



General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
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March 16, 2009

Dr. William Harrison
Chairman & Chief Executive Officer
State Board of Education
State of North Carolina

Dr. June St. Clair Atkinson
State Superintendent
North Carolina Department of Public Instruction
State of North Carolina
301 Wilmington Street
Raleigh, North Carolina 27601-2825

VIA FAX ONLY

Re: The Halifax County Public Schools

Dear Chairman Harrison and Superintendent Atkinson:

I am enclosing a Notice of Hearing and Order Re: Hearing for April 29, 2009. The subject matter of the hearing is the Halifax County Public School system and its apparent failure to provide the children who attend the schools within the system with the equal opportunity to obtain a sound basic education.

The hearing will focus on what measures the State of North Carolina intends to take to remedy the constitutional violation of Halifax County Public Schools failing to provide children with the equal opportunity to obtain a sound basic education.

This letter, together with the Notice of Hearing, will provide you with the factual and legal basis for the Court's actions at this point in time.

On April 4, 2002, a month shy of seven (7) years ago, Final Judgment was entered on the liability phase in *Leandro* and the Final Judgment specifically identified three (3) basic educational assets that are required to be present in every school and classroom in our North Carolina Public Schools so that all children can have the equal opportunity to obtain a sound basic education:

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

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

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

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

[*Leandro-Final Judgment*, entered April 4, 2002.]

On July 30, 2004, the Final Judgment's declaration of the three (3) essential assets required to be provided to children in every single school and classroom, was affirmed and approved by the Supreme Court and declared to be part of a "*Leandro-compliant*" resource allocation system."

It [the trial court] ultimately provided general guidelines for a ~~Leandro-compliant~~ resource allocation system, including the requirements: (1) that "every classroom be staffed with a competent, certified, well-trained teacher"; (2) "that every school be led by a well-trained competent principal"; and (3) "that every school be provided in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." *Leandro II* (358 N.C. 605,636).

As you know, I have been monitoring the academic performance of North Carolina schools on a statewide basis for many years. I have been continually concerned over the poor academic performance of school systems, especially in the high schools, in the Northeastern part of North Carolina as well as some of our larger school systems such as CMS and Durham.

One of these school systems was the Halifax County Public Schools. Halifax County's two high schools, Northwest and Southeast, each had terrible performance composites below 41% for 2002, 2003 and 2004. Yet the Middle and Elementary composites were much better.

On May 24, 2005, after conducting hearings and reviewing performance data on high school, I filed a *Report from the Court* on the problem of poor performing high schools throughout North Carolina. At that time, there were some 44 high schools that had performance composites below 60% in North Carolina. The bottom line message of the Report was that the lowest performing high schools in North Carolina must be fixed and not in the distant future.

In August 2005, Governor Easley directed the State Board of Education to send "turnaround teams" to the 44 high schools that had been below 60% proficiency on EOG tests for 2004-05 school year.

On March 3, 2006, I wrote a letter to Superintendent Atkinson and then Chairman Howard Lee entitled "The High School Problem - Consequences" in which I wrote the following conclusion about the continued existence of low performing high schools:

THE BOTTOM LINE IS: The constitutional right of every child to have the equal opportunity to obtain a sound basic education **belongs to the child and not to the superintendent, principal, teacher, school board member or other administrators in the LEA.**

The consistently low performing, priority high school is not providing the children, who are required to attend that school regardless of where the children live, with the constitutionally mandated competent certified, effective principals, competent, certified effective teachers and the resources needed to carry out an effective educational program.

The children who have to attend such schools are being deprived of a basic constitutional right under the North Carolina constitution when they are not provided the assets that are mandated. That right may not be trumped by those whose duty and responsibility is to provide an equal opportunity to the children and who are not doing so.

The proof is in the ABC scores for the school. A non *Leandro-compliant* principal or teacher may not stand between a child and the equal opportunity to obtain a sound basic education in any school, but it is critical in high school.

The children that are attending these low performing priority high schools, regardless of location, should not have to continue to be uneducated and unable to compete effectively with others in today's complex and changing society and economy. There is no longer time to wait for change to come when the educators in charge aren't effective.

There has to be a consequence for continually failing to move a high school upwards in student performance and for failing, after due notice, to seek and embrace change in the high school structure or even make the effort to put in place a ninth grade academy.

Due notice about poor high school performance was given in earnest in 2004 and throughout 2005. Simply put, this dismal high school academic performance cannot continue. There must be a serious consequence for continued poor performance in high schools.

Reduced to essentials, superintendents and principals have run out of room and run out of time. The State is clearly and ultimately legally responsible for these high schools and all other schools. The constitutional threshold has been spelled out and in existence since April 2002.

An ineffective principal cannot stay on any longer and continue to preside over a high school where no more than 55% of the students tested on EOG tests perform at or above grade level.

While I personally believe that the figure should be 65% at a minimum, I have looked to the General Assembly for the definition of a "low performing" school composite score that was enacted during the liability stage of this case to trigger the consequence for continued failure of a high school to achieve decent student performance.

I have found the performance trigger in S.L. 2001-424.

