a student drops out of high school, that child has not obtained the quantitative goals of a sound basic education defined in **Leandro**.

A low high school retention rate also results in an undereducated work force. T. 9/15, p. 99 (Moss). As Bernice McPhatter, the county manager of Hoke, testified, the high drop out rate in Hoke County has hampered county industrial recruitment efforts. Employers do not flock to counties where a great number of potential job holders are functionally illiterate and poorly educated. This same principle applies in every county in North Carolina, especially those that are poor, rural and starving for decent paying industrial jobs.

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".

The failure of large percentages of HCSS students to complete high school not only results in those children who leave having failed to obtain a sound basic education, but is also evidence of a systematic weakness in the HCSS in meeting the needs of many of its students. In addition, many of those who stay in school and graduate have not obtained a sound basic education. This is evidenced by the number of HCSS graduates who do poorly in the work force and in higher education.

A disproportionate number of HCSS are poorly prepared for employment and for post-secondary education which is evidence that they have not obtained a sound basic education.

"For purposes of our Constitution, a 'sound basic education' is one that provides the student with at least:

- sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training***
- 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.

Post High School employment.

In addition to the dropouts, many of HCSS students who stay in school and graduate, as many of their counterparts throughout North Carolina, have not

obtained a sound basic education as defined by ***Leandro in that they are poorly prepared to compete on an equal basis in gainful employment and further formal education in today's contemporary society.***

Evidence of this can be gleaned, not only from ABC results, but from "output" evidence relating to the performance of HCSS graduates in the area of employment and post high school education. Plaintiffs introduced evidence regarding HCSS students who sought employment after leaving high school and HCSS students that pursued further education at a community college or in the University of North Carolina ("UNC") system.

In 1994, the North Carolina Education Standards and Accountability Commission stated, "The United States is in transition from an industrialized society to a technological, information-based society, a transition that is having a profound impact on the American economy. American business is finding it progressively more difficult to compete in the global marketplace against its European and Asian counterparts. One reason, business leaders contend, is that our high school graduates lack adequate mathematics, science, language arts, information processing and problem-solving skills for workplace success. Unskilled labor is no longer a valued commodity in this country . . . [T]he number of jobs for unskilled workers has dropped from a high of 60% in 1950 to a projected 15% in 2000." ***It is precisely this transition that the Supreme Court addressed in describing the qualitative components of the sound basic education. Listening to the clickety clack of the looms in a textile mill is a thing of the past in North Carolina. A high school diploma has to mean something substantial in terms of what the student has learned and the skills he or she has obtained in the education process. Hoke County's employers testified that HCSS graduates lack these skills.***

Evidence from Hoke County's employers demonstrated that many HCSS graduates lack the skills that local employers need. Several local business people responsible for hiring and training employees in Hoke County testified that many students coming from the Hoke County public schools are not qualified to perform even basic tasks that are needed for the jobs available.

The president and owner of a farm services company in Hoke County (who was also chairman of the Hoke Economic Development Commission) testified that most of his job applicants come from HCSS, and they generally lack the necessary reading comprehension skills. These employees must be able to read labels on products to avoid harming crops. The employees also need to be able to use basic math concepts, such as dividing by a percentage, in order to supply the proper fertilizer mix. New employees from the HCSS often lack these necessary math skills and must be specially instructed.

For purposes of the North Carolina Constitution, a "sound basic education" is one that provides the student with at least "sufficient ability to read, write and speak the English language and a sufficient knowledge of history, fundamental mathematics and physical science to enable to student to function in a complex and rapidly changing society." **Leandro**

The human resources manager at Burlington Industries in Hoke County explained that even for entry level jobs, Burlington sought employees who could work their way up into more technical jobs. Potential employees need communication skills, as well as problem solving and analytical skills.

The training manager at Burlington testified that employees at the plant needed to be skilled in reading with understanding, because Burlington needed persons

with such skills to stay competitive. As the training manager for Burlington explained, the machinery used today is much more complex than it used to be. Also, employees at Burlington today use computers. Thus the skill level required of employees is higher than in former times.

Many new employees hired at Burlington in Hoke need to be taught basic skills. The majority of workers beginning at Burlington in Hoke are below the 10.9 grade level, which is the level that Burlington aims for. Burlington has tried to address this problem in Hoke by teaching reading, math, and computer literacy skills itself in a computer based learning program called REACH. T. 9/27, pp. 35-37 (Chesnutt).

Most of the Burlington employees who enter the REACH program to learn basic skills are HCSS graduates. Graduates of the REACH program include 178 Hoke High School graduates. 26% of those Hoke High students tested at below the seventh grade level when they began the REACH course, and 67% tested at the ninth grade level or below. This is not surprising to the Court based on HCSS students performance on the ABC tests.

The average age of REACH participants is 30 to 35 years old. In order to graduate from the REACH program, Burlington employees must reach the reading and math skill levels of grade 10.9 or better.

The director of the REACH program at Burlington testified that a sample of Burlington employees in Hoke was given a test of adult basic education. In vocabulary, 60% of the employees tested were below the 8.9 (eighth grade, ninth month) level, and for math, 79% percent were below the 8.9 grade level. As this same instructor testified, there was an equivalent level of test performance found among employees at Unilever, another major employer in Hoke County.

While this evidence is interesting as historical background, it is not surprising given the lack of any meaningful accountability system in place in North Carolina before the adoption of the ABC's program. It is also evidence that corroborates the fact that students who come from households where the parent(s) have a low level of education perform less well in school. Based on this, one would expect the children of these functionally illiterate adults to be at-risk in school and on track to likewise fail to obtain a sound basic education. This is not limited to Hoke County's population because it is a statewide problem for education today. With the loss of old style manufacturing jobs to NAFTA, employers who remain in North Carolina expect their employee pool to be up to date and ready to go to work in today's technical workforce.

In this regard, the qualitative component of a sound basic education that provides the student with at least sufficient academic and vocational skills to enable the student to compete on an equal basis with others in ***gainful employment in contemporary society really means something to Hoke County's employers.***

Unilever, one of the largest employers in Hoke County, operates a plant that produces deodorant, shampoo, and other personal care products. Unilever employees need technical skills, because production lines are high-speed computer-run lines. As a member of the human resources staff testified, Unilever hired approximately 25 new employees in Hoke from January to September, 1999. Although Unilever had received applications from students who have been to Hoke High School, it had not hired any Hoke graduates in 1999 at the time of trial. This is because many of the Hoke applications revealed the applicants' poor writing skills and inability to follow instructions. As a result the HCSS graduate applicants were not able to

compete on an equal basis for gainful employment in contemporary society.

This is true even where hatching turkeys is concerned. The human resources manager of Tar Heel Turkey Hatchery, a company that produces poults (baby turkeys) in Hoke County, testified that the company needs workers with reading, writing and math skills. Some of their jobs require the employees to perform calculations of percentages with regard to medications and vaccines. Some jobs require computer knowledge. In the previous year before the trial, of the 27 applications received from former students of the HCSS, many were incomplete and poorly spelled, and only one Hoke student was hired. Many of the company's 82 employees from HCSS are extremely weak in reading.

This problem is not limited to Hoke County. Any student who has failed to obtain the academic and vocational skills necessary to enable the student to apply for and obtain a decent job is at-risk in today's society.

This outside evidence corroborates the ABC testing data and other evidence relating to HCSS student performance. The Court notes, however, that the employee educational skill level requirements of companies such as Burlington, Unilever, Tar Heel Turkey Hatchery and the agricultural supply business are not limited to Hoke County businesses, but are the same or more rigorous with employers throughout North Carolina. High school graduates from Wake and Mecklenburg Counties that have not performed at grade level or above and thus, have not obtained a sound basic education, face the same employment barriers as functional illiterates in Hoke or other small poor counties with a high school degree that lacks a sound basic education as its foundation. However, the deficiencies in students that have failed to obtain a sound basic education by the time they graduate from

high school are not limited to those who elect to go into the work force upon graduation. The failure to obtain a sound basic education negatively impacts and impedes the student who elects to compete in further formal education such as community college or the university system.

HCSS graduates are generally not well prepared to go on to community college or into the university system.

According to the State, one of the measures of whether the State is succeeding in its goal of "mastery of essential knowledge and skills by every student" is the "percentage of students needing remediation at the post-secondary level." In this respect, evidence of how HCSS students do when they go into the community college and the university system is relevant to whether or not they have obtained a sound basic education at HCSS.

The performance of HCSS students in the community college system evidences a lack of preparation in high school and the lower grades. Of the 1996 HCSS graduates enrolled in North Carolina community colleges in 1996-97, 55% were enrolled in one or more developmental (i.e. remedial) courses. 40% of the HCSS were in "developmental English" and 40% were in regular English. 40% of HCSS graduates were in "developmental mathematics," while only 27.5% were in regular mathematics. Developmental Math is required if a student scores below college level on the Math portion of the ASSET placement test.

In addition, 45% HCSS graduates in community college were taking "developmental reading." Dr. Jaeger found these results consistent with the ASSET test results and other indications of the need for remedial course work after high school graduation. The average grade in remedial reading for those 1996 HCSS graduates who took that course in the NC Community College system was

1.8 on a 4 point scale. This is equivalent to a D+. The average grade in remedial math for 1996 HCSS graduates taking remedial math in the State Community College system in 1997 was 2.1. For HCSS graduates in the system that year the average grade in regular math was 1.8 and in science, 1.8. In short, the grades of HCSS graduates attending community college in remedial and other courses indicate that those students were not adequately prepared to perform at the community college level.

Because of this, it should come as no surprise that among those students from HCSS attending colleges in the UNC system, the percentage taking remedial courses is much higher than the state average. 30.7% of HCSS graduates entering UNC campuses in the fall of 1997 had to take remedial courses. HCSS' rate was double the (15.3%) rate of students from all North Carolina high schools who were required to take remedial courses in college.

22.5% of HCSS graduates entering the UNC system as first time freshmen in the fall of 1997 were placed in remedial math. This is compared to a rate of 14.5% of all N.C. public high school graduates entering the UNC system in the fall of 1997.

29.8% of HCSS graduates entering UNC campuses in the fall of 1996 had to take remedial courses as compared to 16.3% of students from all N.C. public high schools. Of the HCSS graduates entering the UNC system as first time freshmen in the fall of 1996, 10.7% were placed in remedial English as compared to 5.5% of all N.C. public high school graduates entering the UNC system as first time freshmen.

The high rate of students taking remedial courses is costly to the system, as well as to the individuals. The General Administration of UNC has estimated that "approximately \$1.4 million was spent on mathematics

remediation in the University of North Carolina in 1995-1996."

The State has agreed that in determining whether an individual school system is providing a sound basic education, it is relevant to consider college admission and performance data and whether students graduating from that system need remediation in order to do postsecondary education work.

