



***Leandro* Issue Brief**

Issue Overview

The North Carolina Constitution guarantees every child in the State an opportunity to receive a sound basic education.¹ For more than twenty years, significant efforts have been made to solve statewide public-school issues while ensuring the State adheres to its constitutional duty.² To that end, in November 2022, the North Carolina Supreme Court instructed certain state officials to transfer the funds necessary to comply with years two and three of the *Leandro* Comprehensive Remedial Plan.³

NCSBA Position

In order to provide every child in the State an opportunity to receive a sound basic education, NCSBA believes the General Assembly should fully fund years four and five of the *Leandro* Comprehensive Remedial Plan without supplanting other education funds. Funding for *Leandro* would significantly improve access to educational programs and services, particularly in communities where children are being left behind; including increased access to early learning opportunities, such as NC Pre-K and the NC Infant Toddler Program, as well as supports like home visiting, childcare subsidies, and salary supplement programs for early educators.

Issue Background

Leandro

In 1994, five local boards of education (Cumberland, Halifax, Hoke, Robeson, and Vance), in addition to many individual plaintiffs, file a complaint against the State of North Carolina and North Carolina State Board of Education, seeking declaratory and injunctive relief, alleging that children in their school districts were not “receiving a sufficient education to meet the minimal standard for a constitutionally adequate education.”⁴ Defendants file a motion to dismiss. The trial court denies the motion to dismiss and Defendants timely appeal.

In 1996, the North Carolina Court of Appeals reverses the trial court’s order and dismisses all of Plaintiff’s claims. Plaintiffs then petition the North Carolina Supreme Court for discretionary review.

¹ *Leandro v. State*, 346 N.C. 336, 345 (1997)

² See, e.g., *Leandro v. State*; *Hoke Cty. Bd. of Educ. v. State*

³ *Hoke Cty. Bd. of Educ. v. State*, 2022-NCSC-108, 2022 N.C. 963

⁴ *Leandro v. State*, 346 N.C. 336, 342, 488 SE.2d, 249, 252 (1997)

In 1997, the North Carolina Supreme Court grants the petition to address “whether the people’s constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality.” The Court answers the question in the affirmative, reversing the decision by the Court of Appeals, by expressly holding: “Article I, Section 15 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.” The Court remands the case to Wake County Superior Court for further proceedings.

Hoke County

Upon remand, the Wake County Superior Court, with the consent of the parties, bifurcates the case into two separate actions—one addressing the claims of the plaintiffs from rural school districts and one addressing the claims of the plaintiff-intervenors from larger urban districts. The Superior Court then rules that the evidence presented in the rural districts’ trial should be further limited to claims as they pertain to a single district. Hoke County is designated as the representative plaintiff district, and the evidence in the case is restricted to its effect on Hoke County. The case becomes *Hoke County Board of Education v. State*, and the Superior Court ultimately concludes that neither the State, nor the Hoke County School System, were “strategically allocating the available resources to see that at-risk children have the equal opportunity to obtain a sound basic education.”

In 2004, the North Carolina Supreme Court affirms in part and reverses in part the Superior Court order. The Court affirms: (1) the portion of the order concluding that the evidence presented at trial established a clear showing of the denial of the established right of Hoke County students to gain their opportunity for a sound basic education and (2) the portion of the order requiring the State to assess its education-related allocations to the county’s schools so as to correct any deficiencies that presently prevent the county from offering its students the opportunity to obtain a *Leandro*-conforming education.⁵

The Court ultimately remands the case to Wake County Superior Court (Superior Court) to conduct proceedings, consistent with the strictures outlined in the Court’s opinion, monitoring Hoke County compliance and holding trials. The Court also requires executive branch agencies to propose methods to reallocate existing resources to address the deficiencies in Hoke County. Finally, the Court directs the Superior Court to hold trials “involving either other rural school districts or the five urban school districts, . . . in a fashion that is consistent with the tenets outlined in the Court’s opinion.”

None of the trials required by the Court’s decision occur between July 2004 and October 2016. While no trials occurred, the Superior Court held various hearings and Defendants produced several reports and updates during this twelve-year period.

⁵ *Hoke Cty. Bd. Of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004)

In 2018, Plaintiffs and Defendants ask the Superior Court to appoint WestEd, an education research group, to develop detailed, comprehensive, written recommendations to achieve sustained compliance with the *Leandro* constitutional mandates. In 2019, WestEd submits its draft report to the Superior Court. The WestEd Report contains eight recommendations for how the State can comply with the directive to provide a sound, basic education to all children in North Carolina.⁶

In 2020, the Superior Court directs the State to create a plan to implement the fiscal, programmatic, and strategic steps necessary to achieve the outcomes for students required by the North Carolina Constitution. To that end, the Superior Court orders the parties to report within sixty days on short-term actions the State will take in 2020, as well as proposed dates for submitting mid-range actions and a comprehensive remedial plan; including the additional resources needed beyond current funding. In addition, the Superior Court requires the State to identify specific State actors and institutions that will be responsible for implementing specific components of the plan.