The General Assembly established a budgetary fund in excess of \$10,000,000 for the 2001-02 fiscal year, increasing for the 2002-03 fiscal year for low performing elementary schools so that they could receive the "tools needed to dramatically improve student achievement." S.L. 2001-424.

The lowest-performing elementary schools performance composite trigger was **"no more than fifty-five percent (55%) of the students performed at or above grade level** and the school was 80% FRL. The critical factor to the Court is the performance level selected by the General Assembly in its wisdom -- a level of **55% performance composite**, S.L. 2001-424. Section 29.1.

This letter is to put you on notice that in the event the 2005-2006 ABC performance composite for any of the 44 priority high schools is at 55%, or below, and that particular high school's performance composite scores for the previous four (4) years are also at 55%, or below, then and in such an event that high school **will not be allowed to open** in the fall of 2006 unless there is (a) new management in place approved by the State Board of Education, and (b) a valid plan underway, approved by the State Board of Education, to redesign the high school with an instructional design for a 21st Century High School and a staff committed to implementing that change.

It's time that our children who are under the thumb of non Leandro-compliant principals, teachers and superintendents get out from under.

The State Board of Education, of course, is encouraged to adopt regulations and rules that are **more stringent** than the foregoing and the Court would encourage the State Board of Education and the General Assembly to do precisely that this spring.

Regardless of that, the children that are in these schools have a constitutional right to have effective and competent principals who are progressing forward in their educational program, not just "marking time."

Not only are the children's constitutional rights being deprived by ineffective principals, consider the economic impact that is direct and annual in a low performing high school. More than a quarter billion dollars went into those schools in 2005 and the population of students **unprepared** to face the 21st century marketplace on graduation day was 45% or greater.

We must consider also the long-term human detriment. The detriment is immeasurable in terms of human costs, quality of life, lost opportunity, prison cells, and loss of productive, wage earning citizens in our State of North Carolina. **After 5 years, the "grace period" has run out.**

Needless to say, the "Consequences" letter created a great amount of consternation and hand-wringing in the educational community. But, thanks to Governor Easley, the State began to move with regards to low performance in high schools.

In a press release on June 13, 2006, unilateral action by the State was announced by Governor Easley with respect to low performing high schools: The press release stated in pertinent part:

Gov. Easley today announced a comprehensive plan to improve low-performing high schools across the state. As part of Easley's plan, school districts with high schools where less than 60 percent of students did not meet proficiency on end-of-grade tests for the past two years will be required to select from a menu of proven, long term restructuring options or the school will be reconstituted and redesigned through the state's New Schools Project. Easley is also expanding the turnaround team effort to schools where less than 70 percent of students are not meeting proficiency standards.

"The turnaround teams have done their work and reported back," said Easley. **"Nipping around the edges is not getting the job done and major changes are needed to improve performance."**

"In high schools that are not making the grade, we must take action to improve student performance," said Easley. "It is clear that these schools must go beyond traditional approaches and significant restructuring is required. By overhauling the system, we will ensure that our students get an education that will prepare them for the 21st Century workforce."

The High School Turnaround efforts began in earnest in August, 2006. There were initially 35 high schools identified and placed in Turnaround program for 2006-2007.

In meeting with the principals of those high schools in the winter of 2007, that it became evident to me that great numbers of the ninth graders coming to those poor performing high schools from their feeder middle schools were not, in fact, in the main prepared to do high school work at grade level or above.

By looking at performance composites of middle schools and elementary schools each year since 2000, I had come to believe that the elementary and middle schools, by and large, were performing well academically as shown by the End of Grade ("EOG") tests in reading and math given each year.

The reason for this belief was due to the ABC EOG test scores in reading and math. The tests showed high numbers of students performing well and scoring high in elementary and middle school. For example, in 2003-2004, the performance composite data for elementary and middle schools showed the following:

Elementary Schools - 625 schools statewide

342 schools (54.7%) had performance composites of 90 or above.

225 schools (36.0%) had performance composites of 80 or above.

50 schools (8.0%) had performance composites of 70 to 79

Only eight elementary schools had performance composites below 69%.

Middle Schools - 371 schools statewide

105 schools (28.3%) had performance composites of 90 or above.

198 schools (53.4%) had performance composites of 80 or above.

51 schools (13.7%) had performance composites of between 79 and 70.

Only 17 middle schools had performance composites below 69% and there were none below 50%.

Relying on this data was misleading. Academic achievement in math and reading in grades 3-8 seemed to be generally fine. This was not the reality however because the cut scores for the EOG tests were too low and the academics were not rigorous by any means. The result was that the children entering the poor performing high schools were not, in the main, prepared for high school work in mathematics, especially.

The truth came to light in October, 2006. In October, 2006, Chairman Lee and the State Board of Education raised the cut scores on the 2006 Math EOG test to reflect a requirement of increased academic rigor in math to bring the children into the 21st Century.

The mathematics EOG scores plummeted and performance composites dropped when the more rigorous mathematics requirements were in place.

Elementary Schools

In 2005-2006 there were 151 Elementary Schools with composites at 60 and below as compared to 8 in 2003-2004.