Forty-seven of HCSS 235 graduates in 1996 enrolled the next fall at a UNC campus, a 20% rate. Statewide, approximately 29% of all NC high school graduates that year enrolled at a UNC campus that fall. Three UNC institutions enrolled the largest numbers of Hoke students from the graduating class of 1997: Fayetteville State University (7), North Carolina A&T (9) and UNC-Pembroke (9).

In general, UNC institutions make admission decisions based on an assessment of a student's high school record. Factors to consider include grade point average, class rank, advanced courses taken, SAT or ACT scores, extracurricular activities, counselor recommendations and, in some cases, essays.

Of the HCSS graduates who enrolled as first year freshmen at a campus of the University of North Carolina system in the fall semester of 1997, 2.1 percent entered with advanced placement in English. Of all North Carolina public high school graduates entering the UNC system that fall, 11.1% had advanced placement in English. For students enrolling in 1996, the percentage of all North Carolina public high school students with advanced placement in English was 12.2% as compared to HCSS students 6.4%.

Among those enrolling as first time freshmen at a UNC system campus in the fall of 1997, the percentage of HCSS graduates placing in calculus (or a higher math

course) was 6.2%; for all N.C. public high school graduates enrolling as first time freshmen at a UNC system campus that fall, 24.7% placed in calculus or a higher level math course. The prior year, the percentage of students in calculus or above for N.C. public high school students was 23.6% as compared to 8.6% for HCSS.

For all N.C. public high school graduates entering the UNC system as first time freshmen in the fall of 1996, 6.7% enrolled in college honors programs. None of the 47 HCSS graduates who entered the UNC system as first time freshmen enrolled in honors courses.

Students from all N.C. public high schools enrolled in the UNC system in 1996 achieved an average college course grade in biology of 2.2. In comparison, HCSS graduates achieved an average course grade in biology of 1.6, equivalent to a D+. This statistic remained unchanged for 1997.

In 1997, students graduating from N.C. public high schools achieved an average UNC course grade in math of 2.3. In comparison, HCSS graduates achieved an average course grade in math of 1.6, equivalent to a D+. What does all this mean? It means that HCSS students who gain admittance to a UNC institution are far less likely to succeed than students from other high schools in North Carolina.

The Court notes that students from any N.C. LEA who have failed to obtain a sound basic education foundation in math, reading and other core subjects necessary to a successful college experience will have the same problems when and if they are accepted into a UNC institution. A lot of students in the same position as those from HCSS will do poorly and not complete the college experience either.

Of the HCSS graduates who entered a UNC institution as first time freshmen in the fall of 1995, 44.4% returned for their third college year with a GPA of 2.0 or better. Of all N.C. public high school graduates who entered the UNC system as first time freshman in 1995, 62.7% returned for their third year of college with a GPA of 2.0 or better.

Of the N.C. public high school graduates enrolled as first time freshmen in a UNC institution in the fall of 1997, 34.1% returned for a second year with a GPA of 2.0 or better and 30 credit hours or more. In comparison, only 16.4% of HCSS graduates in the UNC system returned for a second year with a GPA of 2.0 or better and 30 credit hours or more.

Of the HCSS graduates who entered the UNC system as first time freshmen in the fall of 1993, 31.3% graduated within 5 years. Of all the North Carolina public high school graduates who entered then, 51.6% graduated from the UNC system within 5 years.

The bottom line is that the performance of HCSS students in UNC system colleges and in community colleges shows that a great number of those students have not obtained the knowledge and skills needed to compete on an equal basis in post-secondary education and for gainful employment in today's job market.

The ABC's test data for HCSS, as well as the entire State of North Carolina, shows that HCSS is not alone or isolated in terms of the poor academic performance of great numbers of its at-risk students. Poor academic performance of at-risk populations of North Carolina public school students permeates throughout the State regardless of the "wealth" or local funding provided.

Based on the data available and the enormity of the at-risk problems throughout the State, the Court cannot close its eyes to this fact and look only at HCSS. The

poor academic performance of at-risk populations is too widespread to by-pass and put off for another day. Additionally, in trying to determine the issues in HCSS as applicable to the Leandro standard, comparisons with other student performance throughout the state on the same test instruments is necessary.

The evidence regarding Hoke County's economy and the socioeconomic status of its population, explains much about the low level of academic performance in the HCSS, and standing alone, constitutes strong and convincing evidence that a great many of the students in the HCSS have for many years failed to obtain the sound basic education guaranteed by the North Carolina Constitution and are continuing to fail to obtain a sound basic education. However, this evidence does answer the Court's inquiry in this case and that is whether or not it is the funding level of HCSS that is a major cause of the problem. To answer this question, the Court must look at the state as a whole in relation to HCSS. The best place to start is with the ABC test data, disaggregated to show how well or poorly other student populations are faring throughout the state.

Under *Leandro*, the Court is required to look at the "output" of student achievement, or the lack thereof, within the context of the ABC testing system of accountability.

Fortunately, the ABC system has been in place long enough for statewide and system-wide data to be available for the Court to look, not only at HCSS, but also to be able to analyze and compare HCSS' performance with those of other LEAs. After examining the test data, especially the test data contained in The Green Books for the years 1995-96 through 1999-2000, the Court is convinced that the problems with HCSS in terms of student achievement are not confined to Hoke and other poor rural counties, but are serious and widespread throughout North Carolina's public

school systems. Hoke County is not alone in poor student performance among the groups of at-risk populations.

Using state average test scores without looking at the at-risk and not at-risk populations performance in a disaggregated fashion answers little, if anything, at all.

What the Court has discovered in its analysis of at-risk student performance statewide should be of great concern to the citizens of North Carolina. It is of great concern to the Court and impacts on this case. As stated earlier, there is no question that there exists substantial student achievement average disparities between Hoke and other poor counties and the larger and wealthier counties. System average comparisons do not tell the story. Using averages masks the true picture with respect to at-risk students' academic performance within any school system, large or small, throughout the State of North Carolina.

Put another way, HCSS is composed of a majority of students that because of socioeconomic background are considered at-risk and this at-risk population in Hoke County is spread across all ethnic groups such that the overall systemwide "average" student performance without regard to race is below many of the larger, wealthier, urban counties where at-risk populations of students do not comprise the large majority of students from middle and upper socioeconomic strata.

In the larger or wealthier systems, the middle and upper middle income students are in the majority and thus, the system average is going to be higher. However, when the Court looks at the at-risk populations in the so-called wealthy and urban districts, regardless of size, the academic performance of the at-risk populations is strikingly similar, if

not worse, than the performance of certain segments of HCSS'at-risk student population.

The Funding Gap that exists between Counties in North Carolina, standing alone, does not explain the poor academic performance of at-risk students.

In this case, the plaintiffs and plaintiff-intervenors seek to have the Court require the State of North Carolina to pour more money into the Public Schools, poor and large urban, as the remedy for children who are not obtaining a sound basic education. The plaintiffs spend a considerable amount of effort and evidence on highlighting the funding disparities in Local Funding and alleged inadequacies in State funding as proof that the State is failing to provide a sound basic education to many of its children, especially those in poor counties and at-risk children in all counties.

While the evidence presented shows that there are considerable disparities in Local support between counties and school districts in North Carolina, the Court's careful examination of the results of student achievement in the ABC's program and other state testing programs reveals that with respect to at-risk student populations, the disparity in Local funding seems to make no discernible difference in the academic achievement of the at-risk populations in the individual districts as compared to a system by system "average" comparison.

Yes, it is certainly true that there are substantial student achievement gaps between the poorer North Carolina counties and the State's economically more advantaged counties. The Public School Forum of North Carolina provides an excellent in-depth analysis of the gaps that exist in the ability of small poor counties to spend money on their schools than that of larger, wealthier counties.

In 1998, the Public School Forum reported that: "The achievement gap between the wealthiest and poorest counties in end-of-grade testing is significant for grades 3-8 (reading and math), high school core courses, and SAT scores." PX 183, 1998 Local School Finance Study, p. 3. "The average percentage of students performing at or above grade level in grades 3-8 (composite score of reading and math, grades 3-8, and writing, grades 4 and 7) was 72.6% in the state's top ten wealthiest counties, but only 55.1% in the ten poorest counties. Over 62% of students in the top ten wealthiest counties achieved proficiency on high school core course tests as compared with only 39.7% of their peers in the ten poorest counties." 1998 Local School Finance Study, p. 3. The same financial trends continue to exist and widen each year according to the 1999 and 2000 Local School Finance Studies, (Pl. Ex. 489 (1999), and Court Exh C (2000)).

With all due respect to the Local School Finance Studies approach, using averages, without more, to point out system-to-system disparities in student performance and local funding does not solve the inquiry that the Court is required to make in this case. The information as to ranking, ADM, local spending and supplemental funding provided by the Local School Finance Studies is an invaluable tool for the Court in its work in this case but the Court has to scratch and dig beneath the "averages" in order to determine if the amount of Local funding support is a causative factor in determining whether students are or are not obtaining a sound basic education. To accomplish this job, the Court must look at student population performance within districts and on a statewide basis. Simply put, the Court must "disaggregate" test results in conducting its analysis. This approach is nothing new. One of the criticisms of the the ABCs program has been its failure to disaggregate test result data at the individual school

level "to be sure that all students in that school are being well-taught." T. 11/16, p. 16 (Robinson, former State Board Chair).

While the Court is not going to disaggregate test result data at the individual school level, the Court has exhaustively examined the disaggregated test data available in The Green Books to try and determine whether or not there are student populations throughout school systems and North Carolina that are not obtaining a sound basic education and if so, what apparent effect does the funding disparity between those school systems play in their lack of Level III achievement.

In this regard, it is important to compare at-risk student populations (such as Native Americans, black and Hispanics) with the majority group of students (white) to be sure they are "not being shortchanged." Jay Robinson.

Taking Jay Robinson to heart and looking at the statistics between ethnic groups, the record shows that there are in fact significant disparities across the State in the performance of different ethnic groups. "In 1998-99, 79.2% of White students in grades 3-8 were at or above Achievement Level III in reading and mathematics compared to 48.5% of Black students, 55.5% of American Indian students, and 55.6% of Hispanic students." PX 490, p. 8. See also the disparities which are set forth in the Court's decision in Section II.

The 1996-1997 Report of Student Performance in Writing issued by the Department of Public Instruction notes that a "wide discrepancy among students within a classroom, and across ethnic groups" is indicated in the test results. PX 60, p. 1. For that test, the State designated a score of 2.5 as the grade level standard. PX 60, pp. 2-3. At Grade 7, only 43.3% of

Hispanic students, 40.2% of American Indian students and 39.2% of black students scored at or above a 2.5. PX 60, p. 6. The results for Grade 4 indicated that only 41.9% of American Indian Students, 39.7% of Hispanic students and 36.7% of black students scored at or above a 2.5. PX 60, p. 5.

