

# THE CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION

## I. INTRODUCTION

In 1997, the North Carolina Supreme Court declared that all children residing in the state have a fundamental state constitutional right to the “opportunity to receive a sound basic education.” (“*Leandro I*”).<sup>1</sup> In 2004, the State Supreme Court held that at-risk<sup>2</sup> students, including prospective enrollees (*i.e.*, 4-year-olds), had been denied that right. (“*Leandro II*”).<sup>3</sup> Although North Carolina’s school children were the supposed victors in these landmark rulings, 20 years after the lawsuit was filed and 10 years after the second decision, tens of thousands of children across the state continue to be denied their right to a sound basic education.

Results from statewide testing provide context on the state of public elementary and secondary education in North Carolina. All public school students in grades three through eight take End-of-Grade (EOG) tests in math and reading. Scores from the 2012-13 school year demonstrate that 58 percent of these students failed the math test and 56 percent failed the reading test. Students in particular subgroups fared much worse on the EOG tests: 78 percent of African-American students, 67 percent of Hispanic students, 72 percent of economically disadvantaged students, 88 percent of students with disabilities, and 83 percent of students with limited English proficiency failed the math EOG test; and 74 percent of African-American students, 71 percent of Hispanic students, 71 percent of economically disadvantaged students, 87 percent of students with disabilities, and 90 percent of students with limited English proficiency failed the reading EOG test.<sup>4</sup>

North Carolina high school students take End-of-Course (EOC) standardized exams in certain courses and their performance on these exams is just as troubling as elementary and middle school students’ performance on the EOGs. For example, during the 2012-13 school year, 64 percent of high school students failed the Math I EOC. More specifically,

<sup>1</sup> *Leandro v. State*, 346 N.C. 336, 347 (1997) (“*Leandro I*”).

<sup>2</sup> The NC Supreme Court explained that at-risk students enter or continue in school from a disadvantaged standpoint in relation to other students who are not burdened with such circumstances as having an unstable home life or being economically disadvantaged. The Court defined at-risk students as including students with one of the following characteristics: from a low-income family; participate in free or reduced-cost lunch programs; have parents with low-level education; show limited proficiency in English; are a member of racial or ethnic minority group; or live in a home headed by a single parent or guardian. *Hoke County Board of Education v. State*, 358 N.C. 605, 632, 637 (2004) (“*Leandro II*”). Depending on the facts in a given case, it may be possible for an advocate to argue that the definition of at-risk should be expanded to include students with other characteristics.

<sup>3</sup> *Leandro II* at 638, 642.

<sup>4</sup> NC Dept. Pub. Instruction, *Reports of Disaggregated State, School System (LEA) and School Performance Data for 2011-2013*, available at <http://accrpt.ncpublicschools.org/app/2013/disag>.

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82 percent of African-American students, 73 percent of Hispanic students, 78 percent of economically disadvantaged students, 91 percent of students with disabilities, and 90 percent of students with limited English proficiency failed the Math I EOC. On the English II EOC, 49 percent of high school students who took the exam failed it. Disaggregating this pass rate by subgroups shows that 67 percent of African-American students, 60 percent of Hispanic students, 65 percent of economically disadvantaged students, 87 percent of students with disabilities, and more than 95 percent of students with limited English proficiency failed the English II EOC.<sup>5</sup>

As these data suggest, many children across the state — particularly at-risk children — are not receiving a sound basic education in our public schools. Although some policymakers believe the solution to this problem is to increase the number of charter schools or to allow students to attend unaccountable private schools with taxpayer-funded vouchers, research and data do not support these “solutions.” Furthermore, these “solutions” siphon money away from the state’s traditional public schools, which educate the vast majority of children in North Carolina.

This chapter is a guide for advocates working to ensure that students receive a high-quality education in North Carolina public schools. It begins with a discussion of the history of the state constitutional right to a sound basic education. Key components of a lawsuit alleging the denial of the right to a sound basic education are then discussed. The chapter concludes with tips for practitioners who are considering bringing a lawsuit to enforce a child’s right to a sound basic education.

As a note of caution, this area of the law has been formed almost entirely by one case; so, bringing an education quality claim under the State Constitution for an individual student will be a novel legal proceeding. In addition, litigating a claim based on the denial of the constitutional right to a sound basic education would be a substantial undertaking in terms of time and resources. Advocates who cannot use this chapter to assist them in bringing such a case will nevertheless find the background information helpful in providing context and framing arguments on behalf of North Carolina students as they address the other important education issues discussed in this book.

