

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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REPORT FROM THE COURT RE: THE READING PROBLEM

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**REPORT FROM THE COURT RE: THE READING PROBLEM**

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All children in North Carolina are entitled to the equal opportunity to obtain a sound basic education. The children’s constitutional right as set out in the North Carolina Constitution and this case follow:

*Leandro* Tenets and Minimal Compliance Standards

The North Carolina Supreme Court’s decisions in *Leandro I* (346 N.C. 336) on July 24, 1997 and *Leandro II* (358 N.C. 605) on July 30, 2004, set in stone, once and for all, the following tenets relating to the Constitutional guarantee to each child of the right to an opportunity to obtain a sound basic education:

FIRST: 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; (*Leandro I* p. 347).....

SECOND: *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: LEANDRO COMPLIANT PREREQUISITES

*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.*

THIRD: That a child who is showing Level III (grade level) or above proficiency (Level IV) on the State's ABC tests, End of Grade (EOG) or End of Course (EOC), is obtaining a sound basic education in that subject matter AND that a child who is not showing Level III proficiency (performing below grade level) on the ABC tests is **not obtaining a sound basic education in that subject matter.**

For purposes of this case, including the Supreme Court decision in *Leandro II* the definitions of Level I, Level II, Level III (grade level) and Level IV proficiency in effect from 1999 forward and as used in all previous Orders are set forth as follows:

Level I: Students performing at this level do not have sufficient mastery of knowledge and skills in this subject area to be successful at the next grade level.

Level II: Students performing at this level demonstrate inconsistent mastery and skills in this subject area and are minimally prepared to be successful at the next grade level.

Level III: Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared for the next grade level.

Level IV: Students performing at this level consistently perform in a superior manner clearly beyond that required to be proficient at grade level work.

FOURTH: That a showing of Level III proficiency is the proper standard for demonstrating compliance with the *Leandro* decision. ( Note: This does not include the State Board of Education's March, 2014 revision of the definition of Level III. That "revision" and the addition of different levels is an issue for a future hearing.)

FIFTH: That a child who is performing below Level III is "at-risk" of not obtaining a sound basic education.

SIXTH: That there are children "at-risk" of not obtaining a sound basic education located throughout the State of North Carolina and those children's needs are similar whether they live in a rural or suburban area.

SEVENTH: That the State must assume responsibility for, and correct, those educational methods and practices that contribute to the failure to provide children with a constitutionally – conforming education.

EIGHTH: That when the State assesses and implements plans to correct educational obligations in the face of a constitutional deficiency in an LEA, or particular school, the solution proposed must ensure competent teachers in classrooms, competent principals in schools and adequate resources to support the instructional and support programs in that school so as to be *Leandro* compliant.

NINTH: Local School Systems (LEAs) are entitled to funding by the State sufficient to provide all students, irrespective of their particular LEA, with, at a minimum, the opportunity to obtain a sound basic education.

The Supreme Court ended its decision in *Leandro II* with the following:

*This Court now remands to the lower court and ultimately into the hands of the legislature and executive branches, one more installment in the 200-plus year effort to provide an education to the children of North Carolina. Today's challenges are perhaps more difficult in many ways than when Adams articulated his vision for what was then a fledgling agrarian nation. The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in *Leandro*, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount. Whether the State meets this challenge remains to be determined. (358 N.C. 605,649)*

This has been the law since April 4, 2002, when the Final Judgment was entered on the liability phase of this case. The North Carolina Supreme Court set the law in stone on July 30, 2004, over nine and one-half years ago. Since that time, this Court has undertaken to monitor the State's progress with respect to carrying out its constitutionally mandated requirement that each and every child be afforded the equal opportunity to obtain a sound basic education. **The North Carolina Supreme Court recently declared that its mandates in this case remain "in full force and effect."**

On November 8, 2013, the Supreme Court of North Carolina, dismissed, by Per Curiam opinion, an appeal by the State of North Carolina from this Court's Order entered July 18, 2011, relating

to legislative enactments pertaining to Pre-K for at-risk four year olds, and affirmed by a unanimous panel of the Court of Appeals in 731 S.E.2d 291 (2012). In dismissing the appeal as moot, the Supreme Court provided in pertinent part:

In *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) and *Hoke County Board of Education v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004), this Court first found and then reaffirmed that the Constitution of North Carolina guarantees 'every child of this state an opportunity to receive a sound basic education in our public schools.' (citations omitted) Following our opinion in *Leandro*, the State created a prekindergarten program (formerly 'More at Four') for at-risk four year-old children. Plaintiffs brought the instant proceeding to challenge changes to this program made by the General Assembly in 2011. We conclude that subsequent legislation enacted in 2012 rendered this controversy moot.....

The 2012 amendments enacted by the General Assembly in the wake of the trial court's order are readily comparable to the intervening legislation in *McCluney*. The repeal of subsection 10.7(h) and the alteration of 10.7(f) constitute 'material and substantial' changes to the provisions that the trial court found unconstitutional. See *McCluney*, 280 N.C. at 405, 185 S.E.2d at 871. Accordingly, we conclude that the questions originally in controversy between the parties are no longer at issue and that this appeal is moot. We express no opinion on the legislation now in effect because questions of its constitutionality are not before us. Id. At 407, 185 S.E.2d at 872. **Our mandates in *Leandro and Hoke County remain in full force and effect.*** *Hoke County Bd. of Educ. v. State*, No 5PA12-2 (November 8, 2013)

For the past nine (09) years, the Court has held hearings and each year has carefully reviewed the academic performance of every school in this State. Following its review, the Court has reported on various aspects of poor academic performance to the Chairman of the State Board of Education, and the Governor. Also, from time to time, the Court has reported this information to members of the General Assembly. At the core of this poor academic performance is the failure of children to learn to read by the time they reach the 3<sup>rd</sup> grade. Reading comprehension is critical to a child's obtaining a sound basic education across all subject lines.

There is no need to rehash these efforts here. Suffice it to say that poor academic performance remains a problem in a host of elementary, middle and high schools throughout North Carolina and as a result, the children in those schools who are blessed with the right to the equal opportunity to obtain a sound basic education as guaranteed by the Constitution and as set out in *Leandro*, are being deprived of their constitutional right to that opportunity on a daily basis.

### **Chronological Background – Learning to Read – The K-2 Assessments - Reading 3D.**

All children in grades 3-8 are given EOG summative assessments in reading and math. These summative assessments are called End of Grade tests in reading and math. In 2006, the State Board of Education raised the standards (cut scores) for mathematics in grades 3-8. As a result, the grade level performance of many (not all) children throughout the State of North Carolina dropped from Level III to Level II. This happened because the previous assessments were not rigorous enough. Over time, the student performance on the more rigorous math assessments gradually improved.

The same action with respect to the reading EOG summative assessments did not happen until 2008 when the SBE raised the standards for reading in grades 3-8. Like math, the reading scores of students (many but not all) plummeted as did the math scores in 2006. When this

happened, the Court reviewed the reading scores provided by DPI and placed into evidence. The Court's examination of the reading proficiency of children in certain elementary and middle schools statewide showed that students in many school districts were simply not reading at grade level in far too many numbers. It goes without question that a child must learn to read and read proficiently in order to obtain a sound basic education in all subjects that are being taught. There is an old maxim which was testified to multiple times during the trial of Leandro I ---***K through 3 learning to read – 3 forward, reading to learn --.***

The Court's examination of Halifax County's lack of grade level performance in elementary and middle school reading (as well as many other subjects) in 2008 and prior years, led to the SBE and Halifax County entering into a Consent Order in which the State was to try to assist Halifax County Schools so the children there could see some modicum of academic achievement. This Consent Order was entered in May, 2009, and the process is still on-going.

During this time period, the Court began to focus on the four (4) academic years that a child spends in elementary school before they take the first EOG assessments in reading and math at the end of the third (3<sup>rd</sup>) grade. Without pre-K, each child spends a year in kindergarten, a year in first grade, a year in second grade and a year in third grade – a total of four full years. The Court questioned why so many children were not reading on grade level at the end of the third grade when they had been in school supposedly learning to read and write for four full years?

Logically, it would follow that there would be some form of assessment of these young children in K-2 going on so the teachers would be aware of their students' progress in reading during each of the years prior to the end of 3<sup>rd</sup> grade. If not, why not? The answer to the question is that North Carolina had implemented a formative system for K-2 known as the K-2 assessments in reading and math that were available since the mid 1980's for use by the classroom teachers in K-2 to assess each child's progress in reading and math.

The K-2 assessment system was brought to the Court's attention in 2009. The purpose of the K-2 assessments is to maintain a continual assessment of a child's academic progress in reading/literacy. Put another way, on-going assessment in literacy and mathematics instruction throughout the school year in grades K-2 is necessary and critical for each child's academic growth in reading and math. Assessment guides instruction and the K-2 assessments consist of formative, benchmark and summative.

In response to this "news", the Court held a hearing on August 26, 2009 to put on the record information about 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 the K-2 Assessments in each and every elementary school.

### **The August 26, 2009 Hearing on K-2 Assessments.**

At the hearing, the State was to report to the Court regarding the requirement that all elementary schools effectively use and implement K-2 (kindergarten through second grade) literacy and math assessments, including the importance of K-2 assessments guiding instruction in literacy (reading) and mathematics in the early grades and the requirements of the State Board of Education ("SBE") with respect to the use and implementation of K-2 assessments in elementary schools.

2009 Statutory authority: Two statutes were applicable.

First statute -- 115C-174.1, which dealt with components of state's testing system, provides that no standardized tests may be utilized in grades one and two unless required by federal grants connected to the Reading First Program. However, the statute places the obligation on the SBE to adopt and provide to LEAs developmentally appropriate individualized assessment instruments that are consistent with the SCOS (standard course of study). It further permits the LEAs to use the state assessments or to develop their own assessments.

Second statute – 115C-105.27(1a) deals with school improvement plans and provides that school improvement plans may include the use of assessments to monitor student progress in learning to read. School improvement plans must include a plan for preparing students to read but assessments were discretionary. (note – a statute requiring schools develop a plan for all students to be reading by grade 2 was deleted in 2011 or 2012).

### **SBE Mandatory policy regarding implementation of assessments of student progress in reading and math as of 2009.**

The SBE adopted a policy, effective in 2009, known as globally competitive students, C-16, which is a policy on K-2 assessments. **This policy was mandatory, not permissive, and required that schools and districts implement assessments in grades K, 1 and 2 (K-2) and that those assessments include documented, ongoing individualized assessments during the years, which would be formative, benchmark as well as summative. The districts and individual schools can use state developed assessments or their own developed assessments which must meet certain standards.**

The assessment programs and materials must provide information about the progress of each student for instruction and early intervention and formative assessments. The assessments have to provide the child's next year teacher with information concerning the status of each child which is a summative report. It also has to provide parents of the status of their child relative to grade level performance standards, which is also summative. The assessments also have to provide the school and district data about children's achievement status and progress in K-2 grades and must provide summative assessments for proficiency and growth. The data must be disaggregated by groups.