In analyzing ABCs results, the State has found that "[s]chools with historically higher percentages of students applying for free or reduced lunch tended to have lower performance composites (percent of students at or above grade level) on the ABCs." PX 159(H. Johnson) Schools in the low-performing category almost universally have very high FRPL populations. This finding by the State is corroborated by the performance of students in HCSS. However, there are larger, wealthier school districts that have larger numbers of students with free or reduced price lunch status than attend HCSS in all grades.

By way of example, in 1997-98 Wake County had an ADM of 89,074 children. Of the children attending the Wake County Schools, 31.7% were eligible for free or reduced price lunch, some 27,612 children and over 20,000 more children than enrolled in HCSS in 1997-98. New Hanover County had 21,211 children enrolled in 1997-98. Its free and reduced lunch eligible population was 34.4%, or 7,297 children. Again, more than the total number of students enrolled in HCSS. And, the number of students failing to perform at grade level in Wake County far outnumber the entire student population of HCSS. The same is also true for Charlotte Mecklenburg.

Accordingly, the Court will look not only at HCSS' ABC results but will compare HCSS results with some other school systems starting with its larger, wealthier neighbor, Charlotte Mecklenburg ("CMSS).

Comparison of Hoke County's student performance with Charlotte Mecklenburg (CMS) student performance in 1999-00, a snap shot - small and poor versus large and wealthy.

In looking at Hoke's student performance, a snap shot comparison of Hoke's student performance with students in a large, urban school district within its geographical region of North Carolina would be interesting, especially for comparison of students of similar race. Using logic and common sense, one would expect to see the academic performance of a large, school district to be substantially better than a poor rural school district such as Hoke, especially where the system's local funding per ADM is substantially higher. In 1998-99, Hoke had 63.7%(3,844) of its students participating in free and reduced price lunch. CMS had 39% (38,653) in free and reduced price lunch, ten times more students than were participating in Hoke.

Hoke County lies within the Southwest Region (RAC 3)of the State. The largest school district in that region is Charlotte-Mecklenburg ("CMS"), a huge urban district. In 1998-99 CMS had over 98,000 students, with a total local funding (excluding capital) per ADM of \$1,910 as compared to HCSS's 6,057 ADM and total local spending (excluding capital) per ADM of \$664 (which included Low-wealth funding). In 1999-00, CMS had an ADM in excess of 101,000. CMS had 36.4% (37,112) of its students participating in free and reduced price lunch. CMS' average teacher supplement was \$4,458.

In 1999-00, HCSS had an ADM of 6,132. HCSS had 60% (3,679) of its students participating in free and reduced price lunch. CMS' average teacher supplement was \$397.

In 1998-99,CMS' local funding support was ranked 5th in the State and HCSS' local funding support was ranked

99th in the State according to the 2000 Local School Finance Study, p.8. CMS' teacher average teacher supplement in 1998-99 was \$3,951 compared to HCSS' \$293. Looking at the difference in local funding per pupil (ADM) in terms of an average classroom of 26 students sharply points out the disparity in local funding support provided to students as between HCSS and CMS. The Court does not have the 1999-00 local funding support data.

The disparity in available local funds between HCSS and CMS using an average class size of 26 students is in excess of \$32,000 per classroom. If the amount of money spent per average classroom was the factor that made a difference in student performance, one would expect CMS's students to be light years ahead of HCSS's students. First, let's compare local spending per ADM and an average classroom for example.

Using as an example, an average class of 26 students, let's calculate the disparity in dollar amounts (local funding per ADM) between HCSS and CMS as applied to an average classroom of 26. One ADM equals one student. For each classroom of 26 students with \$1,910 per ADM, CMS provides local funding of **\$49,660** to the 26 students in the average classroom.

Compare this amount to an average classroom of 26 students in HCSS where the spending per ADM is \$664. HCSS provides local funding of **\$17,264** to the 26 students in the average classroom, **a spending difference of more than \$32,000 per average classroom.** For this huge amount of extra money per (classroom/ ADM), common sense would dictate that one would find much better student performance on EOG and EOC scores in CMS than in HCSS.

That is, if sheer dollars spent per ADM were being properly spent so as to make a difference in performance of students at-risk of academic failure. A

snap shot of the scores on certain EOC, EOG and Comprehensive tests in reading and math for CMS and HCSS in 1999-00 follows and what common sense would expect is not the case at all with the at-risk students in each LEA:

Since HCSS has a significant number of Native American Students, the Court will include their scores in comparison to CMS's Native American Students as well as the scores of black and white students by way of example for years 1999-00:

3rd Grade Reading and Math EOG scores.

In 1999-00, 39.2% of Hoke County's Native American students performed at or above grade level in reading and math in the third grade. 53.1% of CMS's Native American students performed at or above grade level in reading and math. ***Statewide 52.4% (787 out of 1,502) Native Americans scored at or above Level III-715 failed to achieve grade level proficiency.***

In 1999-00, 44.3% of Hoke County's black students performed at or above grade level in reading and math in the 3rd grade, which was higher than the State percentage of 43.7% and higher CMS' black 3rd grade students' performance at 42% at or above grade level. ***Statewide 30.6% (9470 out of 30,948) blacks scored at or above Level III- 21,478 failed to achieve grade level proficiency.***

In 1999-00, 72.4% of Hoke County's 3rd grade white students performed at or above grade level in reading and math which was lower than the state average of 76.2% and much lower than CMS's 3rd grade white students' average of 81.9% above grade level in reading and math. ***Statewide 61.1% (37745 out of 61,775)whites scored at or above Level III- 24,030 failed to achieve grade level proficiency.***

4th Grade reading and math

In 1999-00, 57.7% of Hoke County's Native American 4th grade students were at or above grade level in reading and math. 58.3% of CMS's Native American 4th grade students were at or above grade level in reading and math. The statewide average for this group was 57.6%. **Statewide 57.6% (801 out of 1,390) scored at or above Level III - 589 failed to achieve grade level proficiency.**

In 1999-00, 46.9% of Hoke County's 4th grade black students were at or above grade level in reading and math while 53.1% black 4th graders performed below grade level (Level III) in reading and math. Hoke County's black 4th graders outperformed CMS' black 4th graders in reading and math. Only 45.5 % of CMS's black 4th graders scored at or above grade level in reading and math while 54.5% scored below grade level. **Statewide 48.9% (14,505 out of 29,662) scored at or above Level III - 15,157 failed to achieve grade level proficiency.**

In 1999-00, 73.8% of Hoke County's white 4th graders scored at or above grade level in reading and math as compared to the statewide average of 79.6% of white 4th graders scoring at or above grade level in reading and math. CMS's white 4th graders scored at a 5.1% level of proficiency - 84.7% at or above level III. **Statewide 62.6% (38,960 out of 62,237) scored at or above Level III - 23,277 failed to achieve grade level proficiency.**

7th Grade reading and math

In 1999-00, 49.1% of Hoke County's Native American 7th grade students performed at or above grade level in reading and mathematics. 62.2% of CMS's Native American 7th grade students performed at or above grade level in reading. **Statewide 55.4% (794 out of 1,433) scored at**

or above Level III - 639 failed to achieve grade level proficiency.

In 1999-00, 50.7% of Hoke County's black 7th grade students performed at or above grade level in reading and mathematics compared to a statewide average for blacks of 50.5% in the 7th grade reading and math. 51.1% of CMS's black 7th graders scored at or above grade level in reading and math. **Statewide 50.5% (13,901 out of 27,526) scored at or above Level III - 13,625 failed to achieve grade level proficiency.**

In 1999-00, 73.4% of Hoke County's white 7th grade students performed at or above grade level in reading and math as compared to 81.0 % of white 7th graders statewide and 87.8% of white 7th graders in CMS. **Statewide 63.8% (38,277 out of 59,995) scored at or above Level III - 21,718 failed to achieve grade level proficiency.**

Algebra I EOC test in high school

In 1999-00, 50.8% of Hoke County Native American students performed at or above grade level on the Algebra I EOC test. In adjacent Scotland County, Native American students scored at a level of 89.7% at or above grade level. 51.9% of CMS's Native American students performed at or above grade level on Algebra I. **Statewide 52.1% (638 out of 1,224) scored at or above Level III - 586 failed to achieve grade level proficiency.**

In 1999-00, 48.5% of Hoke County's black high school students scored at or above grade level on the Algebra I EOC test compared to the state average of 48.0%. Sadly, only 29.8% of CMS's black high school students scored at or above grade level in Algebra I while 70.2% scored below grade level. (Only 938 black students out of 3,146 taking Algebra I in CMS scored at or above grade level). **Statewide 48% (11,835 out of**

24,656) scored at or above Level III - 12,821 failed to achieve grade level proficiency.

In 1999-00, 58.1% of Hoke County's white high school students scored at or above grade level on the Algebra I EOC test. CMS's white high school students scored at or above grade level at a rate of 70.6%. **Statewide 66.2% (39,500 out of 59,667) scored at or above Level III - 20,167 failed to achieve grade level proficiency.**

N.C. High School Comprehensive Tests in Reading and Mathematics (the test results are not part of the ABCs)

Another snapshot comparison for 1999-00 between HCSS and CMS is to look at the North Carolina High School Comprehensive Tests in Reading and Mathematics. The N.C. High School Comprehensive Tests are given at the end of the tenth grade. These tests assess the English Language Arts and Mathematical Competencies the typical student should master by the end of the 10th grade. These tests were first administered to North Carolina High School students in April, 1998. (The Green Book-1997-98, p. I, Def. 244) The scores are not part of the ABC accountability system. A review of the 1999-00 scores explains why the tests are not counted as part of the ABC's and explains why the DPI is trying to postpone giving a comprehensive high school test as a condition of graduation from high school in North Carolina for several more years. To corroborate this statement, the Court will include the Statewide Performance in addition to CMS and HCSS. The statewide percentage results for 1997-98 and 1998-99 are reported later in this decision.

Comprehensive Test Results in Reading at end of 10th grade-Statewide as well as CMS and HCSS

Statewide in reading only 61.7% of all students scored at or above Level III. 38.3% - 29,629 of all

students failed to score at grade level proficiency and thus, had not obtained a sound basic education in English Language Arts by the end of the 10th grade.

The American Indian score was 42.2% (57.8% below Level III); the black score was 39.4% (60.6% - 12,601 black students below Level III) and the white score was 71.6% (28.4% - 14,627 white students below Level III). 27,228 B&W 10th grade high school students scored below Level III and thus, had not received a sound basic education in English Language Arts by the end of the tenth grade.

HCSS' Native American students scored at 36.8% proficient (Level III or above) in reading while CMS's Native American students scored at 35.3% proficient.

HCSS' black students scored at 30.5% proficient in reading while CMS's black students scored at 37.1% proficient in reading.

HCSS' white students scored at 68.3% proficient in reading while CMS's white students scored at 78.1% proficient in reading.

Comprehensive Test Results in Mathematics at end of 10th grade- Statewide as well as HCSS and CMS.