In March 2021, the North Carolina Department of Justice, on behalf of the State, submits the Comprehensive Remedial Plan (Plan). The Plan includes 146 proposed action items to be implemented across the State. In June 2021, the Superior Court orders the State to implement the Plan, costing roughly \$5.5 billion each year by 2028, according to an appendix to the Plan itself.⁷

In a September 2021 hearing, the Superior Court sets a date—October 18, 2021—by which the State must secure the funds needed to implement the Plan. To note, the State does not yet have a biennium budget passed by the General Assembly and signed by the Governor at this point. On October 18, the Superior Court gives Plaintiffs and Defendants in the case until November 8 to provide suggestions on securing funding for the Plan. On November 10, 2021, the Superior Court orders the North Carolina Office of State Budget and Management, the Treasurer, and the Controller to transfer \$1.7 billion from the General Fund to fund the first two years of the Plan.⁸ The State Controller timely challenges the Superior Court’s order in the North Carolina Court of Appeals (Court of Appeals).

Meanwhile, on November 18, 2021, the General Assembly enacts, and the Governor signs, the State Budget.⁹ The State Budget appropriates \$21.9 billion to K-12 public education for fiscal years 2021-2023.¹⁰

On November 30, 2021, the Court of Appeals rules that the Superior Court cannot order the State to transfer \$1.7 billion to fund the Plan (“Our issuance of this writ of prohibition does not impact

⁶ Summary of the Leandro Comprehensive Remedial Plan, Office of the Governor, June 29, 2021.

⁷ Summary of the Leandro Comprehensive Remedial Plan, Office of the Governor, June 29, 2021.

⁸ 10 Nov. 2021 Order in *Hoke Cty. Bd. Of Educ. et al. v. State of North Carolina and W. David Lee*

⁹ House Bill 103 / S.L. 2022-74 (FY 2022-23 Appropriations Act)

¹⁰ Senate Bill 105 / S.L. 2021-180 (FY 2021-23 Appropriations Act); House Bill 103 / S.L. 2022-74 (FY 2022-23 Appropriations Act)

the trial court’s finding that these funds are necessary, and that portion of the judgement remains. But it is now up to the legislative and executive branches, in the discharge of their constitutional duties, to do so”).¹¹ In December 2021, various parties to the lawsuit appeal – some of which challenge the Superior Court’s November 10 Order and others challenge the Court of Appeals’ November 30 Order.

In March 2022, the North Carolina Supreme Court grants a motion to hear the appeal of the Superior Court’s order directly. At the same time, the Court sends the case back to the Superior Court to determine the effect of the enactment of the State Budget on the Superior Court’s November 10 Order. The Superior Court then sets out a timetable for parties to deliver their takes on what impact the passage of the State budget should have on the Superior Court’s order. Two weeks after a hearing, the Superior Court issued an order on April 26, 2022, finding the State underfunded the *Leandro* Plan by \$785 million but did not order the money to be transferred from the state treasury to state agencies.

The case goes back before the North Carolina Supreme Court on August 31, 2022, for oral arguments. The Supreme Court is set to decide the answer to two questions: (1) Whether any judge in this case has found a statewide violation of students’ constitutional right to access a sound, basic education; and (2) Whether the courts can compel the transfer of \$785 million to state agencies as remedy for any violation.

On November 4, 2022, the State Supreme Court upholds the November 10, 2021, Superior Court order calling for the transfer of funds necessary to comply with years two and three of the *Leandro* Comprehensive Remedial Plan. The Court then sends the case back to Superior Court to recalculate the amount of funds to be transferred following an analysis of how much the 2022 State budget funds the *Leandro* Plan. Once those calculations have been made, the Court instructs the Superior Court to “order those State officials to transfer those funds to the specified State agencies.”

On December 19, 2022, the Office of State Budget and Management files an affidavit stating: “The analysis reveals that 63% of the Year Two Action Items of the Comprehensive Remedial Plan, and 60% of the Year Three Items of the Comprehensive Remedial Plan have been funded. This means that approximately \$257,679,390 of Year Two Action Items remain unfunded, while \$420,121,777 of Year Three Action Items remain unfunded.”

¹¹ 30 Nov. 2021 Order in re: *Hoke Cty. Bd. Of Educ. et al. v. State of North Carolina and W. David Lee*, North Carolina Court of Appeals (2021)