While the mandatory policies regarding K-2 assessments were put in place in 2009, there was no clearly effective method of enforcement by statute in 2009, except withholding a superintendent's salary for not complying with the Uniform Education Reporting System.

K-2 Reading (literacy) assessment – Background History and development in N.C through 2009.

**The children in K-2 do not take EOG tests as they are standardized and not permitted for children in K-2 but they are assessed frequently so the teacher can find out where the student is and provide appropriate instruction.**

Young children in kindergarten and the early grades 1 and 2 are not developmentally ready to take standardized tests. In the early 70's the children were administered the California Achievement Tests but it was not an appropriate instrument for developmentally young children. The CAT also took time away from instruction as it was a summative assessment, not formative. The CAT did not guide the teacher's instruction for the individual child. As a result, over the years, there was a movement to develop a more age appropriate method of assessing a child's learning performance in reading and literacy.

In 1987, a task force was developed to field test the K-2 literacy assessment and the initial assessment began in 1988 and evolved through 2009 to an assessment that is appropriate for young students. By assessing a student's progress in reading through formative assessments, teachers can use the assessment data to guide/focus their instruction in the classroom on their individual students. The critical point that resonates throughout all the evidence about the K-2 assessments and for that matter, formative and benchmark assessments in higher grades, is that the teacher must use the data learned about the student's achievement or lack thereof, in the assessment to focus and guide the individual student's instruction using that information. If the student is simply assessed and the teacher does not use the data to focus the teaching of the student on deficiencies, the assessment is useless.

The K-2 assessment from 1999 through 2005 was modeled after *Reading Recovery: the Observation Survey*, by Marie Clay. The 2009 revision contained many of the components of the 2005 revision. The K-2 assessment was continually looked at and improved from 2005 through the 2009 revision of the K-2 assessment.

The k-2 literacy assessment was, and is, made available to K-2 elementary school teachers statewide in a literacy folder (file) that holds all of the components of the literacy assessment, including writing samples, question and answer components, letter and sound id components and comprehension components.

What is the educational purpose for having the K-2 literary assessment or for that matter the K-2 assessments in reading and math? **The educational purpose for requiring teachers to use assessments is so that the teacher can measure, during the course of the school year, each child's academic progress (or the lack thereof) on a frequent basis so that the teacher can determine from the assessment where the child is in terms of acquiring a sound basic education and mastering the curriculum for the school year and grade.**

The reading curriculum in K through 2 (and the upper grades as well) is called the Standard Course of Study ("SCOS"). The SCOS is the uniform curriculum for all courses students take throughout the public school curriculum. Each subject (including reading in grades K-8) in SCOS has specific objectives/standards which the student is expected to master over the nine (9) month school year. Even though the students in K-2 do not take End of Grade (EOG) standardized (summative) tests, the students in K-2 are expected to achieve and master the SCOS objectives for reading and math for that year.

Teachers are expected to teach their students the content/material that will help each child master the objectives for the SCOS. The strength of the properly used assessments is that instruction is individualized to meet the needs and progress of each child in the classroom. A classroom teacher that does not properly assess the children on an individual basis is engaged in inappropriate teaching, which is a violation of the children's right to obtain a sound basic education as they are not being provided with a competent teacher in the classroom.

It is critically important to note that K-2 are years in which a child's foundational reading skills are developed. K-2 is the foundation and the SCOS for K-2 is developmentally appropriate for the age of the students and the foundation for reading as the child goes forward. The use of the formative assessments lets the teacher know where the child is in terms of his or her literacy skills at the beginning of the school year and how the child is progressing during the year. The teacher is to also benchmark during the year to determine the child's growth and then to measure (summative) at the end of the year to determine that the child has a year's worth of growth or better for the literacy skills learned during the year.



In addition to teaching the SCOS in proper sequence and in a proper time frame, the classroom teacher should also be engaged in frequent assessments of his or her students to determine whether or not they are mastering the critical standards required to obtain a sound basic education in the particular course, to wit: grade level proficiency or above.

**Why should teachers be required to frequently assess each of their students? Because proper use and implementation of formative and benchmark assessments lets the teacher know whether or not a student is mastering the objectives being taught and if not, to provide the teacher with information as to the child's weaknesses so the instruction for the particular child can be tailored to meet the child's educational needs.**

**What happens when a teacher fails to properly use formative assessments in the classroom? Then the teacher does not know what each child is mastering in the subject matter and the child just "rolls along" without learning what is required to master the SCOS objectives for the year. An elementary K-2 teacher who fails to properly assess the students in their classroom is not providing a *Leandro* compliant educational opportunity to the children in their classroom.**

How many kinds of assessments are there?

There are three types of assessments used in the "educational vocabulary". These are (1) formative assessment (2) benchmark assessment and (3) summative (total) assessment.

What are assessments? Partial Source: *State Superintendent's Vision for 21<sup>st</sup> Century Assessment – published March 26, 2007*

Formative Assessment- What classroom teachers should be using on a weekly basis to keep up with a child's progress in a subject.

A process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to help students improve their achievement of intended instructional outcomes. Formative assessment is found at the classroom level and happens minute-to-minute or in short cycles. Formative assessment is not graded or used in accountability systems. The feedback involved in formative assessment is descriptive in nature so that students know what they need to know next to improve learning.

Interim/Benchmark Assessment.

Interim/benchmark assessments are given to students periodically throughout the year or course to determine how much learning has taken place up to a particular point in time (summative). These assessments provide information for programs and instructional support. The main users of this information are teacher teams, curriculum coordinators, and principals.

Summative Assessment – End of Grade Tests/ End of Course Tests for ABC system

A measure of student learning to provide evidence of student competence or program effectiveness. Summative assessments are found at the classroom, district and state level and can be graded and used in accountability systems. The information gathered from summative assessments is evaluative and is used to categorize students so performance among students can be compared.

Classroom assessments should promote learning (formative) and help determine how much learning has taken place at a particular point in time (summative). Both ways of assessing are

essential to student learning and the information gathered is used to inform students, teachers and parents.

A teacher who is competent and knows how to differentiate instruction among the students in the classroom will utilize formative assessments to determine if a child is mastering the critical standard being taught at that point in the course which is supposed to align with the pacing guide for the course.

The formative assessment is not a “test” but merely a measurement of the student’s knowledge and understanding of the critical standard being taught in the class at that point in the course. The formative assessment is a necessary tool because if the student has not mastered the critical standard being taught at that time, the assessment informs the teacher of that fact and will enable the competent teacher to focus or change instruction on that critical standard for that student to enable the student to master the subject. A competent teacher will frequently use formative assessments so that no student will be left behind as the course progresses.

Teachers in K-2 are expected to utilize formative and benchmark assessments in order to determine each child’s progress (or lack thereof) and use the data collected from the assessment to guide/form the ongoing individual instruction for each child. To this end, in reading, students are assessed using the texts (books) that they use in class to learn to read. The books that the children used are on a reading level that is appropriate for the instruction for that age and grade and to meet the objectives of the SCOS for that year. In K-2 as well as upper grades in elementary school, the books in the grade are referred to as leveled texts. What are leveled texts?

Leveled Texts are books that are determined, educationally, to be appropriate for the grade and achievement level in the class).

This is critical in learning to read and being able to read and comprehend the text. Accordingly, one of the important components of the literacy assessment is to assess a child’s reading using the leveled texts that are employed in the classroom. Put in plain English, the children are learning to read using books in the classroom. The books are “leveled” for the particular age and developmental phase expected in the child’s grade and grade level. Once the books are “leveled” that is - determined to be appropriate for the reading level in the particular grade and objectives for reading, they are available for use by the teacher in the classroom for that grade.

In NC, schools and teachers can order books that are consistent with the reading levels that the children in that grade are expected to achieve. The purpose for the ‘leveled” texts is to enable teachers and schools to order reading texts that are consistent across the state so that all systems (although they might not use the identical books) are using books that are consistent with texts across the state for that same class and level.

Running records – formative assessment of a child’s reading skills and achievement. One of the components of the K-2 reading assessment is known as a running record. This is a written record of a student’s assessment in reading using the leveled text. In this component, a child and the teacher sit together and the child reads a portion of the leveled text (book) to the teacher. The teacher assesses the child’s reading skills in vocabulary, pronunciation, sound and reading comprehension and the speed at which the child reads the text, among other items. This assessment is recorded in the child’s literacy folder in the running record. Once the child finishes reading the text, the teacher asks the child to tell her what the text said (comprehension phase).

In K-2, the teacher is expected to formatively assess each child in the classroom on a regular basis by having the child read from a leveled text to the classroom teacher. This assessment can be administered anytime during the school day and takes a short amount of time per child (minutes). The child reads out loud and the teacher records the time, vocabulary skills, phonics, letter recognition and comprehension skills. How does the teacher assess comprehension? Easy, the teacher asks the child to tell her/him what the child has just read and what it means.

This is a one on one kind of assessment in reading and the best practice is to assess the reading skills one on one with the child. However, there are some assessments, such as spelling inventory that can be done in a small group right in the classroom. For example, the teacher assesses the children's knowledge of letters through letter ID.

The teacher can assess the entire class and determine which children do not know all of their letters and which letters a child has not mastered. After assessing the children, the teacher can individualize the instruction and work with those children who have not mastered certain letters on an individual, or small group, basis to teach them the letters they have not mastered. The formative assessment is the means to determine what letters the child knows or does not know and the data (information about what letters the child does not know) drives the instruction for that child on an individual basis. Put another way, the assessment measures where the individual student happens to be as compared where the child is supposed to be in the SCOS. (r p23)

### **Benchmark Assessment – use of Secured Texts to determine the child's progress.**

Secured texts – to assess the child's reading skills and progress at intervals during the school year. The teacher is utilizing leveled (at the particular reading level that is used for the objective in reading during the grade during the year) texts in the classroom that the children are reading as they progress during the year. However, to achieve fidelity and confirm that the child is actually reading (as opposed to memorizing the particular book and parroting the text back, etc.) the State has identified books that are leveled at the same reading level as those books (texts) used in the classroom in K-2 or above.

These books are not distributed in the classroom but are "secured" for purposes of assessing the child's actual reading skills and comprehension in a process known as benchmarking. The benchmark is a form of assessment to determine the student's performance level and achievement (or non-achievement) in reading (or any other subject – but here we are focusing on reading). In K-2 assessments, the teacher pulls a "secured" text, which in plain English is nothing but a book the student has never read but is at the level at which the child is supposed to be reading in the classroom during the year.