Statewide in mathematics only 64.7% of all students scored at proficient (Level III or above). 35.3% - 27,308 students failed to score at grade level proficiency and thus, had not obtained a sound basic education in mathematics by the end of the 10th grade.

The American Indian percent proficient was 45%; the black percent proficient was 40.8% (59.2% -12,234 black students below grade level); the white percent proficient was 74.7% (25.3% -13,003 white students below grade level). As a result of these scores,

25,237 of the B&W 10th grade high school students had not received a sound basic education in mathematics by the end of the tenth grade.

HCSS' Native American students scored at 42.1% proficient. CMS' Native American students scored at 35.2% proficient in mathematics.

HCSS' black students scored at 40.1% proficient while CMS's black students scored at 38.1% proficient in mathematics.

HCSS' white students scored at 78.1% proficient while CMS' white students scored at 80.6% proficient in mathematics.

While the foregoing comparison only covers one year, similar results can be found for the previous years, including 1997-98, the first year in which the high school comprehensive tests in reading and math were given. While the percentages may vary somewhat, the trend remains the same-unacceptable.

Test scores (which are discussed throughout the Court's decision) are not, however, the only available output evidence. Plaintiffs offered testimony of a number of Hoke County public school administrators and teachers. These witnesses testified that many of their students were not performing at grade level and lacked essential skills. These witnesses, however, could be talking about any child in any classroom in the State of North Carolina who is not performing at grade level and lacked essential skills.

Many children in Hoke County begin their public schooling poorly prepared. Many children arrive at kindergarten not knowing what a book is or knowing their colors. One kindergarten teacher testified that every year, over half of her kindergarten students

cannot recognize or write their name and cannot hold a pencil, scissors or crayons because they do not have these things at home. Thus they lack skills and basic knowledge needed by kindergarteners. As explained in Section II of the Court's decision, this is not unique to Hoke.

As one Hoke third grade teacher testified, some Hoke students are not able to read when they arrive in the third grade. Those who do read have difficulty with comprehension, analyzing and problem solving. A student who cannot read when he enters third grade will not be reading at grade level at the end of the year, given the limited resources available. The same is true for any student in any county within North Carolina who is unable to read at grade level when he or she enters the third grade. See the Court's discussion in Section II of the decision dealing with At-Risk Children.

The performance problems do not stop in the 8th grade but continue to affect high school performance as well. This is true, not only in HCSS, but permeates the at-risk children in every system in North Carolina as the Statewide results show.

As one Hoke County high school biology teacher testified, many Hoke County high school students do not have the basic reading skills necessary to succeed in biology classes. Many students have difficulty reading the text and sounding out the biology vocabulary. High school students in Hoke often lack the critical thinking skills necessary to relate scientific concepts, as well as the basic math skills necessary to complete basic calculations. Those students also have difficulty reading and comprehending the questions on the state end-of-course tests. The same is true throughout North Carolina counties as shown by the performance of students on Algebra I, Physical Science, Biology, U.S. History and English I EOC tests, all

covering subjects that are needed for a student to achieve a sound basic education.

As one high school English teacher testified, some Hoke regular senior English students cannot read on a second-grade level. Many students cannot use vocabulary words correctly in a sentence, identify literary terms that they were taught in ninth grade, or come up with examples of concepts they previously learned. The same is also true throughout other counties in North Carolina judging by the large numbers of high school students who cannot achieve proficiency in reading and by the end of the tenth grade, or on the EOC tests.

A review of the major high school EOC tests for 1999-00 proves that this is not simply a Hoke County problem - it is a statewide problem, especially when looking at the sheer number of children who are failing to achieve proficient scores in high school EOC tests necessary for a sound basic education.

Biology EOC - 1999-00.

Statewide there were 80,549 students who took the EOC test in biology, a course required for high school graduation and a subject necessary for a sound basic education. Only 57.6% scored at Level III or above. Native Americans scored at 36.6% proficiency; blacks scored at 32.0% proficiency (68%-12,904 scored at Level II or below); whites scored at a 68.6% proficiency (31.4% - 16,934 scored at Level II or below); Hispanics scored at 44% proficiency. **The bottom line is that 42.4% - 34,153 students in high school in North Carolina failed to achieve a sound basic education in biology in the year 1999-00. Of those children failing to achieve a sound basic education in biology, 49.6% were white.**

English I EOC - 1999-00.

Statewide there were 93,434 students who took the EOC test in English I, a course required for high school graduation and a subject necessary for a sound basic education. Only 68.4% scored at Level III or above. Native Americans scored at 48.3% proficiency; blacks scored at 49.3% proficiency (51.7%-13,920 scored at Level II or below); whites scored at a 77.8% proficiency (22.2% - 13,414 scored at Level II or below); Hispanics scored at 51.7% proficiency. **The bottom line is that 31.6% - 29,525 students in high school in North Carolina failed to achieve a sound basic education in English I in the year 1999-00. Of those children failing to achieve a sound basic education in English I, 45.4% were white and 47.1% were black.**

Physical Science EOC - 1999-00

Statewide, there were 67,066 students tested in physical science, a subject necessary to achieve a sound basic education under **Leandro**. Only 57.1% scored at Level III or above. Native Americans scored at 32.4% proficiency; blacks scored at 33% proficiency (67%-13,350 scored at Level II or below); whites scored at 69.5% proficiency (31.5%- 13,436 scored at Level II or below); Hispanics scored at 42.6% proficiency. **The bottom line is that 45.1% - 30,247 students failed to obtain a sound basic education in physical science in 1999-00 in North Carolina. Of that number, 44% were white and 44% were black.**

HCSS and CMS EOC scores in physical science were well below the state average. Black students in CMS scored 25% proficient (75% did not obtain a sound basic education in physical science) and black students in HCSS scored 19.4% proficient (80.6% did not obtain a sound basic education in physical science). White students in CMS scored at 71.3%, less than a percentage point over the state average for whites and white

students in HCSS scored at 64.3%, five points below the state average for whites.

As one Hoke County teacher testified, many Hoke High School math students lack the critical thinking skills necessary to succeed in lower level math courses. For example, students do not understand examples of square footage of carpets, calculating sales tax, or the rise and fall of stock prices because they have never been exposed to any of these concepts. This is also true throughout other counties in North Carolina judging by the large numbers of students who cannot achieve proficiency in mathematics by the end of the tenth grade, or in Algebra I, or Algebra II.

Algebra I EOC - 1999-00

Statewide, there were 90,109 students tested in Algebra I, a course required for high school graduation. 68.9% scored at Level III or above. 31.1% scored below grade level. Native Americans scored at 52.1% proficient (Hoke 50.8%;CMS 51.9%); blacks scored at 48% proficient (52%- 12,821 failed to score at Level III); whites scored at 77.7% proficient (22.3% - 13,305 failed to score at Level III); Hispanics scored at 62.4% proficient; **The bottom line is that 28,024 high school students failed to obtain a sound basic education in Algebra I. Of that number 12,281 were black and 13,305 were white, a combined total of 25,586 B&W.**

Algebra II EOC - 1999-000.

In 1999-000 in Algebra II, there were 52,451 students participating in EOC tests for the course. 61.1% scored at Level III or above. 38.9%-20,403 students failed to score at grade level. For Native Americans the level of proficiency was 37.3%. HCSS' Native Americans scored at a level of 42.9%. For black students statewide the level of proficiency was 39.6%

(60.4% - 7185 were not proficient). HCSS' black students were 32.8% proficient. CMS' black students were 38.1% proficient. For white students statewide the level of proficiency was 70% (30% -11,239 were not proficient). HCSS' white students were 58.7% proficient. CMS' white students were 70.2% proficient, the state average for white students. **The bottom line is that 20,403 high school students (38.9%) failed to achieve a sound basic education in Algebra II.**

As a Hoke High School social studies teacher testified, many social studies students are not reading at grade level, and have difficulty grasping the subject matter because of their lack of vocabulary. This is also true throughout North Carolina as evidenced by the 1999-000 student performance on core high school courses such as Economics, Legal and Political Systems (ELP) and American History, all of which are part of the substantive sound basic education mandated by *Leandro*.

ELP Systems EOC - 1999-000.

Statewide, there were 78,992 students who were tested in ELP, a course required for high school graduation and the subject matter of which is necessary for a sound basic education under *Leandro*. 67.3% of all students scored at Level III or above. Native Americans scored at 41.9% proficiency (HCSS Native Americans scored at 50.0%); blacks scored at 45.9% (54.1% - 11,940 scored at Level II or below); whites scored at 77.6% proficiency (22.4%- 11,505 scored at Level II or below); Hispanics scored at 53.3% proficiency. **The bottom line is that 32.7% -25,830 students failed to obtain a sound basic education in ELP Systems in 1999-00 statewide. Of that number, 44.5% were white and 46.2% were black.**

HCSS black students scored at 55.2% proficiency. CMS black students scored at 39.2% proficiency (60.8% below

grade level); HCSS white students scored at 75% proficiency and CMS white students scored at 78.8% proficiency.

United States History EOC- 1999-00 *Leandro* requires a "sufficient fundamental knowledge of ..history"

Statewide, there were 70,930 students who were tested in U.S. History, a fundamental knowledge of which is required under the ***Leandro*** standard for obtaining a sound basic education. In an almost unbelievable display of ignorance, only 46.9% of N.C. High School students scored at a proficient level. **53.1% - 37,664 students failed to show that they had achieved a sound basic education in U.S. History.** 27.7% of American Indians scored at Level III (Hoke 14.3%); 24.6% of blacks scored at Level III (75.4%- 14,696 scored below Level III); 56.5% of whites scored at Level III (43.5% -20,598 scored below Level III); 38.6% of Hispanics scored at Level III; (Hoke 42.9%);(CMS 31.1%)

The testimony of Hoke teachers regarding poor student performance in high school is corroborated by the EOG and EOC scores for Hoke County. However, as the record clearly and unequivocally shows, poor student performance (by at-risk children) exists not only in Hoke County and CMS but in all counties statewide as the test scores for 1999-00 and prior years show.

In this regard, the Court has compiled data from the Green Books for the years 1995-66 through 1999-00 that shows 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 puts a number by each percentage of student performance per ethnic group for those who have failed to achieve grade level. The data clearly

shows that for each year and for each course, although there is incremental improvement over time, that the numbers of black and white students individually at-risk in these courses (by failing to achieve grade level) are almost the same in each subject. The bottom line is that the numbers of at-risk students are about equal, as between blacks and whites, while the percentages vary due to the total numbers of students in each ethnic group. The numbers of children not achieving proficiency is disturbing.

Number of Students Scoring Below Grade Level (Level III) By Race Statewide In Reading & Math in Grade 8

| 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%) |

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%) |

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%)

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%) |

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%) |

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%) |

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%) |

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.

