

NORTH CAROLINA:

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

WAKE COUNTY:

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

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
Plaintiff-Intervenor,

and

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

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

and

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
Realigned Defendant

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NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Tuesday, November 17, 2015 at 10:00 a.m. in Courtroom 5-C (or such other Courtroom in the Wake County Courthouse as is available), Wake County Courthouse and to continue on Wednesday and Thursday, November 18 & 19, 2015 as scheduled below:

Subject Matter of the Hearing:

The purpose of this hearing is two-fold: (1): The Court held a hearing on July 21,22 and 23, 2015 in which the State of North Carolina acting through the State Board of Education presented a plan as to how the State of North Carolina intended to correct educational deficiencies in the student population as evidenced by the measures of output extant in the K-3 assessments, not reading on grade level by the end of the third grade, and other measures of student achievement evidenced by EOG, EOC and ACT tests. The plan was required to identify the actions necessary to address the State of North Carolina's constitutional obligations to provide the children of North Carolina with the equal opportunity to obtain a sound basic education and in that regard— to provide competent certified teachers in every classroom; well - trained competent principals in every school and the resources necessary for each school. At the end of that hearing, the State of North Carolina had not concluded its evidentiary presentation in support of its stated position that it was now providing the children of North

Carolina with the opportunity to obtain a sound basic education. The plaintiffs contended that the plan as being submitted by the State was insufficient to adequately address and provide solutions for the educational deficiencies of thousands of North Carolina K-12 students who are not performing at grade level and therefore, not obtaining a sound basic education. Because there was not sufficient time to permit the State to finish its scheduled witnesses and to permit the plaintiffs' to have time to offer rebuttal evidence, if any, the hearing was continued by the Court. At the conclusion of the July hearing, the Court directed the State and the parties to continue discussing their differences and to try working towards a plan that both sides could agree on. This hearing is to permit the State to conclude its evidentiary presentation and to permit any rebuttal evidence, the plaintiffs' may purport to put on.

(2) The second purpose of this hearing will be to provide the State of North Carolina, acting through its Executive Branch, including but not limited to the State Board of Education and The Department of Public Instruction, the opportunity to report to the Court concerning the following matters relating to the issue of whether or not our school children are obtaining a sound basic education as defined in *Leandro I* and whether or not our school children are being provided with the minimal educational resources required for constitutional compliance by *Leandro II*. This portion is essentially to provide the results of assessments given to students statewide to determine their level of academic achievement in the preceding school year.

Tuesday November 17, 2015 at 10:00 a.m. Courtroom 5-C Wake County Courthouse

Data to be provided:

ABC Results statewide for 2014-15.

The 2014-2015 End of Grade Mathematics Scores in Grades 3-8 by school for each grade 3,4,5,6, 7 & 8 by LEA, statewide showing GLP scores on one exhibit and CCR scores on a separate exhibit.

The 2014-2015 End of Grade Reading Scores in Grades 3-8 by school for each grade 3,4,5,6,7 & 8 by LEA, statewide showing GLP scores on one exhibit and CCR scores on a separate exhibit.

The 2015-2016 Beginning of Grade 3 Reading assessment (BOG3) for all elementary schools. This assessment is critical because it assesses the reading of third graders at the beginning of the 3rd grade utilizing the EOG3 Reading Assessment. The General Assembly has proclaimed that it is the goal of the State of North Carolina that all children should be proficient in reading by the end of the third grade. The BOG3 results are to show (1) number tested; (2) Scale Score Mean; (3) Number at "new" levels 1 and 2; (4) Percent at Levels 1 and 2; (5) Percent that met the GLP ("new") proficient benchmark for BOG3; and Percent that met the CCR benchmark for BOG3.

The 2014-2015 End of Course Scores in all high schools, by LEA, statewide which data shows the number of students in each EOC subject that were proficient in the subject in each high school and shows whether or not growth standards (state) were met or not met in each EOC subject in that high school.

The 2014 - 2015 Performance Composite for each school by LEA, statewide, which data also shows whether AYP and/or Growth was met or not.

The 2014-2015 Report entitled Percent Proficient in North Carolina by Ethnicity by subject, EOC or EOG, statewide.

ACT, PLAN and EXPLORE test results for 2015

The 2014-2015 statewide ACT test (given to all high school juniors) results including benchmark data and performance data by school, by subject tested, statewide in English, Math, Reading, Science and Writing, by LEA and individual high school.

The 2014-2015 statewide ACT PLAN test (given to all high school tenth graders) results including benchmark data and performance data by school, by subject tested, statewide, in English, Math, Reading, Science and Writing, by LEA and individual high school.

The 2013-2014 statewide ACT EXPLORE test (given to all eighth graders) results including benchmark data and performance data by school, by subject tested, statewide, in English, Math, Reading, Science and Writing (if applicable), by LEA and individual middle school.

The North Carolina ACT, PLAN and EXPLORE test data analyzed by ethnicity and sex, if available, statewide and system wide, if available.