The use of the benchmark assessment in reading is to be done three (3) times a year. In this process the teacher uses the "secured" text and has the child read from the text that the child has never seen but is on the same level as what the child is using in the classroom. The child reads the text and the teacher assesses the time, vocabulary, phonic pronunciation and comprehension of the text by the child to determine (using the running record) the child's proficiency in reading at that point in the year. By using the benchmark assessment in reading (or other subjects) the teacher and school are able to measure the academic growth of the child in terms of mastering the SCOS objectives for the year.

The bottom line is that to be effective in K-2 reading, the teacher must utilize formative and benchmark assessments throughout the school year so the teacher can use the data obtained

from the assessments to guide the individual child's instruction so the child can master the subject and learn to reach proficiently.

The K-2 assessment system is designed to be seamless from grade to grade provided the classroom teacher is doing the assessments, running record and instructions on pace with the SCOS for the year.

The K-2 assessment system requires that the teacher maintain a separate folder (record) for each child for literacy which contains the assessments, including the running record and which indicates at what level the child has mastered in reading.

For example, Jimmy is in the first grade and at the end of the first grade the teacher has kept a folder on Jimmy's progress in reading and writing skill development. The teacher provides a summative (year end) report on Jimmy's progress and the folder contains the running record for Jimmy's literacy skills and progress and indicates Jimmy's progress at the level of that progress. The running record is the most important because it is an ongoing assessment used frequently. The teacher also benchmarks Jimmy's level three times a year using secured texts to measure and validate the progress (or lack thereof) that Jimmy has made. This folder is provided to the second grade teacher who can know from reading the materials where Jimmy is at the start of the second grade and what his strengths and weaknesses are so the second grade teacher can immediately begin to tailor instruction to meet Jimmy's individual level in reading. Put another way, the teacher knows from the folder at what level text Jimmy has been reading successfully be it a first grade level, second grade level or higher, or that he has not mastered reading on a first grade level which would be a sign of instructional failure in the prior two years of school.

What is the effect on the children in learning to read in a K-2 classroom when the teacher fails to do the formative and benchmark assessments as required, or in an incomplete fashion? The answer depends on the individual child. Some children are able to read when they come to kindergarten. Others learn to read in the classroom but not the struggling students. The struggling students ( at-risk ) tend to not make progress and do not become proficient readers or writers if the teachers do not know what they are doing and do not assess the students so as to tailor the instruction so the children can keep pace with the other students. These students, without assessment and intervention, stagnate in the classroom and do not learn to read.

Using the K-2 assessments is without question an essential tool for at risk children who are struggling to learn to read. Additionally, for all children in K-2, the classroom teacher should know, by effectively using formative assessments, where every one of the children are in terms of mastering the objectives for reading and math, every single student and every single day.

In this regard as well, the teacher's lesson plan and pacing guide should reflect the objectives in the SCOS and the formative assessment is used to measure the child's progress as they work through and master the objectives, which in this case is reading proficiency.

The principal in the elementary school should be familiar with the K-2 assessments so that the principal can determine, when they are in the elementary classroom, that the K-2 Assessments are being properly implemented and used to guide instruction in the classrooms. With respect to the literacy folder, the principal should, at any time of the year, be able to pick up the folder and upon review, see where the child is in literacy progress and whether or not the teacher has been actually doing the K-2 assessment as it was designed to be done.

Put another way, the principal of the elementary school should be on top of each classroom teacher's progress with respect to properly utilizing the K-2 assessment to gather information on each child and use that information to guide individual instruction in literacy. The new principal standards for 2009 forward require principals to know about the assessments so they can see that formative assessments are in place in their schools.

The K-2 assessment system properly implemented and used by the classroom teacher guides the instruction for each child individually and measures their academic progress.

What is the effect of a teacher not using the K-2 assessments properly on a child in the classroom?

1. The child is not progressing and is not proficient.
2. The teacher does not know where the child stands in terms of literacy progress and the SCOS.
3. The child is not reading and is not progressing and the teacher does not know what reading level the child is on.
4. The child is NOT provided the opportunity that they are entitled to have in order to learn and obtain a sound basic education.

Reduced to essentials, this is a failure of classroom instruction on the part of the teacher and the principal and the elementary school and is a violation of the child's right to have an effective competent teacher and principal in the classroom and in charge of the school.

The evidence presented at the 2009 hearing clearly and convincingly showed that the proper application and use of the K-2 Assessments in Kindergarten through grades 1 and 2 in reading and mathematics, should result in all children being able to perform in reading and mathematics at grade level or above so that they enter the 3<sup>rd</sup> grade reading at a proficient level and doing grade level mathematics. Teachers who did not effectively use the K-2 Assessments, which were upgraded in 2005 and again in 2009, were not providing their students with the equal opportunity to obtain a sound basic education.

**The bottom line is children should not be getting to the third grade unable to read at grade level or above, nor should they be getting to the third grade not prepared in mathematics. The failure of children to be prepared for reading and math so that by the end of grade 3, they are performing at grade level can be traced, in large measure, to the elementary school's failure to properly use and implement the K-2 Assessments appropriately, if at all.**

Based on the abysmal results on the 2007- 2008, 2008-2009 reading end of grade tests in many elementary schools and abysmal mathematics end of grade tests in many elementary schools, including those in Halifax County, it appeared to the Court that the K-2 Assessments were not being properly utilized or implemented in the early grades. If they were it would seem logical to infer, at this point, that the children in the 3<sup>rd</sup> grade would not be tanking in reading and/or math after four (4) years in elementary school.

Subsequent to the hearing in August, 2009, the Court had the opportunity to review the statewide reading scores – one year after the cut scores for reading in 3-8 had been implemented.

The Court, in the course of its review of the statewide 2008-2009 reading end of grade tests in grades 3 – 8, focused on elementary and middle schools where the 2008-2009 reading end of grade test scores for grades 3 through 5 and 6 through 8 were fifty percent (50%) proficient or

less in all three grades in the school, or where two out of the three grades test scores in reading were 50% proficient or less.

An elementary school or middle school where the children in all three grades, or 2 out of 3 grades, were reading at 50% or less proficiency is a school where the equal opportunity to obtain a sound basic education is simply not happening. Five out of ten children not being proficient in reading is evidence of a failure in classroom instruction and school leadership, nothing more, nothing less. Had k-2 assessments been properly conducted in these schools, the children would not have been so academically behind.

### ***The Urban Reading Problem – Durham, Forsyth and Guilford School Systems -- The May 4, 2010 Hearing***

The Court, in the course of its review of the statewide 2008-2009 reading end of grade tests in grades 3 – 8, focused on elementary and middle schools where the 2008-2009 reading end of grade test scores for grades 3 through 5 and 6 through 8 were fifty percent (50%) proficient or less in all three grades in the school, or where two out of the three grades test scores in reading were 50% proficient or less.

An elementary school or middle school where the children in all three grades, or 2 out of 3 grades, were reading at 50% or less proficiency is a school where the equal opportunity to obtain a sound basic education is simply not happening. Five out of ten children not being proficient in reading is evidence of a failure of **Leandro** mandated competent classroom instruction and school leadership, nothing more, nothing less.

Realizing that there are major academic problems in small rural school systems in the Northeast such as Halifax, the Court decided to look at reading scores for 2008-2009 in three large urban districts to determine if academic disasters in reading similar to those in Halifax and other rural counties in the Northeast were present. The urban school districts are **Durham, Forsyth and Guilford.**

In March, 2010, the Court entered a Notice of Hearing and Order setting a hearing for May 4, 2010, wherein the three (3) urban districts were requested to appear and explain what they were going to do to improve reading scores in multiple elementary and middle schools.

The results of the Court's examination of DPI student accountability data for 2008-2009 in reading were attached to the Notice of Hearing and Order. A summary of the results follows here:

#### **Durham- 2008-2009**

Elementary Schools -15 out of 29 (51.7%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 63.4% of third graders were not proficient in reading, 61.4% of fourth graders were not proficient in reading and 46.5% of fifth graders were not proficient in reading. For all 3 grades combined in these 15 elementary schools there were **2170 children not proficient in reading or 57.3% not proficient.**

Middle Schools - 4 out of 9 (44.4%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 59.4% of sixth graders were not proficient in

reading, 60.5% of seventh graders were not proficient in reading, and 64.4% of eighth graders were not proficient in reading. For all three grades combined in these 4 middle schools **there were 1609 children not proficient in reading or 61.4% not proficient.**

#### **Winston Salem/Forsyth- 2008-2009**

Elementary Schools -13 out of 43 (30.0%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 62.8% of third graders were not proficient in reading, 57.3% of fourth graders were not proficient in reading and **66.7% of fifth graders were not proficient in reading.** For all 3 grades combined in these 13 elementary schools there were **1742 children not proficient in reading or 62.05% not proficient.**

Middle Schools - 4 out of 15 (26.6%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 57.5% of sixth graders were not proficient in reading, 63.0% of seventh graders were not proficient in reading, and **63.6% of eighth graders were not proficient in reading.** For all three grades combined in these 4 middle schools **there were 817 children not proficient in reading or 61.2% not proficient.**

#### **Guilford- 2008-2009**

Elementary Schools - 21 out of 66 (31.8%) regular elementary schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 55.4% of third graders were not proficient in reading, 59.2% of fourth graders were not proficient in reading and **58.7% of fifth graders were not proficient in reading.** For all 3 grades combined in these 21 elementary schools there were **2448 children not proficient in reading or 57.6% not proficient.**

Middle Schools - 3 out of 20 (15.0%) regular middle schools fell into the category where all three grades, or 2 out of 3 grades, had reading proficiency at 50% or below in all three grades or in 2 out of 3 grades. In those schools so identified, 53.5% of sixth graders were not proficient in reading, 59.4% of seventh graders were not proficient in reading, and **62.0% of eighth graders were not proficient in reading.** For all three grades combined in these 3 middle schools **there were 928 children not proficient in reading or 58.2% not proficient.**

**These children in the 8<sup>th</sup> grade were heading to high school where they are simply not prepared to do the work.**

**The May 4, 2010 hearing – a synopsis of the testimony from each district.**

All three urban systems appeared for the hearing and presented evidence:

#### **Guilford County Schools – Superintendent Mo Green**

Goals as of 2010 – remove low performing schools by 2012 and moving more schools up. Very first strategies are focused on literacy (reading). Had 55% of students on grade level. “and so for me literacy became a thing that we needed to focus on in our district and so we made that the first of our implementation strategies.”

The Superintendent agreed that when a child is in third grade and can't read the child is headed downhill academically. The K-2 assessments must be done by the teacher and the principal must make sure the teacher is doing the assessments.

Guilford County has adopted strategies and plans to assist the low performing elementary schools and other schools and to attempt to improve literacy and reading, including K-2.