The foregoing analysis is a highlight. A thorough review of the data contained in The Green Book for each year from the 1995-96 edition to the 1999-2000 edition, shows that black, Hispanic, and Native American students in North Carolina consistently score lower than Asian and White students on EOC and EOG tests. The same is true for the Comprehensive Reading and Mathematics tests that have been given at the end of the tenth grade since 1998.

The same disparities that appear in the state tests appear on the SAT results.

The same also applies to SAT tests. PX 478, p. 4. For example, black SAT test-takers in North Carolina trailed the State average in 1999 by 149 points and trailed white test-takers by more than 200 points. PX 478, pp. 3-4. Black, Native American, Asian, and white students in North Carolina also all consistently score lower than their counterparts nationally on SAT tests. Of these groups, North Carolina's black SAT test-takers actually are closest to their national counterparts -- but still trailed by a full 19 points in 1999. PX 478,

After examining the data in The Green Book and data relating to Local funding efforts, teacher supplements and other evidence, it appears to the Court that the amount of Local funding effort does not have much, if any impact, on the poor student performance of those children who are consistently failing to achieve proficiency (Level III or above) regardless of race.

One would, of course, expect the opposite but the comparison of CMS and HCSS shows that both have high percentages of at-risk students not achieving academic success. One comparison is not enough.

Therefore, the Court has compiled the data from 3 counties - Orange, Harnett and Wake - for the past 3 years. Orange and Wake are in the top 20 counties in terms of Local funding support while Harnett (although similar in numbers of students to Orange) ranks next to HCSS, at the very bottom. The data there shows the same disturbing trend in the performance of at-risk students as in HCSS and CMS. The Court does not have the ADM Local funding data for 99-00.

COMPARISON OF STUDENT PERFORMANCE ON ABC'S IN ORANGE/CHAPEL HILL/CARRBORO; HARNETT & WAKE FOR 1997-98; 1998-99 & 1999-00 WITH THE STATEWIDE AVERAGE PERFORMANCE.

ORANGE COUNTY - NUMBER 1 IN LOCAL FUNDING 97-98 & 98-99

Orange County has been number 1 in North Carolina in actual effort in local funding support to its school systems for 1997-98 and 1998-99.

In 1997-98, Orange County had an ADM of **14,517**. Its spending per ADM (excluding capital) was \$2,391 (\$62,166 per average classroom of 26 students). Orange County's two LEAs paid their teachers an average supplement of \$3,052 (Orange County) and \$3,025 (Chapel Hill/Carrboro). Orange County had 24.6%(1,484) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 16.9% (1,382) participation in free and reduced lunch.

In 1998-99, Orange County had an ADM of **14,892**. Its spending per ADM (excluding capital) was \$2,608 (\$67,808 per average classroom of 26 students). The average teacher supplement was \$3,250 and \$3,075,

respectively. Orange County had 26.3% (1,620) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 16.3% (1,377) participation in free and reduced price lunch.

In 1999-00, Orange County had an ADM of **14,619**. The average teacher supplement was \$3,872 (Orange Co.) and \$4,418 (Chapel Hill). Orange County had 25.8%(1,672) of its students participating in free and reduced price lunch. Chapel Hill/Carrboro had 18% (1,609) participation in free and reduced price lunch.

HARNETT COUNTY - NUMBER 97TH & 98TH IN LOCAL FUNDING 97-98 & 98-99 But comparable in numbers of students to Orange County.

Harnett County has been in the bottom in North Carolina in actual effort in local funding support to its school system for 1997-98 (**97th**) and 1998-99 (**98th**). HCSS has been the system just below Harnett in each of those years. Harnett County and Orange County have almost the same number of ADM. In 1997-98, Harnett County had an ADM of **14,417**. Its spending per ADM (excluding capital) was \$608 (\$15,808 per average classroom of 26 students) identical to HCSS in the same year. Harnett paid its teachers an average supplement of \$756. Harnett had 47.6% (7,177) of its students participating in free and reduced price lunch.

In 1998-99 Harnett County had an ADM of **15,414**. Its spending per ADM (excluding capital) was \$696 (\$18,096 per average classroom of 26 students). Harnett paid its teachers an average supplement of \$956. Harnett had 46.8% (7,201) of its students participating in free and reduced price lunch.

In 1999-00 Harnett County had an ADM of **15,932**, with 47.5% (7,568) of its students participating in free and reduced price lunch. Harnett paid its teachers an average supplement of \$1,270 in 1999-00.

WAKE COUNTY -NUMBER 15TH AND 17TH IN LOCAL FUNDING AND SECOND LARGEST SYSTEM IN THE STATE BEHIND CMS - CONSIDERED TO BE ONE OF THE BEST ACADEMIC LARGE SYSTEMS IN NORTH CAROLINA.

Wake County has been in the top 20 counties in North Carolina in actual effort in local funding support to its school system for 1997-98 (15th) and 1998-99 (17th). In 1997-98, Wake had an ADM of **89,704**. Its spending per ADM (excluding capital) was \$1,302 (\$33,852 per average classroom of 26 students). Wake paid its teachers an average supplement of \$3,572. Wake had 22.3% (19,954) of its students participating in free and reduced price lunch.

In 1998-99 Wake County had an ADM of **92,566**. Its spending per ADM (excluding capital) was \$1,409 (\$36,634 per average classroom of 26 students). Wake paid its teachers an average supplement of \$4,226. Wake had 21.7% (19,658) of its students participating in free and reduced price lunch.

In 1999-00 Wake County had an ADM of **102,646**. Wake paid its teachers an average supplement of \$4,485. Wake had 22% (22,630) of its students participating in free and reduced price lunch.

Wake's local funding effort per ADM for each year was more than twice that of Harnett's per ADM about one half of Orange County's local funding effort per ADM. The Chapel Hill/Carrboro school is located squarely in the middle of the University of North Carolina community. Its student scores should be higher due to the level of parental education in the community.

The Court, using The Green Book, has compared the 4 school systems' for three years (97-98;98-99 & 99-00). The comparison sets out the percentage of black (B) and (W) white students who scored **at or above grade level**

indicating that they were obtaining a sound basic education in those subjects (Level III or Level IV) for each year in the following areas: (a) EOG in Reading and Math for grades 3 and 8-the percentage is the number of students who have performed at grade level in **both** reading and math; (b) The N.C. Comprehensive Tests in Reading and Mathematics given at the end of the 10th grade; (c) High School EOC tests in 4 core subjects that are all components of a sound basic education and high school education to wit: English I, Algebra I, ELP and Biology(98) /Physical Science (99/00). **DUE TO SPACE CONSIDERATIONS THE COURT IS ROUNDING OFF THE PERCENTAGE TO THE NEXT HIGHEST NUMBER.**

What do the numbers show: By way of example. Take the U.S. History EOC test for 99-00 (History is another component of a sound basic education) in the Orange County Schools. The % of black students scoring at Level III or above was 48.1% (this means that **51.9% failed to score at grade level** and thus, had not obtained a sound basic education in U.S. History). The % of white students scoring at Level III or above was 62.1% (this means that **37.9% failed to score at grade level** and thus, had not obtained a sound basic education in U.S. History). To interpret the data set out below, all one has to do is understand the foregoing. **ON THE CHART THE NUMBER 51.9% IS ROUNDED UP TO 52% AND 37.9% IS ROUNDED UP TO 38%.**

Remember, the **percentages shown are the percentages of children, black and white, who scored proficient-grade level or above-on the EOG/EOC tests in the subjects shown.** Following each comparison, the Statewide Performance Average of Black and White Students in that subject area for that year is set out.

1997-98

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | | ALG I | | ELP | | BIOL | | ENG I | | |
|--------|--------------|----|--------------|----|-----------------------|----|---|------|-------|----|-----|----|------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W | |
| ORANGE | 38 | 68 | 49 | 85 | 40 | 70 | | 53 | 74 | 80 | 93 | 52 | 76 | 42 | 77 | 50 | 76 |
| CH/CA | 39 | 90 | 62 | 97 | 41 | 91 | | 49 | 91 | 42 | 91 | 43 | 94 | 34 | 93 | 40 | 94 |

| | | | | | | | | | | | | | | | | |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| HARNETT | 39 | 66 | 54 | 79 | 26 | 56 | 27 | 53 | 42 | 66 | 53 | 82 | 28 | 63 | 47 | 70 |
| WAKE | 38 | 83 | 52 | 90 | 42 | 80 | 49 | 91 | 53 | 84 | 49 | 85 | 43 | 85 | 45 | 83 |

1997-98. R=reading M=math Statewide Results-Green Book

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | ALG I | | ELP | | BIOLOGY | | ENG I | | |
|-------|--------------|----|--------------|----|-----------------------|----|----|-------|----|-----|----|---------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W |
| State | 39 | 73 | 50 | 81 | 35 | 65 | 32 | 65 | 40 | 71 | 46 | 77 | 33 | 71 | 40 | 72 |

1998-99

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | ALG I | | ELP | | PHYS SC | | ENG I | | |
|---------|--------------|----|--------------|----|-----------------------|----|----|-------|----|-----|----|---------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W |
| ORANGE | 43 | 78 | 41 | 81 | 41 | 70 | 35 | 74 | 56 | 77 | 51 | 79 | 26 | 70 | 40 | 78 |
| CH/CA | 41 | 92 | 60 | 97 | 43 | 94 | 47 | 93 | 46 | 88 | 47 | 94 | 32 | 86 | 55 | 95 |
| HARNETT | 50 | 73 | 55 | 79 | 37 | 69 | 37 | 68 | 48 | 67 | 60 | 82 | 29 | 68 | 47 | 70 |
| WAKE | 43 | 84 | 52 | 91 | 50 | 84 | 49 | 85 | 57 | 85 | 47 | 84 | 32 | 74 | 48 | 85 |

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

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | ALG I | | ELP | | PHYS SC | | ENG I | | |
|-------|--------------|----|--------------|----|-----------------------|----|----|-------|----|-----|----|---------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W |
| State | 42 | 75 | 51 | 82 | 39 | 72 | 37 | 72 | 46 | 74 | 47 | 77 | 32 | 68 | 45 | 75 |

1999-00

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | ALG I | | ELP | | PHYS SC | | ENG I | | |
|---------|--------------|----|--------------|----|-----------------------|----|----|-------|----|-----|----|---------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W |
| ORANGE | 37 | 80 | 57 | 81 | 46 | 73 | 47 | 78 | 67 | 81 | 41 | 81 | 19 | 59 | 43 | 83 |
| CH/CA | 44 | 93 | 64 | 98 | 36 | 96 | 51 | 95 | 48 | 94 | 60 | 95 | 43 | 89 | 63 | 98 |
| HARNETT | 50 | 76 | 62 | 80 | 35 | 66 | 43 | 80 | 52 | 67 | 56 | 77 | 37 | 67 | 54 | 76 |
| WAKE | 45 | 89 | 60 | 92 | 50 | 86 | 50 | 87 | 60 | 88 | 51 | 89 | 36 | 79 | 53 | 90 |

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

| | GRADE 3(R&M) | | GRADE 8(R&M) | | NC COMPREHENSIVE TEST | | | ALG I | | ELP | | PHYS SC | | ENG I | | |
|-------|--------------|----|--------------|----|-----------------------|----|----|-------|----|-----|----|---------|----|-------|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | B | W |
| State | 44 | 77 | 56 | 85 | 40 | 72 | 41 | 75 | 48 | 78 | 46 | 78 | 33 | 70 | 50 | 78 |

In anticipation of the carping that would occur (although the Court has examined The Green Book data

for each district and county in N.C.) if the Court only makes a 5 county, 6 district comparison (the Court has already compared CMS and HCSS earlier in this decision which adds 2 more systems totaling 5 counties), the Court has decided to look at 8 more LEAs throughout the State over the last two years, 1998-99 & 1999-00. The Court does not have the per ADM funding data 1999-00.