A full written explanation of the ACT, PLAN and EXPLORE tests detailing what the tests measure, their content, the meaning of benchmarks, and what parts of the tests measure whether high school students in grades 10 and 11 have grade level (Level III or IV) proficiency of content and material in the following high school courses: United States History; Civics and Economics, Geometry, Physical Science, and Algebra II.

In regard to the foregoing, the ACT Profile Report for North Carolina and the ACT profile report for the PLAN and EXPLORE tests, if available, will be sufficient; This is so because in the 2012 hearing regarding ACT and PLAN, there was testimony provided by DPI as to the three tests and what the tests measured, including EXPLORE. Both Plan and Explore are diagnostic assessments to measure the student's level of achievement/proficiency and to assist the counsellor/teachers/principal in guiding the student forward in their academic progress towards proficiency and graduation.

ACT, PLAN and EXPLORE – Measure of individual grade level proficiency in each subject tested.

The Court wants to know the **score on each subject** of ACT, PLAN and EXPLORE which indicates that the student taking the test **is not proficient** in that subject. For example, if an 18 ACT English Benchmark score predicts college readiness in English, what ACT English Benchmark score indicates that the child is simply not proficient in the subject of English to the point that the child fails to possess sufficient English skills to enable that child to successfully engage in post-secondary education and training in either vocational training or college? This same question applies to the EXPLORE and PLAN assessments?

Reading and Math Assessments in K-3 – An update from 2015

Although there are no ABC End of Grade assessments given in K-2, there are Literacy and Math Assessments in place that are required to be used and implemented for each child in those grades. The basis for this is that continual assessment of a child's academic progress is a critical component of a child's educational process regardless of the grade the child is in.

Everyone knows that early childhood education is critical in providing the child a baseline of academic progress in literacy and fundamental mathematical skills.

Accordingly, the Court wants up dated information on the record (from the date of the hearing in January, 2015 on K-2 assessments) concerning the present state of the K-2 assessments, their importance in guiding instruction in literacy and math in the early grades and the requirements of the State Board of Education with respect to the use and effective implementation of K-2 assessments in each and every elementary school as of 2014-15.

The Court wants a brief updated report on the progress taking place to ensure that the children in K – 2 are being formatively assessed in reading and math and that the data from the assessments are being actually used to guide each child's instruction in those subjects.

Report on the efforts of the Turnaround High School and Middle School projects for 2014-15, including the performance results in such schools in the project. In connection with this, the Court is still waiting to hear a cogent explanation of how High School academic performance for 2014-2015 (or any year) can be effectively measured when only three ABC end of course tests are given in addition to the ACT tests for 10th and 11th graders.

NC Final Exams update and further explanation- try again. In the event that the General Assembly has passed legislation to delete the NC Final Exam(s) from the high school assessments, there is no need for any report on this subject. If not, the Court has not forgotten DPI's inexplicable rationale for not providing scores on the NC Final Exam that reflect whether or not the student is proficient or not proficient (grade level) in the subject tested. This time- the third try- DPI is directed to come back prepared to offer a clear, cogent explanation of how these tests are measured in terms of individual student performance and grade and why this information is not used to determine the academic achievement levels of the children taking the tests.

Selected Financial Data

Financial Data prepared by DPI Information Analysis and Reporting relating to Financial Expenditures by Major Categories for 2012-2013 identified by the following titles:

Data for Original 44 Low Performing High Schools FY 2014-2015

Data for Original 44 Low Performing High Schools FY for 2010, 2011, 2012, 2014 and 2015 showing the cumulative five year expenditure amount.

Proof of Concept Study – Grades 3-8 Report from DPI on status and detail of study.

DPI is to provide testimony and a written, detailed report on the progress of the Proof of Concept Study Grades 3-8 that is a through – grade model which includes testing in grades 3-8 English/language arts/reading and mathematics and the proof of concept study being conducted. The SBE and DPI are fully aware of this Court's determination that removing summative assessments in EOG and EOC courses is a violation of the Leandro holdings with respect to accountability and determination that children are performing at CCR (Level 4) grade level in their EOG areas and EOC courses. At present, the executive summary of the Proof of Concept Study provides for "A stand-alone summative assessment at the end of the year that may be connected to interim assessments." (POCS p. 1) This provision needs to be fully explained and a summative assessment (EOG) is required.

Wednesday, November 18, 2015 at 9:45 a.m. – Continuation of the presentation of the foregoing items if not completed on Tuesday.

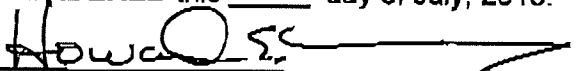
Completion of the State's evidence scheduled, but not presented at the July, 2015 hearing and any rebuttal to be presented by plaintiffs.

Thursday, November 19, 2015 at 9:45 a.m. – Continuation of the hearing, if not concluded on November 18, 2015.

Completion of State's evidence scheduled, but not presented at the July, 2015 hearing and any rebuttal to be presented by plaintiffs.

NO FURTHER MATTERS WILL BE TAKEN UP.

SO ORDERED this 30th day of July, 2015.


Howard E. Manning, Jr.
Superior Court Judge