Guilford County is addressing the K-2 literacy assessment in 2 ways. First, since 2008 Guilford has started using DIBELS literacy assessment system. DIBELS stands for Dynamic indicators of basic early literacy skills. Starting in 2008 Guilford rolled out DIBELS assessment and by end of first semester of 2010, had 15,000 K-2 graders being assessed on Dibels.

Dibels focuses on early literacy skills, like fluency and phonemic awareness. Dibels is an effective assessment tool which tells teacher where the weaknesses and strengths with each child. However after you assess the child, the teacher must use the assessment data to fashion the instruction needed to teach the child. Dibels is just a helpful machine. The teacher must assess, get results and Dibels provides the teacher strategies to employ to instruct the child.

Guilford is giving teachers development in how use the strategies to instruct the children. Principals are supposed to be able to know about the assessments and see they are carried out by teachers.

The second important part of the K-2 literacy assessment is TRC, a developmental reading assessment in k-2. TRC stands for Text Reading Comprehension– the student reads text and answers questions about what they read. TRC assesses reading comprehension. TRC is new term for what called the running record in the K-2 assessment system previously explained.

### **Winston Salem/Forsyth:**

#### **Superintendent Don Martin and Dr. Foster.**

WSF has identified schools with poor performance. Central Office provides instructional support for the schools. Goal is to put in an experience principal in Tier One (needing the most help) schools to attract good teachers. Extending school year to add three weeks and pay teachers in those schools for 11.5 months with time for additional training. WSF presented a plan to improve academic achievement in poor performing schools which was well thought out and if implemented, could result in improved academic achievement especially in elementary reading scores.

WSF was also implementing Dibels into the K-2 assessments. Superintendent Martin recognized that Dibels must be properly used in order to improve a student's reading achievement.

"If you don't do anything but test (assess) with Dibels and you haven't made any progress, you've got to intervene. So we are talking about training in the interventions part (data drives instruction) – training in the interventions part, training in the basic literacy piece, all the parts of literacy which really gets into direct instruction."

Since Dibels is data driven program and is synchronized to the classroom computer and the system internet, Dibels reports on the assessment and the child's skills and the teacher (and principal and central office can access the data). A child that is need of intervention in literacy



(at-risk, high need) is shown on the progress chart as being in the RED. WSF recognizes that these students need a higher level of intervention such as Direct Instruction which requires a high level of energy from the teacher but properly implemented gets results. Dr. Martin believed, as does the Court, that Direct instruction is a key intervention for high risk students. Direct instruction is hard to do but it works for those children that fall in the RED.

**Dr. Martin agreed on the bottom line regarding K-2 assessments being necessary. Each elementary school must use the K-2 assessments whether by hand or by employing DIBELS. Teacher must assess either way. This is critical because K-2 assessment has measured reading levels – so if the teacher is assessing correctly in k-2 the teacher should know what level each child is reading on in the class. The principal can measure what a K-2 teacher is doing when using the K-2 assessments as well principal can measure the third grade teacher by end of grade test – and it’s sometimes better**

**Dr. Foster**

**Dr. Foster testified about K-2 assessments and importance of the need for assessment of a kindergarten (or pre-K) child’s developmental readiness to learn when the child reaches kindergarten (or pre-K). There are many at-risk children who come to Kindergarten (or Pre-K) who are developmentally behind for their chronological age. This is a known fact about at-risk children and other children who have developmental difficulties.** Yet, there are assessment systems which can measure a child’s readiness level in terms of years and months. One is the American Guidance System which can assess a pre-kindergarten or kindergarten or older child to determine where the child actually is from a developmental position – to wit: the system can assess that a child is 3 years and 4 months old in terms of readiness when in chronological age the child is 5 years and three months old. The child’s lack of development as compared to the child’s chronological age is a detriment to the child’s ability to access the educational opportunity available to that child.

Dr. Foster testified that nationally we have come to a conclusion that you can predict high school achievement by third grade EOG scores. As a result, If we do not close achievement gap by end of third grade then we have “in essence doomed a large number of students to a trajectory of academic failure. If you can’t read in the third grade you got to be bowled down.”

The problem in literacy is that there are quite a number of students that enter kindergarten who are significantly developmentally below where they should be –some by two or more years. WSF has come to conclusion that a curricular versus a developmental perspective is one of key issues.

Dr. Foster explained this quite well. “Our teachers have been trained to believe that if they provide the curriculum, any curriculum of any grade, with fidelity (that is they teach it right and assess) following the pacing guides, create fair assessments, treat every child fairly – that any child in the classroom should be able to do well on that curriculum.” (parenthesis added).

“The problem is that if the child is not at the starting point for that curriculum – it won’t matter how well you present the curriculum, the student is not going to be able to catch up. Must scaffold that child to the starting line.. Our (NC) preschool programs .. and Head Start has taken a national hit for this , but if you look at the Head Start data, Head Start closes achievement gaps quite well, some as many as a year and a half, yet these children still come to kindergarten, the first day of school, and if you do not have the support mechanisms in place

the very first day of school you have set those children on a trajectory for opening the achievement gaps again.”

Our current educational process, not just in W-S/Forsyth but across the US does not provide the kind of support that these students need, and in large urban districts this can be as many as 40, 50, 60 or sometimes 70 percent of the students. In W-S we have re-thought this educational paradigm and now are working on plans to restructure what we do in K-2 to address the needs of students...

Dr. Foster was critical of the hand and pencil K-2 assessments as being too subjective.... For example In K only 20% assessed at risk, yet in the EOG3 57 were proficient/ 43 percent not proficient... he believes that if you provide support to those on did not do well on K-2 assessments, you will miss quite a few students...(this was based on the pre-Dibels K-2 assessment system.... “ and I believe that is why many school districts are going to programs such as Dibels or AIMs web. Now, we have done Dibels, and when you look at the Dibels data... our Dibels kindergarten data said we had 51% of our students on grade level in literacy, 60 percent in the first grade and 58% in the second and 57% in the third grade. ... What has created the urgency is that Dibels is saying ..... here are the students you really have at risk and these are the students that you had better do something with immediately... our (old) K-2 assessments were underestimating these numbers significantly.”

WSF took a look at pre-K language and cognition scores ..... pulled literacy items out of the language assessment at end of pre-K we found that the pre-K literacy score correlated highly with our first grade Dibels scores and also accurately predicted 3<sup>rd</sup> Grade EOG..... realized that we had 30 to 40% of students at high risk.

What are we going to do about those students? Dibels measures without being subjective. Assessing with Dibels shows that the child either has the material or they do not... Dibels is doing an accurate assessment and you are getting a good reading on literacy /reading from Dibels. Likewise, Dibels is addressing the development side versus the curricular perspective in terms of the child's readiness to learn to read.

Dr. Foster believes this is key to helping at-risk children who are developmentally behind. Development says that you have to learn this skill, then this skill, then this skill, and they overlap but you cannot skip the stages to learn to read.

WSF is working to develop a curriculum which builds on development skills for the K-2 students. WSF having all publicly funded pre-ks provide their data so WSF can come up with a score that will predict how students will do in kindergarten.

This concept intends to have kindergarten teachers come together before students arrive and planning on how to assess and get immediate data on those children in the red and put them in a program that will meet their needs immediately.

The ideal transition should occur between end of pre-K and start of kindergarten so teachers will not have to wait three to nine weeks before deciding which children are at risk and then decide what are the school is going to do about this child who is at risk. If you are trying to scaffold children up to be ready for kindergarten curriculum there is zero time to waste.

The bottom line for everyone is that the kindergarten teacher must assess each child upon arrival and determine their developmental level and plan to immediately begin to work on the

deficiencies in their developmental skills because they are NOT starting at the same point as their classmates who are not at-risk because of developmental deficiencies that they bring from home.

Dr. Foster explained that in order to address these developmental deficiencies and different levels it can be a scheduling nightmare but that the elementary school will have a literacy block time that is different for every grade level so the system can train a team of teachers within the school who can provide the direct instruction and work with high risk students – and will be in each literacy block time so as to support students with small group instruction for high risk.

At same time the teachers can move the grade level and above students along with higher level materials. (This point is critical for the students who are reading at or above grade level who are in class with developmentally deficient students – this is why parents pull children out of the public schools)

**This is a critical point – in current elementary structure we have students heterogeneously structured (all different levels of proficiency) not homogeneous structured (all with similar levels of proficiency) and the classroom teacher is forced to “pander” to the students who are lowest performing (high risk students) which means the teacher has to target instruction so those high risk are not left completely behind.. while the message to the children on grade level is that they are on easy street and do not have to work hard to do our assignments and send message to highest performing students that effort does not matter... all children must be encouraged to do their best effort regardless of level of academic achievement and stay motivated.**

High risk students are assessed by Dibels every 10 days (2 weeks) and WSF has team at every school to monitor the assessment and plan instruction to meet needs of child.

The system is flexible. For those children in RED, the teachers use direct instruction and flexible homogeneous groupings. Flexible homogeneous groupings permit the child who advances in literacy can move from the Red to Yellow to Green (grade level and above) and the system does not ‘track’ students by putting them in one group and leaving them there despite improvement.

### **Durham Public Schools (DPS)**

At the time of the hearing DPS had just employed a new superintendent (Dr. Becoates) who had not yet started the job. The Court listened to the DPS presentation and noted the following points:

#### General overview:

1. Durham acknowledges that its identified elementary schools' academic achievement in reading is not acceptable and that effective principals (leadership) within those schools can change the culture and raise student achievement.
2. Durham did not use ClassScapes or MAP or any other proven assessment system but it did use EVAAS to look at classroom teacher effectiveness.
3. Durham is moving towards Professional Learning Communities (PLC) to create formative assessments.

4. Durham had a plan to provide support to poor performing schools based on a tiered system and admitted it needed “sustainable leadership” within the school to carry out initiatives to move student achievement.

Elementary overview:

5. Re-normed 08 reading scores showed reading EOG scores were not where they needed to be, that they were unacceptable and DPS hired consultants to review the problem.
6. Consultants advised that DPS place more focus on fluency, vocabulary and comprehension and to evaluate interventions in place for reading (deficiencies) because there was not a consistent system wide reading program at the 29 elementary schools.
7. DPS reacted by the same old tired responses – more professional development for teachers.
8. Analyzing the 2.5 hour literacy block and rearranging the block into several pieces, including a 90 minutes homogeneous small group learning session.
9. Use some direct instruction and a structured reading program.
10. Double dose reading block for teachers to intervene or accelerate AIG students.
11. Use a core reading program in all elementary schools and follow district pacing calendar.
12. DPS uses the K-2 assessment and the DRA (diagnostic reading assessment) every 9 weeks and report results to District.
- 13. DPS learned from K-2 assessment that some elementary schools were not administering the assessments at the quality that DPS expected and not using the data from the assessments to provide the children differentiated (individual) instruction to remediate. (Well, that certainly explains poor reading scores.)**
14. DPS has always administered the K-2 assessments but they found out that there were sites that were not properly administering the assessments in that the assessments were not used to drive instruction for the individual child. DPS made an effort to retrain the elementary teachers. (If a teacher was *Leandro* compliant, to wit: competent and certified and able to assess -- why would a teacher have to be retrained?)
15. DPS acknowledges the simple truth about properly assessing a child. The assessment is designed to determine where the child is weak, where the child is strong and then use the data to figure out how to instruct the child to get to grade level. Bottom line, if the data learned by assessing is not used to drive instruction, then the assessment is not any good.