The Counties in which the LEAs are located are from the top, middle and bottom in terms of 97-98 & 98-99 Local funding per ADM and average teacher supplements (98-99&99-00) In addition, the free and reduced price lunch participation will be listed for each LEA for 98-99 & 99-00. To make the comparison complete, the Court has added Charlotte-Mecklenburg and Hoke to the comparison for 98-99 and 99-00.

DURHAM COUNTY. Durham County ranked Number 3 in 97-98 with Local funding per ADM in the amount of \$1,941 (28,937 students). In 98-99 Durham ranked Number 4 in Local Funding per ADM in the amount of \$2,025 (29,270 students). In 98-99 Durham's average teacher supplement was \$3,078 and Durham's free and reduced price lunch participation was 41.2% (11,749 students). In 99-00, Durham had an ADM of 28,740. Durham's average teacher supplement was \$4,009 and Durham's free and reduced price lunch participation was 40.0% (11,487 students).

FORSYTH COUNTY. Forsyth County (Winston-Salem Forsyth LEA) ranked Number 7 in 97-98 with Local funding per ADM in the amount of \$1,696 (42,120 students). In 98-99 Forsyth ranked Number 8 in Local funding per ADM in the amount of \$1,645 (43,103 students). In 98-99 Forsyth's average teacher supplement was \$3,015 and Forsyth's free and reduced price lunch participation was 35.2% (15,186 students). In 99-00, Forsyth had an ADM of 43,363. Forsyth's average teacher supplement was \$2,809 and Forsyth's free and reduced price lunch participation was 36.8% (15,938 students).

GUILFORD COUNTY. Guilford County (Greensboro) ranked Number 10 in 97-98 with Local funding per ADM in the amount of \$1,551 (59,120 students). In 98-99 Guilford ranked Number 11 in Local funding per ADM in the amount of \$1,555 (60,409 students). In 98-99, Guilford's average teacher supplement was \$3,033 and Guilford's free and reduced price lunch participation was 38.8% (23,811 students). In 99-00, Guilford had an ADM of 62,856. Guilford's average teacher supplement was \$3,001 and Guilford's free and reduced price lunch participation was 39.3% (24,712 students).

RANDOLPH COUNTY. Randolph County ranked Number 92 in 97-98 with Local funding per ADM in the amount of \$697 (20,014 students, including Asheboro City). Randolph County received Low Wealth Funding in 98-99. In 98-99 Randolph ranked Number 94 in Local funding per ADM in the amount of \$734 (15,763 students excluding Asheboro). In 98-99, Randolph County received Low Wealth Funding. Randolph County's average teacher supplement was \$504 and Randolph County's free and reduced price lunch participation was 27.9% (4,394 students). In 99-00, Randolph County (excluding Asheboro City Schools) had an ADM of 17,008. Randolph County's average teacher supplement was \$499 and Randolph County's free and reduced price lunch participation was 26.4% (4,491 students).

NEW HANOVER COUNTY. New Hanover County (Wilmington) ranked Number 11 in 97-98 with Local funding per ADM in the amount of \$1,475 (21,211 students). In 98-99, New Hanover ranked Number 9 in Local funding per ADM in the amount of \$1,643 (21,101 students). New Hanover's average teacher supplement was \$2,534 and New Hanover's free and reduced price lunch participation was 36% (7,577 students). In 99-00, New Hanover had an ADM of 25,235. New Hanover's average teacher supplement was \$2,535 and New Hanover's free and reduced price lunch participation was 29.8% (7,530 students).

ROBESON COUNTY. Robeson County ranked Number 96 in 97-98 with Local funding per ADM in the amount of \$664 (23,274 students). Robeson County receives Low Wealth Funding each year. In 98-99, Robeson ranked Number 96 in Local funding per ADM in the amount of \$709 (23,484 students). Robeson's average teacher supplement was \$1,375 and Robeson's free and reduced price lunch participation was **73.3%** (17,746 students). In 99-00, Robeson had an ADM of 24,388. Robeson's average teacher supplement was \$1,250 and Robeson's free and reduced price lunch participation was **73.6%** (17,954 students).

HALIFAX COUNTY (does not include Roanoke Rapids City or Weldon City data on performance, or ADM, or supplement) Halifax County ranked Number 65 in 97-98 with Local funding per ADM of \$854(6,517 students). Halifax County receives Low Wealth Funding. In 98-99, Halifax ranked Number 64 in Local Funding per ADM in the amount of \$925 (6,328 students). Halifax's average teacher supplement was \$165 and Halifax's free and reduced price lunch participation was **82.6%** (5,225 students). In 99-00, Halifax had an ADM of 6,306. Halifax's average teacher supplement was \$450 and Halifax's free and reduced price lunch participation was **82.0%** (5,170 students). The Court notes that the overwhelming majority of the students in the Halifax County system are black, a trend that is not unusual in the poorest Northeast N.C. Counties (those with free and reduced lunch participation over 70%). Those counties are Bertie, Hyde, and Washington.

PITT COUNTY. Pitt County ranked Number 53 in 97-98 with Local funding per ADM of \$895 (19,333 students). Pitt County receives Low Wealth Funding. In 98-99, Pitt ranked Number 60 in Local Funding per ADM in the amount of \$944 (19,666 students). Pitt's average teacher supplement was \$924 and Pitt's free and reduced price lunch participation was 46.2% (8,938 students). In 99-00, Pitt had an ADM of 19,343. Pitt's average teacher

supplement was \$1,361 and Pitt's free and reduced price lunch participation was 49.1% (9,488 students).

In 1997-98, there were 483,872 students participating in free and reduced price lunch in N.C.-this was 39.6% of the children in the public schools. In 1998-99, there were 494,099 students participating in free and reduced price lunch in N.C.-this was 40.2% of the children in the public schools. In 1999-00, there were 500,533 students participating in free and reduced price lunch in N.C.- this was 39.5% of the children in public schools.

In the following comparison, the Court notes that the two consistently lowest performing counties in the tenth grade comprehensive tests and high school EOC test were Robeson and Halifax for 98-99 and 99-00. The factor that distinguishes Robeson and Halifax is the percentage of free and reduced price lunch participation. Robeson's percentage for 97-98 was 73.7%; for 98-99 it was 73.3%; and for 99-00 it was 73.6%. Halifax's percentage for 97-98 was 83.5%; for 98-99 it was 82.6%; and for 99-00 it was 82%.

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 | | | |
|---------|--------------|----|--------------|----|-----------------------|----|---|-------|----|-----|----|-------|----|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | |
| State % | 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 | | | |
|-------|--------------|----|--------------|----|-----------------------|----|---|-------|----|-----|----|-------|----|----|----|
| | B | W | B | W | Read | B | W | Math | B | W | B | W | B | W | |
| State | 44 | 77 | 56 | 85 | 40 | 72 | | 41 | 75 | 48 | 78 | 46 | 78 | 50 | 78 |

THERE ARE TWO DISTINCT GROUPS OF STUDENTS IN NORTH CAROLINA'S PUBLIC SCHOOLS - THOSE AT-RISK AND THOSE NOT AT-RISK.

The Court has made enough comparisons. The evidence of record as set forth in The Green Books shows the same pattern, more or less, in every county in North Carolina. The only logical conclusion that the Court can draw is that North Carolina's Public Schools have Two Distinct Student Populations in every grade from start to finish - (1) Those children at-risk

of educational failure and (2) those children not at-risk of educational failure. Educational achievement, or the lack thereof, is the dividing line between the two groups.

The main causative factors for this great divide are lack of, or low level of parental education, rampant and unchecked illegitimacy, and poverty which result in children being born and thereafter existing in an environment without two (married) parents, an environment in which daily survival is a prized commodity, rather than discipline and education. How did the Court reach this conclusion? From looking at the evidence and applying common sense.

To this end, the Court has reviewed the statewide data, including, but not limited to: (1) ABC test scores from 95-96 to 99-00; (2) Free and Reduced Price Lunch participation by County from 97-98 through 99-00; (3) Average Teacher Supplements from 97-98 through 99-00; (4) Local Funding per ADM and other data compiled by the Public School Forum, (5) Level of parental education as it affects student achievement on the ABCs and the high school comprehensive tests; and (6) the other evidence submitted.

From this review, it became crystal clear to the Court that there are two distinct groups attending the public schools in North Carolina-- those children at-risk of academic failure that are not obtaining a sound basic education and those children who are not at-risk of academic failure and who are obtaining a sound basic education. The major factors which can be used to identify (with of course, the usual exceptions) those children at-risk and those not at-risk, are (1) socio-economic status (2) level of parental education and (3) free and reduced price lunch participation, all of which are inextricably intertwined with the other.

Put another way, the low performing children who are consistently scoring below grade level -Level III- throughout the State of North Carolina are poor, and/or have parent(s) with little education who are employed on the lower end of the economic scale, if they are employed at all.

Parental Education Level is an undisputed factor in identifying the cause of disparities in achievement between at-risk and not at-risk children. Common sense would tell one that, even if the data were not extant to prove it.

Children of better-educated parents generally do better in school, and stay in school longer, than children whose parents have not completed high school. Students whose parents have a high school degree or less tend to perform less well on tests than those with college or graduate degrees. There is a direct correlation between students' performance on the EOG and EOC tests and parent education level. "The Green Books" [1995-96-99-2000] Def. Exhs. 239,243,244, Ct. Exhs. B,B-1) This data is found in each Green Book in those tables accompanying EOC/EOG tests entitled "EOC-Test Results/ Characteristics and Performance of Students."