## **II. THE CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION**

### **A. Filing the *Leandro* Lawsuit**

In 1994, students and their parents from the relatively poor school systems in Cumberland, Halifax, Hoke, Robeson, and Vance counties, and the boards of education for those counties, filed a lawsuit alleging that under the North Carolina Constitution, every child has the right to equal educational opportunities no matter where she resides. Students and parents from the relatively large and wealthy school districts of the City of Asheville and counties of Buncombe, Wake, Forsyth, Mecklenburg and Durham, and

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<sup>5</sup> *Id.*

the boards of education for those districts, intervened, alleging that they had a right to adequate educational opportunities. Both the plaintiffs and plaintiff intervenors alleged that the defendants, the state of North Carolina and the State Board of Education, had denied them their rights, and they sought declaratory and injunctive relief.<sup>6</sup>

## **B. *Leandro I***

The North Carolina Constitution states:

The people have a right to the privilege of education, and it is the duty of the state to guard and maintain that right.<sup>7</sup>

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools ... wherein equal opportunities shall be provided for all students.<sup>8</sup>

In 1997, the North Carolina Supreme Court held that the above two constitutional provisions combine to “guarantee every child in this state an opportunity to receive a sound basic education in our public schools.”<sup>9</sup> The Court explained that the General Assembly has a duty to provide “the children of every school district with access to a sound basic education.”<sup>10</sup> The Court stated, “The intent of the framers was that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime.”<sup>11</sup> The Court cautioned, “An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.”<sup>12</sup>

The Court defined a sound basic education as one that will provide students with each of the following abilities, skills, and areas of knowledge:

- (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;

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<sup>6</sup> *Leandro I* at 342-44, *Leandro I*, 346 N.C. at 342-44.

<sup>7</sup> NC Const. art. I, § 15.

<sup>8</sup> NC Const. art. IX, § 2(1).

<sup>9</sup> *Leandro I* at 347, *Leandro I*, 346 N.C. at 347.

<sup>10</sup> *Id.* at 353. Unfortunately, the Court also held, “provisions of the current state system for funding schools which require or allow counties to help finance their school systems and result in unequal funding among the school districts of the state do not violate constitutional principles.” *Leandro I*, 346 NC at 349. In other words, “the North Carolina Constitution ... does not require that equal educational opportunities be afforded students in all of the school districts of the state.” *Id.* at 351.

<sup>11</sup> *Id.* at 348.

<sup>12</sup> *Id.* at 345.

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- (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 or vocational training;  
and
  - (4) Sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.<sup>13</sup>

The Court remanded the case to the trial court to determine whether children in North Carolina had been denied their right to a sound basic education.<sup>14</sup>

### C. The Trial

On remand, Superior Court Judge Howard Manning, Jr. was designated to preside over the trial and all subsequent proceedings. The ensuing trial lasted approximately 14 months, resulting in over 50 boxes of exhibits and transcripts, an eight-volume record on appeal, and a memorandum of decision that exceeded 400 pages.<sup>15</sup> Plaintiffs presented the following evidence: comparative standardized test score data; student graduation and dropout rates; employment potential; post-secondary education success (or lack thereof); deficiencies in the educational offerings in Hoke County Schools; and deficiencies in the educational administration of Hoke County Schools.<sup>16</sup>

The trial court ruled that the State Defendants had failed to fulfill their constitutional duty to provide all students with the opportunity to receive a sound basic education. In terms of funding, the trial court found, and the North Carolina Supreme Court affirmed, that Local Education Agencies (LEAs) are “entitled to funding by the state sufficient to provide all students, irrespective of their LEA, with at a minimum, the opportunity to obtain a sound basic education.”<sup>17</sup> The Court offered general guidelines for a *Leandro*-compliant resource allocation system:

[that] every classroom be staffed with a competent, certified, well-trained teacher; that every school be led by a well-trained, competent principal; that every school be provided, in the most cost-effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children may be met.<sup>18</sup>

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<sup>13</sup> *Id.* at 347. (emphasis added).

<sup>14</sup> *Id.* at 357-58.

<sup>15</sup> *Leandro II*, 358 N.C. at 610.

<sup>16</sup> *Id.* at 623.

<sup>17</sup> *Id.* at 634.

<sup>18</sup> *Id.* at 636.

Regarding at-risk students, the Court found that the State Defendants had failed to identify and provide adequate remedial aid to these children. As a result, the Court ordered the state to provide pre-kindergarten services to all at-risk prospective enrollees.