The Court has reviewed the transcript of the May 4, 2010 and the evidence presented by all three school systems undisputedly revealed:

1. All three systems recognized and acknowledged that their elementary and middle school reading scores in the identified schools were unsatisfactory and needed improvement.
2. All three systems acknowledged that the K-2 assessment system for literacy was required to be properly implemented and with fidelity
3. All three systems had prepared various plans for correcting the reading deficiencies, including acknowledging that the K-2 assessments in reading had to be properly administered and that the data obtained from the assessments had to be used to drive instruction for the individual student (disaggregated instruction).
4. If a child is not reading at grade level at the end of the third grade, then the child is headed backward in terms of learning going forward.

5. WFS and Guilford were ahead of the curve in 2009 by having made the decision to switch from the "old" k-2 assessment system and move forward with DIBELS and TRC to get students in K-2 on grade level in reading. Durham had not made that move forward.
6. There are developmentally challenged at-risk children coming to kindergarten who are not developmentally on a level with their peers such that, absent extremely intense intervention and constant assessment by their teachers, are not going to be able to stay up with their grade level peers in literacy or other courses.
7. That the WFS testimony by Dr. Martin and Dr. Foster clearly showed that WFS knew what was necessary to assess at-risk low development children and to implement interventions from the day the children arrived at kindergarten to help them overcome their developmental deficiencies and learn on pace with the other children.

Reduced to essentials, with proper developmental assessment, early and intense intervention in kindergarten forward, at-risk children and others in grades k through 2 should arrive at the beginning of the third grade reading at the beginning of third grade level. The next step for the Court was to continue to monitor the 3-8 reading EOG scores and other scores statewide and in these three districts to see if each district had implemented the steps planned to improve reading scores in the identified elementary and middle schools in their districts.

As a result of this hearing, the Court also remained convinced that if K-2 assessments in reading are properly implemented and each child is assessed with fidelity and that data used to drive the child's instruction from the day they enter kindergarten until they reach the beginning of third grade, a period of three school years, that each child should be reading on grade level and on track to score at the constitutional grade level for proficiency at the end of the third grade.

**Based on the representations made by the three school districts at the May 4, 2010, that they recognized the reading problem and were working to improve their students reading proficiency, the Court decided to track the elementary schools identified in the Notice and Order of Hearing for May 4, 2010 in each district using the DPI performance data introduced into evidence for each year through the end of the 2012-2013 school year. For the 11-12 school year, the Court inserted the cost per ADM (student) at each school who was below grade level in reading.**

**It is important to note that these Master Reading Reports do not cover all the elementary schools in each district – only those schools who were in the original notice of hearing and some schools who later scored below proficiency and are noted in that particular year.**

**Also, even if the elementary school improved above the first threshold, the school remained on the list so its improvement could be shown on the records.**

**The results of the years 08-09 through 12-13 for Durham, Guilford and WS-Forsyth are attached to the Exhibit Section of this Report. Each Master Reading Report Data explains the scope of the data. The reading scores speak for themselves.**

**The August 29, 2012 Hearing – The “old” K-2 Assessment system done by hand and running record is being replaced by the Reading 3D Diagnostic System using Dibels and TRC.**

The Court held a hearing on August 29, 2012 at which it received the EOG and EOC (what was left of them) results statewide. The Court also requested an update on the K-2 assessments and progress of implementing the DIBELS and TRC assessment system that replaced the hand done K-2 assessments, Reading 3D diagnostic System.

Carolyn Guthrie – Project Manager for Reading 3D diagnostic assessment system at DPI testified about the K-2 assessments and their updates.

The K-2 assessment system is a formative assessment system where the teacher is looking at foundational skills in reading together with a running record for the child’s progress in reading out of a leveled (authentic text) book with the child sitting beside the teacher one on one. (109) – this is a formative system as compared to benchmarking and summative assessments –

Formative assessment is a process that teachers should be doing on a daily basis to decide what the child needs for instruction in the next day’s lesson. In short, the assessment shows what the child’s needs are (deficiencies) and the teacher uses that data to plan the individual instruction.

Benchmarks generally are done 3 times a year – beginning, middle and end – the third benchmark, which is the end of the year, is considered the summative assessment for early childhood ( K-2) as these children are not administered standardized tests (EOG) in reading until the third grade.

**Update on K-2 reading assessment from 2009 to 2012.**

From start of the K-2 assessments in the mid 1980’s through 2009, the formative assessments and benchmarks were paper and pencil. The components of the assessments, foundational skills and reading from the leveled text were administered by the teacher using paper and pencil and recording the results on paper – such as the running record – for the literacy folder.

Beginning in 2009, DPI started a pilot program with small group (27) schools using technology instead of pencil-paper. The teachers used DIBELS (dynamic indicators of basic early literary skills), a software program for the assessments, which is downloaded/ programmed into a Palm Pilot or other hand held device. (Note: Some LEAs were already using DIBELS prior to 2009, such as Guilford and WSF)

Dibels measures and assesses foundational skills such as phonics, phonemes and it is based on fluency. These are one minute measures that can be done quickly and it’s based on how quickly a child can de-code and hear sounds and link sounds.

Using Dibels and the hand held device, the teacher punch into the program the results of the reading assessment using the leveled text instead of having to write it down on the running record. The hand held device was in sync with the teacher’s classroom computer and the results were analyzed and reports printed out with the results of the assessment.

**The paper – pencil method** using the leveled text had the child seated by the teacher. The teacher has selected a leveled text of 150 words. The child reads to the teacher from the text and the teacher checks for every word correctly read and pronounced and for every word incorrectly stated, the teacher writes the word that the child has not mastered and mark the type of error the child has made such as an omission, incorrect pronunciation or that they simply did

not know the word. After the child finishes the text, the teacher figures out how many errors, the rate of accuracy and then, the teacher asked comprehension (did they understand what they read) and writes the answers the child gives about what the text said – reading comprehension. This was all done in pencil.

**The Dibels reading assessment method** using a palm pilot, iPad or touchscreen notebook differ in that the story (text) is loaded in the computer. The child is still sitting by the teacher with the book and reads the text. But the teacher is not having to write on paper. The teacher taps the device only when the child gets a word incorrect and the teacher writes on the screen what the error was and the program puts the error on top of the word on the screen. Once the child finishes reading the text, the teacher pushes a button and the program calculates everything immediately (errors and results). Next the teacher goes to the comprehension phase of the assessment. The questions about the text are in the program and the questions appear on the hand held device. The teacher asks the questions and there is a rubric on the screen that follows the question. The teacher scores the child on how they answer the questions. The assessment covers content and reading skill of the child when reading the text and answering content questions. .

The Dibels portion is a one minute assessment. The text used in the assessment is printed out and provided to the child and the child reads the text and answers questions provided by the program with the teacher using the hand held device to mark the errors and ask the comprehensive questions.

Using the Dibels assessment, once the reading and questions are complete, the program prints out the results (data) from the formative assessment. At this point, the teacher knows that the child has missed vocabulary and has made some content errors. What is the teacher supposed to do with the data? The teacher is supposed to do an MSV analysis to determine what mistakes the child has made such as syntax and visual. The Dibels program will produce a graph for the teacher that has analyzed the assessment results and drill down on the area of weakness such as visual or meaning. The program also provides activities that can help the child with the problem such as seeing the whole word and that's how the teacher plans instruction to correct the deficiency that the assessment has shown to exist.

As compared to the paper pencil method, the Dibels program provides a quick and accurate analysis (provided the teacher has actually tapped the screen accurately when errors are made) and provides data on the type of error made and suggestions for correction.

As discussed earlier, the books used for the Benchmark process are 68 “secured” texts. That is to say they are texts that are not used in the regular classroom for reading but are only used for the benchmark assessments. Do not get upset. The secured texts are leveled (that is they are appropriate reading levels similar to the books the children are used to reading in the classroom) and are only used 3 times a year to benchmark the child’s progress and growth on the SCOS.

The benchmark books are only used 3 times a year. Because the assessment is a benchmark, it is set against a national cut-point standard and the child has not seen the text. This is called a “cold read.” In this context the child is reading from a book/text the child has never seen before and in so doing, the child’s skill is measured against text that is on the same level as what the child has been experiencing in class but at the same time, it measures whether or not the child has mastered the skills that the teacher has been developing during the regular classroom period. This is different in that the child should be regularly assessed using the book/text that

the teacher is using in class during that period of time and thus, the teacher knows that the child (if accurately assessed) what instructional level the child is on. The cold read is a reality check that measures the child's skill in reading unfamiliar text. (120)

### **Expansion of Dibels and the K-2 Assessment using M Class Reading 3D from 2009 to 2012.**

The 2009 27 pilot schools used Dibels and the K-2 Assessment through a proprietary system called M class reading 3D. This system utilized the K-2 Assessment formative system integrated with technology. The 3D system was aligned with the K-2 assessment system. The reading 3D was piloted in kindergarten, first grade and fourth grade.

After Dibels was piloted in 2009 -2010, the General Assembly appropriated \$10,000,000 dollars to expand the 3D program. The M class reading 3D assessment system was chosen for the expansion. DPI also obtained permission from the US Dept of Education to use funds left over from the Reading First Federal grant program. The Reading First program was a formative assessment system that placed reading coaches in all of the schools that were included in the grants for K-3 grades. Reading First did its formative assessments with technology. 73 Reading First schools went into the expansion program in the fall of 2010.

The next source of schools was the bottom 5% of the elementary schools in North Carolina and DPI encouraged these schools to become part of the program to help with the formative process in early reading. 75 of the bottom 5% went into the program. The bottom line was 480 schools elected to go into the M class reading 3D program for the 2010 – 2011 school year.

The expansion covered grades K-3 and the bottom 20% of fourth and fifth graders in reading. This limited coverage for 4<sup>th</sup> and 5<sup>th</sup> graders came from input from the pilot schools fourth grade teachers who advised that they really did not need the program for the at grade level and above grade level readers in 4 and 5, but that the bottom 20% (those that were not proficient and not at grade level) would really benefit from the assessment system. This also expanded the techniques for K-2 assessments to higher grades for those that were not proficient in reading.