In 2005-2006 there were 231 Elementary Schools with composites at 69 to 60.1 as compared to 7 in 2003-2004.

Middle Schools
In 2005-2006 there were 84 Middle Schools with composites at 59 and under as compared to 2 in 2003-2004.

There were 33 additional Middle Schools whose composites were between 65 and 60 in 2005-2006 as compared to only 15 between 69 and 60 in 2003-2004.

There is no need to dwell on this. Suffice it to say that this data revealed a systemic weakness in mathematics that had not seen the light of day before. Mathematic instruction in grades 3-8 and before was not up to par in way too many elementary and middle schools.

The Court held a hearing on mathematics instruction. It was disclosed that if a child did not reach proficiency in 8th grade math, there was more likelihood than not that the child would not be successful in Algebra I in the 9th grade. Failure of proficiency in Algebra I is a valid predictor of future drop out from high school.

In light of a problem with mathematics education, we began to look backward towards the quality of middle and elementary education in mathematics.

The State properly focused on the feeder middle schools for the Turnaround High Schools and looked at weakness in elementary school math. The feeder middle schools, now that the poor math scores were revealed for all to see, were sending too many children unprepared to be successful in Algebra I to the poor performing high schools in Turnaround.

In 2007-2008, the State expanded the Turnaround effort to include thirty-five (35) middle schools and twenty (20) elementary schools. Halifax County's four (4) middle schools were all in the Turnaround program. Their academic performance is contained in the Notice of Hearing.

The other shoe, reading performance measured by EOG tests, was about to drop in 2008. This is because in 2007-2008, the State increased the rigor and standards of performance for reading in grades 3-8 on the EOG tests just as it had done in mathematics in 2006.

This time, everyone had to know what was coming in terms of an implosion in reading scores in grades 3-8 because everyone knew the reading EOG tests were going to be harder and require more rigorous instruction in the classroom to prepare the children for grade level proficiency.

The educational establishment was prepared for the bad news when the reading EOG scores were released in November, 2008. The education "excursionists" were prepared and DPI prepared a "linking study" showing what the scores would have been if the old easy test had been given instead of the up to date more rigorous 21st Century reading EOG test.

For example:

Grade 3 reading EOG tests. 111169 children took the test in 2008 and 61763 were at grade level or above. The percentage

of proficiency among third graders statewide was 55.1%. Under the old test, according to the "linking study" the percentage of proficiency would have been 80.8%.

Grade 8 reading EOG tests. This is the one a child has to pass to graduate from high school. 106913 children took the test in 2008 and 58,684 were at grade level or above. The percentage of proficiency among eighth graders statewide was 55.1%. Under the old test, according to the "linking study" the percentage of proficiency would have been 93.1%

Still, the results of the reading EOG for 2008 showed that the majority (56.7%) of North Carolina children in grades 3-8 were proficient in reading under the more rigorous test. Those children had been properly prepared by their classroom teachers.

In stark contrast, the reading EOG results in Halifax County can be described as nothing less than academic disaster. The number and percentage of non proficient (students who scored below grade level) in the elementary grades 3,4& 5 are contained in the Notice of Hearing. However, a synopsis is appropriate here:

Grade 3 - 8 elementary schools - 69.3% 224 out of 323 children were NOT proficient in reading.
Grade 4 - 8 elementary schools - 67.3% 220 out of 327 children were NOT proficient in reading.
Grade 5 - 8 elementary schools - 77.3% 245 out of 317 children were NOT proficient in reading.
For a total of 71.3% Not Proficient in Reading in Grades 3 through 5.

Middle Schools are supposed to prepare the children for high school. Proficiency on the 8th grade reading EOG is a key to high school graduation.
Grade 6 - 4 middle schools - 72.4% 210 out of 290 children were NOT proficient in reading.
Grade 7 - 4 middle schools - 84.8% 291 out of 343 children were NOT proficient in reading.
Grade 8 - 4 middle schools - 74.2% 279 out of 376 children were NOT proficient in reading.
For a total of 74.3% Not Proficient in Reading in Grades 6 through 8.

This is irrefutable evidence of a complete breakdown in academics in Halifax County Public Schools. It is no wonder

why the high schools have been such poor performers all of these past seven years. The children in elementary and middle schools are not, as shown, by the reading EOG example, obtaining a sound basic education in reading from year to year and grade to grade.

This is academic genocide and it must be stopped. The State of North Carolina is responsible and it is time for the State of North Carolina, through its Executive Branch and the State Board of Education to exercise direct command and control over the Halifax County Public Schools.

The children that go to the Halifax County Public Schools are the focus, not the school board, the superintendent or the principals or teachers. It is now time to shift the focus to children and away from the adults.

I am sure there will be great whining and wailing from the adults but never forget that the adults are the ones responsible for Halifax County Public Schools reaching this situation of academic collapse in classroom instruction and the concurrent violations of those children's right to the equal opportunity to obtain a sound basic education that are occurring everyday in the Halifax County Public Schools.

Sincerely,

A handwritten signature in black ink that reads "Howard E. Manning, Jr." with a long, sweeping horizontal line extending to the right.

Howard E. Manning, Jr.