Using the 1997-98 & 1999-2000 High School Comprehensive Test Results,[Table 6,page 178-97/98]; [Table 7, page 203-99/00], The Green Books, the Parental Education Level information reveals:

(R)=reading (M)= math

Parental Education 97/98

Did Not Finish H.S. - 4,969

71.8% below Level III (R); 70.1% below Level III (M)

H.S. Graduate - 22,598

54.2% below Level III (R); 55.4% below Level III (M)

Community College- 14,899
 43.5% below Level III (R); 45.4% below Level III (M)
 Four Year College-17,223
 32.1% below Level III (R); 32.3% below Level III (M)
 Graduate school-8,332
 17.7% below Level III (R); 17.5% below Level III (M)

Parental Education 99/00

Did Not Finish H.S. - 4,832
 65.6% below Level III (R) 59.7% below Level III (M)
 H.S. Graduate - 19,813
 52.8% below Level III (R); 48% below Level III (M)
 Community College - 13,775
 35.9% below Level III (R); 33.2% below Level III (M)
 Four Year College - 18,838
 26.3% below Level III (R); 24.1% below Level III (M)
 Graduate School - 8,746
 15.6% below Level III (R); 14.6% below Level III (M)

This same pattern exists with respect to all of the ABC test scores, EOC and EOG. The information is contained in The Green Books - Tables for EOG/EOC Tests entitled "Multiple-Choice Test Results- Characteristics and Performance" of Students. These tables set forth Levels of Parental Education and achievement percentages/numbers of students.

While there are certainly children from the at-risk group who succeed in school despite their socio-economic disadvantages, the lowest achievers generally come from this background. Those children from this group who do achieve have overcome the odds. Every school system in the state has children from this group. The economic conditions of the County and City or Town in which they live generally reflect the numbers of children who are not achieving grade level or above.

In contrast to the at-risk group of students, the overwhelming majority of the children who are performing at or above grade level -Level III or above-

throughout the State of North Carolina are not poor, have parent(s) with educations beyond high school and who are employed in the middle to upper end of the economic scale. While there are children from these backgrounds that do not achieve at Level III or above, the higher achievers generally come from the middle and upper middle-income background.

However, no matter how "wealthy" the County (LEA) is in terms of Local funding support, the school systems' scores show that these two groups of children exist in each LEA and the disparities between their academic performance are just as stark in "wealthy" systems such as Wake, CMS, Orange and Forsyth as in the school systems in the middle and at the low end of the Local funding spectrum.

When one looks at the percentage comparisons of students who are failing to achieve grade level proficiency on the basis of ethnicity, the higher percentage of at-risk students falls squarely on blacks, Hispanics and American Indians although the numbers of Hispanic and American Indian students is small when compared to the number of black and whites in the school system statewide.

The number of white students failing to achieve at grade level and thus at-risk is sometimes greater and many times comparable to the number of black students failing to achieve at grade level. Comparing the percentage of blacks failing to achieve to the percentage of whites failing to achieve is misleading, because there are so many more white students in the public schools. Accordingly, North Carolina has an across the board problem with at-risk students of all races, not just a problem with minority students.

White students are not immune from being at-risk of academic failure. There are large numbers of white students at-risk as well. As seen from the data

compiled above and from the record, the number of white students failing to achieve Level III or above in the elementary grades and in high school core subjects such as ELP, English I, U.S. History, Biology, Physical Science and Algebra I, and the High School Comprehensive Tests in Reading and Math, is higher or comparable to the number of black students who are failing to achieve Level III or above.

This should come as no surprise because there are many white students whose parent(s) come from low socio-economic status, have little, if any, education and work in low wage jobs, if at all. Those white children come from the same environment that other at-risk children do and the causes of their lack of achievement are the same.

Nowhere is this point made as clear as in a county which has a poor economic base with low paying jobs, such as Hoke, Halifax and Robeson, all with Free and Reduced Price Lunch participation above 60%. There, the performance of all students across racial lines is lower than in counties such as Wake, Mecklenburg and Durham where there are the two distinct groups of people divided by socio-economic status - the poor and the middle and upper middle income.

In those "wealthier" counties, the scores of black children remain low by percentage while the scores of white children (reflecting their parents income level and educational status) remain high by percentage. Nevertheless, if you have 80% of the white students in a district performing at or above grade level, there are 20% of the whites who are not and the number of those low achieving students are generally comparable to those of blacks who are low achieving.

In counties in the Northeast such as Halifax, Bertie, Northhampton, Washington and Hyde, the majority of the students in the public school systems are poor

and black. The scores of those children directly reflect the poverty level of the community in which they reside. Again, it is not race which causes the child to be at-risk, but the poverty, low parental education and job skills, if any and the illegitimacy which results in there being no stable family environment for the children to grow up in.

It is undisputed that poverty and low educational levels go hand in hand. Within this socio-economic background, there are also other factors at work which put the children further at-risk, including the absence of a stable two-parent (married) home environment due to irresponsible children, who are illegitimate, and who continue the cycle by having illegitimate children themselves, never get married and put those children at-risk of academic failure before they ever get to school.

Illegitimacy, like low parental education, is a factor in the disparities in achievement, as it is an outward and visible sign of irresponsible parents and a less than positive home environment for a child to grow up in. This is not the fault of the public schools and yet poverty and the illegitimacy it spawns, produces at-risk children that the public schools are expected to educate and train.

Unfortunately, way too many of North Carolina's children are brought into this world and, through no fault of their own, plunged into "home" environments void of intellectual stimulation, discipline, respect for others and from which they arrive at the schoolhouse destined for academic failure. This is not the fault of the public schools and yet, the public schools have no choice but to shoulder the burdens of these at-risk children and are expected to provide them with the equal opportunity to obtain a sound basic education.

This is so because, in the eyes of the law, these at-risk children are citizens of North Carolina, and, as citizens, they have the same constitutional rights as those children whose parents are married, have decent educations, earn a decent living and provide their children with a learning rich environment from the day they come home from the maternity ward.

Fortunately for these at-risk children, the State of North Carolina, with the vision of Jim Hunt and the support of the General Assembly, has enacted the **Smart Start Program** to begin to address the void in these children's everyday lives earlier than age 5. Pre-school experiences are vital to a child being ready and able to learn. It is these same at-risk children that the Court addressed in Section II of this decision regarding a quality pre-kindergarten program as part of the at-risk child's pre-school experience.

In this regard, the Court's decision about a pre-kindergarten experience for at-risk children, does not, repeat, does not mandate a 4 year old kindergarten program for all North Carolina children, nor does it require a "formal" pre-kindergarten program attached to and included in each elementary school. Why not?

Because the majority of North Carolina's children reside in stable home environments with parents who provide them with intellectual stimulation, a decent standard of living, values and discipline, do not need to leave home early and go into a publicly funded 4 year old pre-kindergarten program, nor should they ever be required to do so as they are not at-risk of academic failure. For these not at-risk children, there is simply no justification for taking them out of a stable home environment and sending them off to school before age 5.

The evidence clearly and convincingly shows that the majority of North Carolina children are not at-risk

of educational failure and are obtaining a sound basic education as required by Leandro. The problem comes with the other group - those at-risk of academic failure regardless of where they live

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. Under the ABCs, there has been steady progress since 1995 for all children in the elementary grades. All one has to do is look at the ABC testing scores at the elementary school level, North Carolina's educators have made great progress in the last five years in the basics of reading and math, but with respect to a large number of the at-risk population, more needs to be done. The following shows the percentage of black, white, Hispanic and Asian students tested at the end of the 3rd grade in reading and math that scored at or above Grade Level for the 5 years from 95-96 through 99-00:

Number of Students Scoring at or above Grade Level (Level III) By Race Statewide In Reading & Math in Grade 3 R = reading M = Math

| Year | White | | Black | | Asian | | Hispanic | |
|-------|-------|------|-------|------|-------|------|----------|------|
| | R | M | R | M | R | M | R | M |
| 95-96 | 74.5 | 77.7 | 44.4 | 45.6 | 72.6 | 80.4 | 56.4 | 57.7 |
| 96-97 | 75.7 | 80.2 | 46.2 | 49.9 | 72.9 | 81.6 | 51.8 | 59.6 |
| 97-98 | 80.6 | 78.6 | 54.4 | 47.6 | 78.9 | 77.8 | 58.3 | 57.0 |
| 98-99 | 82.1 | 80.1 | 57.6 | 49.9 | 76.6 | 81.0 | 61.3 | 59.8 |
| 99-00 | 83.1 | 76.2 | 58.5 | 43.7 | 78.8 | 72.2 | 62.8 | 52.6 |

While this snapshot comparison shows progress, it also shows that North Carolina has a long way to go in addressing the at-risk group of students and what **Leandro** means to them. After all, those students have a constitutional right to an equal opportunity to receive a sound basic education just like those who are not at-risk of receiving a sound basic education.

Fortunately, the majority of N.C.'s children fall within the group who are not at-risk, go to school, learn and master the curriculum and obtain a sound basic education in the subjects taught them in North Carolina's public schools. For the not at-risk group of children, those achieving at Level III and above and being taught by competent certified teachers, the equal opportunity to obtain a sound basic education as defined by **Leandro** is being met regardless of where the children are in school.

With respect to the at-risk group, there is a serious question to be answered. Why do the at-risk children continue to perform so poorly in both the dirt poor counties and the "wealthy" counties when the amount of Local funding per average classroom of 26 is so great?

The evidence in this case raises a serious question with respect to the at-risk group of students. How is it that the LEAs with the highest levels of Local Funding per ADM and the highest teacher supplements have such large numbers of at-risk students failing to achieve grade level proficiency at the same or similar levels as those in Hoke, Robeson and other "poor" counties? How is it that Wake County with Local funding per average classroom of 26 students in the amount of \$36,634 as compared to Harnett County's Local funding per average classroom of 26 students in the amount of \$18,096, had 43% of its black 3rd graders proficient in reading and math in 1999-00 while Harnett had 50% proficient and Chapel Hill/Carrboro had only 41%? This pattern exists throughout the "wealthy" school districts as shown in the Court's previous comparisons and from the Green Books.

It is clear from the evidence that some of the at-risk group of students are not obtaining a sound basic education throughout the state. The Court's task in

this litigation is to determine whether or not the State of North Carolina is providing every child "an opportunity to receive a sound basic education in our public schools." If the State is providing each and every child with that opportunity, then the Constitutional mandate of **Leandro** has been met.

So far in this case, the Court has determined that the educational delivery system in North Carolina meets the **Leandro** standards, without answering the issue of funding, and that at-risk children should be provided a quality pre-kindergarten educational experience so that they can arrive at kindergarten ready to learn.

The evidence about Hoke County has shown that there are many children who are not obtaining a sound basic education in that school system. The evidence has also shown that Hoke County is not alone in its population of at-risk students. The State of North Carolina is permeated with at-risk students in each county and the evidence has further convincingly and clearly shown that the performance of at-risk students in poor and rich counties is strikingly similar regardless of the so called ADM dollars available from the Local funding source or Low Wealth funding, if applicable.

We know what socio-economic factors put a child at-risk of academic failure when they arrive at school. These factors remain constant throughout the State of North Carolina. We know that when these 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. This being the case, what the Court does not presently know is why the wealthy counties have so many at-risk children performing at a comparably poor academic level as those children in poor counties such as Hoke and Robeson.