**As of the beginning of 2012 -2013 the system became web based. The Web based system provides data on assessments throughout the school, and the system and the assessments and record of the child can be transferred electronically if the child leaves the district.**

As of the beginning of the 2012 school year the system was web-based and teachers could use iPads and IPods as platforms for assessment. The program immediately produces a report to the teacher following the formative assessment. The machine produces a graph for the teacher and child to see where the child is in terms of mastery of the reading and produces some strategies to assist in the areas where the child needs help. Also the teacher and child can immediately discuss the instruction needed. (128)

The beauty of the web based system is that the system can produce reports for the entire class for an individual teacher as well as get data on a specific child. The teacher can see each objective they have been assessed on, where they scored and whether they are in an intensive need, a moderate need or on grade level. The principal or assistant principal in the school can access this data and pull up each class, the school as a whole, or any child. The central office can do the same thing and access the same data.



The assessment data can enable the teacher to analyze the child's progress and guide what needs to be done in instruction to get the child to fill in the deficiency gaps. The system can generate reports for parents. After each benchmark DSM 3D generates parents' reports that teachers will use in conference. The report explains what the child was measured on and in parent friendly language explains activities the parent can do at home to help the child with learning and mastering a specific literacy skill. The system can generate reports state-wide so if a child transfers, the results are sent electronically.

**The K-2 assessment system starts when every child is in kindergarten.** If the teacher is properly using the formative assessments with each child, and that child is intensely behind, the formative assessment should be done every 10 days to monitor progress. If the teacher uses the assessment properly, especially with the reading 3d program, the teacher can tell from the very beginning where the child's deficits are and intervene early to bring the child to proficiency and fill in the gaps. This should be done before the child reaches the third grade. That is, from the beginning of kindergarten forward.

What this means in plain English is that if the kindergarten teacher properly formatively assesses each child and for those in trouble, assesses every 10 days and focuses instruction and remediation for the individual child's deficiencies, theoretically, no child should get to the third grade deficient in reading.

The breakdown in this "theoretical thesis" – ie, doing the proper job of assessing all children and instructing to meet their needs based on the assessments – is the classroom teacher who is (a) not doing the formative assessments at all; (b) not doing the formative assessments correctly to learn about the gaps in the child's reading skills or (c) not doing the formative assessments correctly, getting the data and then not using the data to guide the instruction to remediate the child's deficiencies.

**If the kindergarten, first and second grade teachers correctly use and implement the K-2 assessments the children should be able to read at grade level when they reach the third grade.**

In those elementary schools not yet having access to the web based Dibels system, the K-2 teachers are still required to use the K-2 assessment system using the paper pencil method of assessment. There is simply no excuse for not doing the K-2 assessments even if it is by pencil paper. The teacher can still monitor the child's progress, assess and use the data to guide the child's individual instruction just like the web based system.

**The Excellent Schools Act enacted in 2012 expanded the Reading 3D Program to the 3<sup>rd</sup> grade and funded the web based Reading 3D Program so all elementary schools could be connected and provided with the web based assessment capability for the K-2 assessment system.**

**The North Carolina Read to Achieve Program, NCGS 115C-83.1 et seq.**

Part of the Excellent Schools Act established the North Carolina Read to Achieve Program NCGS 115C-83.1 through 115C-83.10. In enacting this legislation, the North Carolina General Assembly provided:

**115C-83.1 The goal of the State is to ensure that every student read at or above grade level by the end of third grade and to continue progress in reading**

**proficiency so that he or she can read, comprehend, integrate and apply complex texts needed for secondary education and career success.**

This goal is on all fours with the Leandro I definition of a “sound basic education” with respect to reading and writing the English language ***“to enable and student to function in a complex and rapidly changing society; having sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and to enable the student to compete with others on an equal basis in further formal education or gainful employment in contemporary society.”*** (Leandro I, page 347.)

The North Carolina Read to Achieve Program also required the following action in order to carry out its mandates with respect to reading. The following provisions are set forth in shorthand form. For detail refer to the Act, a copy of which is attached in the Exhibit portion of this report:

115C-83.4 required, in pertinent part, the SBE to develop and implement a comprehensive plan to improve reading achievement in the public schools based on reading instructional practices with evidence of effectiveness based on empirical research in reading development

115C-83.5 required developmental screening and kindergarten entry assessment of every child entering kindergarten for early language, literacy and math skills within 30 days of enrollment and that the assessment shall be completed within 60 days of enrollment. Further, the assessment shall be at the classroom level and aligned with NC’s early learning and developmental standards and the SCOS. The results of the developmental screening and the kindergarten entry assessment shall be used to focus on the status of the children’s learning at entry; instruction for each child and efforts to reduce the achievement gap at kindergarten entry and for continuous improvement of early childhood education.

This requirement acknowledges that children enter kindergarten at different stages of development as explained by Dr. Foster at the May, 2010 hearing and fulfills the requirement for early screening on developmental levels and kindergarten skill levels early in the year.

115C-83.6 mandates assessments in reading using valid, reliable, formative and diagnostic reading assessments. “Difficulty with reading development identified through administration of formative and diagnostic assessments shall be addressed with instructional support and services and the assessments, to the greatest extent possible, shall yield data that can be used with EVAAS, or a comparable system, to analyze student data to identify root causes for difficulty with reading development and determine actions to address them.”

115C-83.7 eliminates social promotion and requires a student be retained in the third grade if the student fails to demonstrate reading proficiency appropriate for a third grade student as “demonstrated on a State-approved standardized test of reading comprehension administered to third grade students.”

115C-83.9 requires notification to parents and guardians about the student being retained in third grade if the student is not demonstrating reading proficiency at the end of the third grade. This notification is required to be in writing, timely and furnished with notice of this requirement when the child is in kindergarten, first, second and third grade when the child (a) is demonstrating difficulty with reading development; (b) is not reading at grade level; or (c) has a personal education plan as required by G.S. 115C-105.41. The upshot of this provision to let the parent(s) or guardian know early on that the child is having difficulty with reading and the consequences of not getting behind the child at home to help with the problem.

115C-83.10 requires each local board of education to publish on line a report in writing to the SBE about the number of third grade students who have demonstrating proficiency in reading and who have not demonstrated proficiency in reading on the 3<sup>rd</sup> grade EOG test in reading (standardized test) as well as the number of students “exempt” from retention and those who are retained for not demonstrating reading proficiency in the third grade.

When the General Assembly enacted the Excellent Public Schools Act, the SBE adopted a policy that **mandated the Reading 3D Program in all elementary schools in grades K – 3.** The Reading 3D Program is the assessment program selected to meet the statutory requirements for K-2, and up assessments under the Act.

The General Assembly also provided the funds to purchase the web based hand held devices for those schools that did not have them which included replacement of old palm pilots, kits for the schools, professional development and for licenses for each of the students in K-3. As of 2012, NC had about 450,000 students in K-3.

### **What should principals do to effectively monitor the assessment system and progress in Reading 3D in elementary schools?**

As of the end of the school year in 2011-12, there were 480 elementary schools that were “on line” with the Reading 3D Program. The principal in the “on line” school has access to the K-3 assessment data in reading and can review the entire class, individual students data and entire grade data for the school.

**The most successful schools have principals that monitor and review the assessment data themselves on a regular basis, meet with the PLCs on each grade level and have the data in front of them at the time. These principals discuss the data with the teachers, discuss individual children and monitor the progress of the students in reading in K-3. In short, the principal should be on top of the reading progress in the early grades by using the assessment data to drive the instruction in the classrooms.**

A really on the ball elementary principal will use resources available in the teacher corps in the school to address groups of children that need intervention to help them become proficient in reading. For example, some of the principals (not all and why not all?) have used the data to identify groups of students that need intervention without regard to the particular class that they are assigned to.

Here’s how it works with a principal who has the capability to adapt to the situation for the good of students who are at risk of not being proficient.

The elementary school has 3 first grade classes. By using the assessment data that is available on line in the principal’s office, the principal notes that there are some 16 students in the first grade that are sorely in need of intervention and are scattered among the 3 classrooms.

The principal meets with the first grade teachers during the PLC time (scheduled time each week for the teachers to meet and discuss the progress among themselves and to find common solutions to help teach and reach their students). The teachers identify the weaknesses in the children from the assessments and the group and the principal decide that one of the teachers is strong in instruction in the area of weakness with the 16 children. The principal and teachers

work out a schedule that permits the 16 children to meet with the teacher for intervention instruction so that particular group can get the intensive help needed for them to move forward.

The effective principal is also allowing the teachers to have a 90 to 120 minute block of time for language arts (literacy) during the school day. This extra time allows that teachers to complete their formative assessments for their individual students and to plan instruction as a result without having to shut down the classroom just to do the assessments in reading.

**The bottom line is that the principals that sit in the office, fail to analyze the assessment data and their fingertips and do not become proactive in seeing the K-3 assessment system is being properly and effectively used by all teachers to drive individualized instruction in literacy, are not performing at a level that is expected to provide their students and faculty with the leadership needed to be successful and have all children obtain a sound basic education and proficiency in reading. This principal is not a *Leandro* compliant principal.**

The principal that does not access the system and use the data available is also deficient in performance and supervision of the classroom teachers in the school because the principal does not know whether or not the teacher is actually doing the formative assessments in the classroom at the rate that they are supposed to be completed. The process of ensuring that the assessments are being done and completed is called "fidelity". **A principal who does access the system and use the data available to supervise and monitor what the classroom teachers are doing is not a *Leandro* compliant principal.**

The term "fidelity" refers to the teacher actually doing and completing the assessments. There are two fidelity reports that the principal has access to so as to monitor the actual progress of the assessment system. The two "fidelity" reports are available on line. The first is the benchmark fidelity report that informs the principal as well as superintendent on up how many teachers completed all of the assessments of their children.

For your general information, the Reading 3D system produces multiple reports. One of the reports is a bar graph for the class which, based on the formative assessments/benchmark assessments by the teacher and the results of the assessments, places each student (or the entire class) in red, yellow or green. Red is a child whose achievement in reading is below proficiency and in need of intense assistance. Yellow designates the child/children that are in moderate need of assistance in reading to become proficient and Green designates the child/children that are on grade level and proficient in reading.

A child who is "red" is required to be formatively assessed (progress monitored) every ten days and the data from the assessment is to be used to guide instruction to help the child master the SCOS.

A child who is "yellow" is required to be formatively assessed (progress monitored) every four weeks

A child who is "green" and on grade level at benchmark, are required to be progress monitored once every grading period. This is required by the children that are performing on grade level can get "left off" the radar and the teacher does not pay close attention to them and if so, the child may fall back in progress and become "yellow" or even "red" because they are not being challenged in class.

The second is progress monitoring, or what is known as the formative piece (ie, the formative assessments of the children who are not at grade level in reading and are shown as being in

“red” on the reports in the system. If a student is in the “red” they are supposed to be formatively assessed every 10 school days (progress monitored). The this process produces a fidelity report on progress monitoring of the students that need intensive assistance to get out of the “red”.