#### D. *Leandro II*

In 2004, the North Carolina Supreme Court affirmed the trial court's ruling that the State Defendants had denied children their constitutional right to a sound basic education. Regarding at-risk students, the Court stated that under *Leandro I* and the State Constitution, regardless of a child's needs or whether the child is at-risk, "the constitutional right articulated in *Leandro I* is vested in them all."<sup>19</sup> The Court affirmed the trial court's conclusion that the state failed to meet the needs of at-risk students, including at-risk prospective enrollees who "require additional assistance" that "the state is obligated to provide." Regarding the trial court's order mandating pre-kindergarten services for at-risk prospective enrollees, the Court explained, "the state recognizes the extent of the problem — its deficiencies in affording 'at-risk' prospective enrollees their guaranteed opportunity to obtain a sound basic education — and its obligation to address and correct it."<sup>20</sup> However, the Court held, at *that juncture of the case*, mandating pre-kindergarten for all at-risk prospective enrollees was premature.<sup>21</sup> The Court deferred to the legislative and executive branches to devise a remedy for the constitutional violation that had occurred.<sup>22</sup>

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<sup>19</sup> *Id.* at 620. Although the state has subsequently argued that the *Leandro* ruling applies only to at-risk students in Hoke County, case law does not support this position. Intrinsic in the application of a fundamental constitutional right is the principle that each right vests equally, and cannot be arbitrarily denied, weakened, or revoked. To ensure that all rights vest equally, the Equal Protection Clause of the state Constitution "prohibits the state from denying any person the equal protection of the laws." *Stephenson v. Bartlett*, 355 N.C. 354, 377 (2002). Additionally, the United States Supreme Court has provided helpful guidance on this issue, explaining:

[t]he very enumeration of the [constitutional] right takes out of the hands of government — even the Third Branch of Government — the power to decide on a case-by-case basis whether the right is *really worth* insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.

*D.C. v. Heller*, 554 U.S. 570, 634 (2008). Specifically addressing the right to an education, the United States Supreme Court stated:

it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, *where the state has undertaken to provide it*, is a right which *must be made available to all on equal terms*."

*Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (emphasis added).

<sup>20</sup> *Leandro II*, 358 N.C. at 638, 643-44.

<sup>21</sup> *Id.* at 644. (emphasis added).

<sup>22</sup> *Id.* at 642-43.

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## **E. State Action and Litigation for At-Risk Prospective Enrollees Since *Leandro II***

Following *Leandro II*, the State Board of Education and the General Assembly each took steps to correct constitutional deficiencies in affording at-risk prospective enrollees their guaranteed opportunity to obtain a sound basic education. In doing so, the state consistently identified the North Carolina More at Four Pre-Kindergarten Program (“More at Four”) (currently named the North Carolina Pre-Kindergarten Program (“NC Pre-K”)) as its sole, chosen remedy to fulfill its constitutional obligation to provide at-risk prospective enrollees the opportunity to obtain a sound basic education. In a hearing conducted by the trial court in October 2004, the “State Defendants’ 2004 Action Plan to Court” committed to expanding More at Four to ensure “every at-risk 4-year-old has access to a quality pre-kindergarten program.” In August 2005, the state made an identical commitment to the trial court. From 2005 through 2011, the state expanded More at Four from serving approximately 15,000 at-risk children to serving approximately 32,000 at-risk children. Significantly, in 2010, the state praised More at Four in its successful *Race to the Top – Early Learning Challenge Grant* application.<sup>23</sup> The state, through its repeated actions and statements since 2004, committed to providing pre-kindergarten services to satisfy its constitutional obligation to at-risk prospective enrollees.

However, despite clear evidence that NC Pre-K was effectively providing at-risk children with the opportunity to receive a sound basic education, the 2011 State Legislature passed budget legislation to dismantle the state’s past remedial efforts.<sup>24</sup> The Legislation reduced the number of NC Pre-K slots for at-risk 4-year-olds by 80 percent, without providing any alternative, high-quality pre-kindergarten options for those now-excluded children. The Legislature also failed to identify any alternative remedy for at-risk prospective enrollees.

In response to the dismantling of NC Pre-K, the trial court ordered, in 2011, the state to provide NC Pre-K to any eligible, at-risk 4-year-old who applies, enjoined a section of the legislation, and prohibited the state from implementing any other barriers to deny eligible, at-risk 4-year-olds admission to NC Pre-K. In 2012, the North Carolina Court of Appeals unanimously affirmed the trial court’s order.<sup>25</sup> However, while the appeal was pending, the General Assembly amended the two statutory provisions that the trial court had determined to be unconstitutional: capping the percentage of at-risk children permitted in the pre-kindergarten program; and instituting a co-payment requirement for certain pre-kindergarten students. In 2013, the North Carolina Supreme Court held that the

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<sup>23</sup> *Race to the Top – Early Learning Challenge North Carolina Application for Initial Funding*, 1, 27 (Aug. 22, 2011), available at <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/applications/north-carolina.pdf>.

<sup>24</sup> Current Operations and Capital Improvements Appropriations Act of 2011, 2011 N.C. Sess. Laws 145.

<sup>25</sup> *Hoke Cnty. Bd. of Educ. v. State*, 731 S.E.2d 691 (N.C. App. 2012), opinion vacated, *appeal dismissed*, 367 N.C. 156 (2013).