And at the same time, why does a group of 6 small mountain LEAs that pay NO teacher supplements have decent, and in many cases better than average, percentages of **all** their students in grades 3, 5 & 8 scoring at or above Level III in EOG reading and math tests? By the 8th grade, in 99-00, 4 out of the 6 LEAs were above the state average 75%(all) and 84.2% (white). All were above 80%.

| | Grade 3 | | Grade 5 | | Grade 8 | | Free&Red Lunch | | Funding Rank |
|----------|---------|-------|---------|-------|---------|-------|----------------|-------|------------------|
| | 98/99 | 99/00 | 98/99 | 99/00 | 98/99 | 99/00 | 98/99 | 99/00 | 98/99 |
| CHEROKEE | 79.1 | 77.7 | 84.5 | 82.1 | 85.1 | 87.7 | 52.3 | 51.3 | 78TH |
| CLAY | 66.3 | 81.0 | 81.6 | 81.3 | 81.5 | 89.7 | 38.0 | 42.7 | 27 TH |
| GRAHAM | 62.8 | 64.8 | 66.3 | 76.1 | 88.1 | 90.8 | 47.8 | 49.3 | 28TH |
| MACON | 79.7 | 80.5 | 81.3 | 85.9 | 74.6 | 81.3 | 39.2 | 44.4 | 63RD |
| MADISON | 64.5 | 74.8 | 81.2 | 83.6 | 78.8 | 81.3 | 47.2 | 45.3 | 47TH |
| SWAIN | 79.0 | 66.4 | 75.9 | 80.6 | 82.4 | 84.4 | 57.9 | 57.9 | 66TH |

The only logical answer that the Court can deduce from the across the board low scores of the at-risk group, regardless of the "wealth" and local funding support per ADM, is twofold:

First, the huge sums of money that the State of North Carolina channels into each LEA are not being strategically and logically directed and spent in the best manner possible to accomplish the mandate of **Leandro** which requires the State and the LEA to provide all of its children with the equal opportunity to obtain a sound basic education.

Second, that in the "wealthier" LEAs which have such greater amounts of Local Funding available per ADM, those LEAs are not strategically and logically directing and spending those funds in the best manner possible to accomplish the mandate of **Leandro** which requires each LEA to provide all of its children with the equal opportunity to obtain a sound basic education.

The biggest problem is with the "wealthier" LEAs, because they have so much more money available, and their at-risk results are, in comparison with a poor county like Hoke, worse because their at-risk population should be performing much better if sheer money available was a factor.

The Court raises these questions and makes its observation fully aware that it has "gored" the sacred educational establishment ox by doing so. These questions, however, are based on the concrete evidence relating to the at-risk group of below par student performance in all LEAs statewide.

It, however, is the Court's responsibility to review the funding practices to determine if the State and its LEAs are spending taxpayer dollars in a manner so as to meet the **Leandro** mandate that every child has an equal opportunity to receive a sound basic education.

A REVIEW OF LEANDRO AND ITS MANDATE FOR A SOUND BASIC EDUCATION IS NECESSARY BEFORE ADDRESSING THE MANNER IN WHICH FUNDING SHOULD BE SPENT TO MEET THE CONSTITUTIONAL REQUIREMENTS.

" ..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; (slip op. 13-15)..... Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. ... For the foregoing reasons, we conclude that Article IX, Section 2(1) of the North Carolina Constitution requires that all children have the opportunity for a sound basic education, but it does not require that equal educational opportunities be afforded students in all of the school districts of the state. (slip op. pp. 17-22).

It is crystal clear what Chief Justice Mitchell and the Supreme Court said with respect to funding the equal opportunity to the sound basic education. The Constitution requires that the State and its LEAs provide all children with the equal opportunity to obtain the sound basic education, nothing more and nothing less. In this regard, the following parameters apply:

First, the State Constitution only requires that the State fund the equal opportunity to obtain a sound basic education to all of its children, nothing more.

Second, a sound basic education is qualitatively defined. In short, having a sound basic education means that when one graduates from high school, they should

be able to really compete in the world of today, either in the job market, or in community college, or at an institution of higher learning. In this regard, all children should have learned the basics, recognizing that some children will go on to higher education and others will not.

Third, 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.

Fourth, **Leandro** requires that the Constitutional right to the equal opportunity be met before any other dollars are spent on opportunities outside of the sound basic education.

Fifth, since the at-risk group of children are harder to teach and thus require more resources than not at-risk children in order to satisfy the Constitutional mandate, each LEA and the State must strategically plan and spend the resources funded in a manner that helps all children have an equal opportunity to a sound basic education.

Sixth, the hard cold truth of the **Leandro** decision should not be forgotten. The State of North Carolina originally argued, and the Court of Appeals agreed, that the Constitutional right to education is **limited to an education which provides equal access to the existing educational system and does not embrace a qualitative standard**. This "equal access" argument was

expressly rejected by the Supreme Court in favor of the qualitative standard set forth above. A sound basic education must mean something and have substance.

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.

The requirement that the State and its LEAs provide adequate and strategic allocation of resources and funding means that there may very well be unequal funding of the sound basic education curriculum within each LEA itself, because the non at-risk children do not require as much funding to be provided with the equal opportunity as the at-risk children do.

Until this allocation and realignment of present available funds and resources to meet the Leandro requirement is accomplished by each LEA and the State and the results reported to this Court, there will be no requirement for a Final Judgment.

Reduced to essentials, the plaintiffs and plaintiff-intervenors have produced clear and convincing evidence that there are at-risk children in Hoke County and throughout North Carolina who are, by virtue of the ABCs accountability system and other measures, not obtaining a sound basic education.

What they have not yet proved, by clear and convincing credible evidence, is that the failure of at-risk children (the issue of pre-kindergarten aside) to obtain a sound basic education is the result of lack of sufficient funding by the State of North Carolina.

Instead, what the clear and convincing and credible evidence in this record shows with respect to at-risk children is that given the proper, strategic allocation of resources within each school, at-risk children can obtain a sound basic education like non at-risk children. While the clear and convincing, credible evidence shows that such proper, strategic allocation of resources when employed, work, the evidence is not clear and convincing that the State and each LEA is utilizing its funding and resources in a proper, strategic manner with regard to its at-risk children.

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.

There are many prime examples of leadership and of strategically allocating available resources so as to focus on at-risk children. The Court cites five (5) schools as examples. Each example involved the person acknowledged by all to be critical to a school's success, the principal. The Court also acknowledges that none of the successes set forth as examples could have been accomplished without the focused, dedicated hard work of the classroom teachers in each of those schools and parental support for the programs.

If these wonderful educators can achieve success with at-risk children on a shoe-string, there is no absolutely no excuse for other schools, especially wealthy schools, not to achieve at-risk student success with leadership and proper strategic allocation of resources.

The first is occurring in HCSS. Enter Darlene Clark as the new principal of West Hoke Middle School in 1997-98. West Hoke Middle School was a low performing school at the time. Ms. Clark, without any input from an Assistance Team, turned the school around. Here's what she did. She had teachers tutor at-risk children before and after school. She rearranged the instructional schedule to produce two (2) more hours of instruction per day, one in reading and one in math. She instituted two (2) teacher teams, so that students would get all their instruction from two teachers. Using those, and other techniques, and without any additional resources or funding, Ms. Clark was able to effect substantial changes, improvements and turn West Hoke Middle School into an "Exemplary Growth/Gain" school in 1997-98.

The second is occurring in Wake County. Enter Sue Sisson as principal of Kingswood Elementary School in Cary in 1991. Kingswood was built in 1954 as a school for black children. It has the capacity for 159 students and with trailers, 308 in 99-00. Kingswood has

a large percentage of poor students. By 99-00, Ms. Sisson's school had 95% of its students passing the EOC tests. Here's what she did. The goal was to provide individualized learning for each child. The assistant principal's position was eliminated, along with all but one teaching assistant position, and the dance/drama teacher position. Ms. Sisson utilized the freed up resources to reduce class size to an average of 15 students. The school hired a learning resource teacher to work with at-risk and gifted students. Ms. Sisson used money from the Accelerated Learning Program to spend on teachers as tutors. Kingswood was named a "school of excellence" and Ms. Sisson was the Wake Principal of the Year. (The information about Kingswood is from an Article published in the News & Observer, October 21, 2000 by T.Keung Hui, Staff Writer). The Court has no reason to doubt its accuracy.

The third is occurring in Gaston Middle School in Northampton County. Enter Principal Lucy Edwards. Under Ms.Edwards leadership the faculty and staff have brought Gaston Middle School, a school with 84% of its children on Free and Reduced Price Lunch, from a school where less than 50% of its children were scoring at Level III in reading and math in 1995 to 77% above Level III in Math and 76% above Level III in reading in 99-00. Ms. Edwards has a "relentless focus on achievement." (N&O, 2/19/01-Schools Search For Success) The Court has no reason to doubt its accuracy.

The fourth is occurring in Baskerville Elementary School in Rocky Mount-Nash County. Enter Principal Ann Edge. Under Ms. Edge's leadership, the faculty and staff have brought Baskerville Elementary School, a school with 92% of its children on Free and Reduced Price Lunch, from a school where less than 40% of its students scored at or above level III in reading and math in 1994 to 81% above Level III in math and 67% above Level III in reading in 99-00. (N&O,2/19/01-

Schools Search for Success)The Court has no reason to doubt its accuracy.

The fifth is occurring in Winstead Elementary School in Halifax County. Enter Principal Robert Pope. Under Mr. Pope's leadership, the faculty and staff have brought Winstead Elementary School, a school with 87% of its children on Free and Reduced Price Lunch, from a school where less than 37% of its students scored at or above Level III in reading and math in 1994 to 79% of its students scoring at Level III in both reading and math in 99-00. (N&O,2/19/01-Schools Search for Success) The Court has no reason to doubt its accuracy.

These examples show that, with leadership and focus, available resources can be strategically applied to provide an equal opportunity to at-risk children to obtain a sound basic education. The Court is sure that there are many, many more principals and dedicated teachers who utilize the same leadership and ingenuity throughout North Carolina. 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.

Reduced to essentials, the plaintiffs and plaintiff-intervenors have yet to convince this Court, by clear and convincing evidence, that the State of

North Carolina is not presently providing sufficient funding to its LEAs to meet the Constitutional mandate that each child have an equal opportunity to receive a sound basic education. The Court, on its own, has concluded that a strategic allocation of available resources is required to be developed and then applied to meet the at-risk child's needs. Until this is done, there is no need to proceed further or to enter a Final Judgment.

In accord with the conclusions reached above and the vital need to address these problems within the parameters of Leandro, the Court Orders and Directs:

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 rationale, 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. 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 the knowledge and expertise with which to conduct such a self-examination of the present allocation of resources and to produce a rationale 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.

II. 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 key 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.

This the ____ day of March, 2001.

Howard E. Manning, Jr.
Superior Court Judge