The principal who is effectively managing this system and evaluating the data can go on line and access each teacher and determine from the data whether the teacher is formatively assessing/progress monitoring each “red” child according to the schedule as well as progress monitoring the students in “yellow” and “green.”

In the early grades, K-2/3 the teacher has to do formative assessments/progress monitoring so the teacher can determine where the child has weaknesses in reading foundational and comprehension skills and can using the data, intervene with the child to get the child up to grade level in reading at the pace designated in the SCOS.

If the formative assessment is properly done and instruction individualized to intervene and get the child to grade level in Kindergarten, First and Second Grades and during the third grade, then and in that event, if the intervention and teaching is properly performed and fidelity observed, the child, by March of the third grade, should be on course to take the EOG in reading and score proficient.

For those children whose K, 1, 2 & 3 teachers have not formatively assessed, intervened with individualized instruction as the child moves through 4 years of reading/literacy, then the child will more likely than not score below grade level at the 3<sup>rd</sup> grade EOG reading summative assessment.

This system of formative assessments and benchmarks should lead to the individualized instruction which is so vital for each child and the teacher can focus efforts on what the child needs as opposed to teaching a canned program to the entire class without knowing what each child is learning or not learning.

Again, the formative assessment informs the teacher where the child's deficiencies are in foundation and comprehensive literacy skills and the teacher can guide the instruction to overcome the deficiencies for the child. The formative assessment can also permit the teacher to know which children are at proficiency and the teacher can drive their instruction to permit them to move ahead and begin reading on a higher leveled text which enhances the child's skills and keep them on track to move forward at a faster pace rather than stagnate from boredom in the classroom (145-148)

**Those teachers who do not properly follow this process with assessments are not *Leandro* compliant and are also not in compliance with the Read to Achieve Act and its requirements on assessment and instruction.**

**Problems observed by DPI team as of 2012.**

**As of 2012, problems with instructing teachers in the use of K-2 assessments centers not on the teachers being able to use the K-2 assessments and benchmarks to get all of the information they need on the child's progress at the time of the assessment – teachers do that well and with fidelity (correctly assess) – BUT after doing the assessment (or benchmark) the teacher takes the information and goes on with their**

**usual instruction rather than looking at the assessment results and basing their instruction on the child on an individual basis.**

**In short, using the data gathered by the formative assessment in reading and changing the instruction to meet the needs of the child. Data is supposed to be used to drive instruction. The DPI team overseeing implementation of the K-2 assessments find it difficult to get teachers to understand that they need to use their assessment data to instruct as to each child's needs as shown by the assessment.**

**Bottom line requirement: Do the formative assessment and use the information to tailor instruction to meet the needs of the individual child. Do not put the data in the folder and continue on with the instruction for the entire class on one level. (What about this do you not understand?)**

### **The November 13, 2013 Hearing.**

The Court held a hearing on November 13, 2013 to receive evidence relating to the 2012-2103 EOC and EOG scores statewide together with other data, including an update on K-3 literacy relating to the Reading to Achieve requirement that each child be reading proficiently as of the 3<sup>rd</sup> Grade EOG summative tests.

Carolyn Guthrie testified relating to the mClass Reading 3D assessment system in place for the 2013 -14 school year.

Excellent Schools Act – Update on the Reading 3D assessment system.

For 12-13 school year a majority of elementary schools were using MClass Reading 3D (“Reading 3D) as the assessment system for grades K-3. Elementary schools not on line with Reading 3D were using the K-2 Assessment system developed by DPI. Assessments are mandatory.

Reading 3D has two components: DIBELS Next and TRC.

The Reading 3D program is now one of the key ways of assessing and monitoring K through 2 reading proficiency. The State Board has adopted this as a formative diagnostic assessment system as required by Reading to Achieve.

As of November, 2013, DPI sees a trend towards higher achievement in reading as teachers become familiar with the Reading 3D program and using the assessments to guide their instruction in reading and more children achieve the benchmark levels in reading.

The SBE has adopted a policy concerning the assessments for K-3.

The policy sets how often children should be assessed and benchmarked and most importantly for oversight, sets expectations for administrators at the district and school level and teachers in terms of what they ought to be doing with the data collected to determine what they need to do next in terms of instruction.

**Because the Reading 3D system is on line, there is no excuse for the superintendent and district staff not to review and analyze the data so there can be intervention in a**

particular school and classroom where there is a problem with reading proficiency. The same requirement holds true for the elementary school principal and administrators.

The district (superintendent's staff) is to look at the overall data for the elementary schools so the school district can know the overall trend and which schools are performing well and which ones are not. This information, properly reviewed, should lead to the central office intervening in a school that it not on target for reading proficiency. After all, the central office can drill down and obtain the same data on each child, each teacher and each classroom in any school.

Equally important, if not more so, each principal is to look at the same data to determine which teachers are being successful and which are not and redirect resources and teacher skills to be able to reach children who are deficient.

Most importantly, the classroom teachers are to assess with fidelity and review and analyze the data to determine where their instruction is going to be for each child in their class depending on that child's particular needs.

For the beginning benchmarks in 2013, 97% of the students were benchmarked at the beginning of the year which means that the elementary school teachers and principals knew where each child stood in terms of reading proficiency. Reduced to essentials, as of 2013, the State has the ability to know where each student in K-3 stands in terms of reading/literacy proficiency. This knowledge is available on the system from the classroom teacher to the DPI.

**Reduced to essentials, effective now, there is no excuse for a teacher, principal or superintendent not to be able to access an individual student's data and to know whether the child is proficient in reading or not, K through 3.**

Present Day – What should be done to help the child that is below proficiency in reading/literacy using Reading 3D as the assessment tool?

Answer:

1. Assess using the Dibels Next and TRC (text reading comprehension) at the beginning of the year. The previous year's teacher should have produced a folder on the child with a summative assessment of where the child was at the end of the previous year.
2. If the child is below benchmark (in trouble – "red") the teacher should start with the lowest sub-skill and get to work on instruction to help the child master the skill. The teacher focuses instruction on that child and the skill for ten days and then re-assesses (progress monitors) to see if the child has made progress in mastering the skill.
3. If there is improvement, the assessment tells the teacher that the instruction is working, if not the teacher needs to find a way to work with the child to achieve success on that skill. If there is progress, the teacher can move the child a little higher and focus on more sub-skills needed. Progress monitoring (assessment) is key to helping the child that is behind.
4. Using the formative assessment and benchmarks, the teacher and the school can and identify a child who is deficient the moment they walk through the Kindergarten door. They can determine where the child is and what kind of foundational skills in literacy they are missing in kindergarten. This means that the State of North Carolina. – the teachers, the principals and the central office can all access the assessment results and see what the child needs in terms of instruction. This is so in 2013 -2014 because it is a

technology, web based system that as soon as the assessment is synced by the teacher, the report goes into a master system and can be accessed up to and including DPI.

5. The entire school's data is accessible. If the school goes backward for the year, someone there is not being effective.

**Based on the evidence presented, the Court finds that if teachers utilized the K-2 (Reading 3D) assessment system effectively and use the data to drive instruction for the individual child, progress monitor and benchmark beginning in kindergarten, there is no reason that the child should have anything to fear about not moving on at the end of the year up to and including 3<sup>rd</sup> grade.**

**Based on the evidence presented, the Court finds that by the time a child reaches the third grade and they are well below benchmark (not proficient at grade level) the child is likely to stay below benchmark.**

**Based on the evidence, the earlier and more focused the intervention takes place, the more likely the intervention is to be successful and if the intervention started before kindergarten this would continue to hold true.**

**Not only does the evidence presented to the Court over the past five years support the foregoing, but the North Carolina Read To Achieve Program corroborates and validates the evidence and collaterally mandates that the school systems take action to assess children beginning in kindergarten and based on the assessments use the data to focus individual instruction for all children in reading.**

**Where was North Carolina at the beginning of the 2013-2014 in terms of having successfully assessed and taught the entering 3<sup>rd</sup> graders to be proficient in reading so they can demonstrate proficiency on the summative, EOG reading test at the end of this year?**

**Answer: Not so hot according to the BOG3 assessment given to 3<sup>rd</sup> graders at the beginning of the third grade in the fall of 2013.**

**The failure of multiple elementary schools to properly implement and use the K-2 assessments from kindergarten forward (this term includes Reading 3D – Dibels Next and TRC) to assess students developmental deficiencies, literacy deficiencies and use those assessments to effectively guide instruction for each elementary student, especially those at-risk of academic failure from the day they set foot in kindergarten, is reflected in the 2013 Beginning of Grade Assessments in reading (BOG3). The BOG3 was given to all entering third graders at the beginning of school year 2013-14.**

The BOG3 assessment, the Court is advised, is the same EOG summative assessment to be given at the end of the 3<sup>rd</sup> grade in 2014.

Children who scored 438 or above on the BOG3 are deemed to be on track to be proficient at the end of the 3<sup>rd</sup> grade in reading. A child who scored a 442 on the BOG3 scored at grade level. Due to "changes" by the SBE, a child who scored a 439 would be deemed proficient as would a child that scores 439, or above on the EOG 3 reading assessment. Whether this reduction in score and the effect of this "change" meets the constitutional standard for grade



level performance is not on the table at this time, but will be the subject of future proceedings in this case.

**The statewide results of the BOG3 are in evidence and are enclosed in the Exhibit portion of this Report. The BOG3 results are simple to read.** The report shows the number of tests given in each school within each LEA, the scale score mean for each elementary school, and the percent of entering third graders who are on track to be proficient on the Grade 3 EOG reading test at the end of the school year.

A student whose score on the BOG3 was at or above 438 was deemed to be on track to be proficient. Remember, the on track at 438 scores does not mean the child was at grade level proficiency, but if the child was properly assessed and taught the child should be able to score high enough on the EOG3 reading to be at grade level at the end of the school year.

**BOG3 Statewide Results:** There were 114,387 entering third graders assessed with the BOG3 test. Out of 114,387 children assessed, only 32% scored well enough (438) to be deemed on track to be proficient at the end of the 3<sup>rd</sup> grade on EOG test in reading. That means that 68% of the entering third graders failed to score well enough to be on track. These results do not provide information as to how many entering 3<sup>rd</sup> graders scored at 442, or above, or for that matter 439 (the “change” score).

**Break this down by the numbers of children: 36,604 were on track 32%  
77,783 were NOT on track 68%**

**114,387 total entering 3<sup>rd</sup> graders in fall 2013  
THIS IS STATEWIDE**

**The report also provides information about each LEA as well as each elementary school within the LEA.**

Here are some examples of LEAs performance system wide on the BOG3. Since the Court is reporting on its 5 year examination of selected elementary schools in Winston-Salem/Forsyth, Guilford and Durham, these LEAs are listed first:

Winston-Salem/Forsyth (WSF) 4014 assessed with BOG3. 32.1% on track – 1289 out of 4014 students on track. **67.9% of 3<sup>rd</sup> graders not on track – 2,725 not on track.**

Durham Public Schools (DPS) 2503 assessed with BOG3. 25% on track – 626 out of 2503 students on track. **75% of 3<sup>rd</sup> graders not on track – 1877 not on track.**

Guilford County 5405 assessed with BOG3. 31% on track – 1676 out of 5405 students on track. **69% of 3<sup>rd</sup> graders not on track – 3729 not on track.**

Wake County 11,800 assessed with BOG3. 46% on track - 5428 out of 11,800 students on track. **54% of 3<sup>rd</sup> graders not on track – 6372 not on track.**

Johnston County 2584 assessed with BOG3. 30.3% on track – 783 out of 2584 students on track. **69.7% of 3<sup>rd</sup> graders not on track – 2071 not on track.**

New Hanover 1992 assessed with BOG3. 35.6% on track – 709 out of 1992 students on track. **64.4% of 3<sup>rd</sup> graders not on track – 1283 not on track.**

Buncombe County 1837 assessed with BOG3. 38.5% on track – 707 out of 1837 students on track. **61.5% of 3<sup>rd</sup> graders not on track – 1130 not on track.**

Charlotte-Mecklenburg 11438 assessed with BOG3. 35.5% on track – 4061 out of 11438 students on track – **64.5% of 3<sup>rd</sup> graders not on track – 7377 not on track.**

Union County 3125 assessed with BOG3. 39.6% on track – 1238 out of 3125 students on track - **60.4% of 3<sup>rd</sup> graders not on track – 1887 not on track.**

The Court does not have the time to list all the elementary BOG3 scores but they are contained in the Exhibit portion of this Report. All one has to do is look and find their own school system and elementary school to see the results.

The bottom line is that learning to read and comprehend what you read is critical to obtaining a sound basic education so that the student can function in a complex and rapidly changing society. Whether or not there will be a significant improvement in 2013-2014's EOG3 reading scores remains to be seen when the reading EOG3 results are in this coming summer.

**THE FINAL PART OF THIS REPORT – THE READING PROBLEM IN THE UPPER GRADES AS CONFIRMED BY THE NATIONALLY RECOGNIZED AND NATIONALLY NORMED TESTS PROVIDED BY THE ACT – EXPLORE, PLAN AND THE ACT.**

In 2011, the North Carolina General Assembly enacted laws related to the North Carolina testing program that basically prohibited the State from giving high school End of Course (EOC) tests in all but three (3) subjects that were required by the federal government. This legislation essentially ended EOC tests in many of the *Leandro* subjects set out by the Supreme Court in *Leandro I*. These high school courses were civics and economics, Algebra II, physical science and American History. This Court objected to the deletion of the high school EOC tests because there was no longer any measurable statewide accountability for high schools in those subject areas and as a result, the Court was of the opinion, that it would be difficult, if not impossible to know whether or not high school students were obtaining a sound basic education in those Leandro subjects. Nevertheless, the legislation passed.

However, in the aftermath of this firestorm in February and March 2011, the General Assembly elected to begin using the ACT, a nationally recognized testing company, to measure high school students against national standards and by using ACT tests that were nationally recognized and normed. The first two ACT tests adopted were the ACT and PLAN. The ACT, which is recognized as a valid instrument for college admissions was to be given to all eleventh graders (Juniors in high school) during the second semester of their junior year beginning in the school year 2011-2012. The PLAN is a curriculum based test for 10<sup>th</sup> graders. The PLAN was also given to 10<sup>th</sup> graders statewide beginning in the school year 2011-2012. The EXPLORE test was adopted and used for 8<sup>th</sup> graders beginning in 2012-2013. 115C-174.11(c)(4); 115C-174.18; 115C-174.22.

Bottom line in 2012-2013, our 8<sup>th</sup> grade, 10<sup>th</sup> grade and 11<sup>th</sup> grade students were, with some statutory exception taking tests, which covered English, math, science, reading comprehension and writing (ACT), which tests measure our North Carolina students against nationally normed standards. PLAN and ACT were given in 2011-12 and 2012-13.

The North Carolina Testing Program for 2012-2013 produced an informational pamphlet which described the Testing Program, including the ACT, PLAN and ACT EXPLORE tests.

These 3 tests are described briefly below from the Testing Program Pamphlet:

*EXPLORE is a curriculum-based educational and career planning program for 8<sup>th</sup> graders that **measures achievement in English, math, reading and science.** EXPLORE includes four multiple-choice tests: English, math, reading and science. For purposes of this Report, only the reading test is described here and in connection with ACT and PLAN. A copy of the North Carolina Testing Program pamphlet for 2012-2013 is included in the Exhibit folder.*

*The EXPLORE reading test measures the student's ability to understand written material from different school subjects. The skills measured include referring to details in the passage, drawing conclusions and making comparisons and generalizations.*

*(In short, the EXPLORE measures reading comprehension skills with the student answering questions on a multiple – choice format)*

The EOG test for reading/language arts is similarly focused on reading comprehension skills based on a student reading selections and answering questions in a multiple-choice format. The EOG test is described, in pertinent part in the North Carolina Testing Program pamphlet on page 1.

*The EOG 8<sup>th</sup> grade reading/language arts test is a test aligned to Common Core Standards (CSS) for English language arts. Students read authentic selections and then answer questions related to the selections. The reading selections are comprised of literary and informational selections based on CSS. Knowledge of vocabulary is assessed indirectly through application and understanding of terms within the context of the selections and questions.*

PLAN is a curriculum-based educational and career planning program for 10<sup>th</sup> graders. PLAN includes four multiple choice tests: English, math, reading and science.

*The PLAN reading test measures reading comprehension by focusing on skills such as: referring to details in a passage, drawing conclusions, and making comparisons and generalizations.*

*(In short, the PLAN measures reading comprehension skills with the students answering questions on a multiple-choice format)*

*The ACT is a curriculum- and standards based assessment that evaluates 11<sup>th</sup> graders' general learning outcomes in English, mathematics, science and writing. The ACT is used as a college admissions and placement test and is accepted by all four-year colleges and universities in the United States. The English, mathematics, reading and science tests are multiple-choice tests.*

The ACT reading test is based on four types of reading selections: social studies, natural sciences, literary narrative or prose fiction and the humanities passage. Questions in each of the four categories are based on the content of the passages. (Description of ACT reading test found at [www.actstudent.org/testprep/descriptions/readcontent.html](http://www.actstudent.org/testprep/descriptions/readcontent.html))

In 2012-2013, the SBE had approved the new standards for reading, as well as other subjects, and the EOG reading tests were made more rigorous and difficult. As was the case when reading EOG's were "re-normed" in 2008, the EOG reading test results plummeted and the result was a great firestorm of criticism because the results had dropped by a large number of percentage points. Let's take the 8<sup>th</sup> grade EOG reading scores. When a student leaves the 8<sup>th</sup> grade, he or she should be quite proficient in reading comprehension so they can succeed in high school.

In 2011-12, the year before the reading EOGs were made more rigorous and difficult, the total number of 8<sup>th</sup> graders tested was 112,301. Out of that number 79,873 were deemed proficient and scored at Level III and IV. Those students constituted 71.1% of all 8<sup>th</sup> graders who took the EOG reading 8 test. Only 28.9% of the students failed to score at grade level or above proficiency. When the results were disaggregated by race, white students were 82.3% proficient and numbered 49,979 students who scored Level III or above. Black students were 53.9% proficient and numbered 16,161 students who scored Level III or above. Asian students were 78.4% proficient and numbered 2,113 students who scored Level III or above.

**How did the 8<sup>th</sup> graders perform Statewide in 2012-2013 when they were assessed in reading using the more rigorous standards and how did those results match up with the reading test in EXPLORE which was also given during the 2012-2013 school year?**

**ANSWER: NO SO HOT ON THE EOG READING TEST and NOT SO HOT ON EXPLORE**

**In 2012-13, the year the reading EOGs were made more rigorous and difficult, the total number of 8<sup>th</sup> graders tested was 113,412. Out of that number 46,386 were deemed proficient and scored at Level III and IV. Those students constituted 40.9% of all 8<sup>th</sup> graders who took the EOG reading 8 test. 67,026 students (59.1%) failed to score at Level III or IV. When the results were disaggregated by race, white students were 52.0% proficient and numbered 31,337 students who scored Level III and above. Black students were 23.5% proficient and numbered 7,221 students who scored Level III and above. Asian students were 57.5% proficient and numbered 1604 students who scored Level III and above.**

The Court also examined all of the middle and charter school EOG8 reading scores and percent of students in each school in the 8<sup>th</sup> grade who scored proficient in reading on the EOG. In the course of this examination, the Court examined each school's 8 grade reading score and counted every school in the State of North Carolina where the 8<sup>th</sup> graders' proficiency percentage was below 50% on the EOG in reading. The number of middle, charter or combined schools whose 8<sup>th</sup> graders' proficiency on the EOG in reading was below 50% added up to Four hundred and Seventy Seven (477) schools.

With the more rigorous reading EOG 8 test in place for 2012-2013, 8<sup>th</sup> grade students were also given the ACT Explore Test for the 8<sup>th</sup> grade, which test also measured a student's reading comprehension as did the 8<sup>th</sup> grade EOG reading test. The ACT tests use the term benchmark to indicate the proficiency level score. When reviewing the ACT tests, EXPLORE, PLAN or the ACT, the results are reported as the percent of students meeting the benchmark score (or above) on each section of the test.

**Turning to the EXPLORE reading test results for 8<sup>th</sup> graders in North Carolina public schools in 2012-2013, there were 100,521 students who took EXPLORE. Out of 100,521 students, only 35.7% met or exceeded the reading test benchmark on EXPLORE. 64,635**

**8<sup>th</sup> graders failed to score at the benchmark level in reading on EXPLORE, which is a 64.3% below benchmark percentage.**

Looking at the EOG8th grade reading result and the EXPLORE reading test results together, some 67,026 (59.1%) failed to be proficient on the EOG reading and 64,635 (64.3%) failed to reach benchmark in the EXPLORE reading test. Both tests measure reading comprehension. EXPLORE is a nationally normed test.

Having covered the 8<sup>th</sup> grade reading let's move on up and see what the 10<sup>th</sup> and 11<sup>th</sup> graders in high school are doing in reading comprehension. The results are not so hot either.

#### **PLAN Reading Test Results for North Carolina 10<sup>th</sup> graders for School Year 2011-2012.**

102,409 10<sup>th</sup> grade students took the Plan Test. Out of 102,409 students only 43,729 (42.7%) met or exceeded the reading test benchmark on Plan. **58,680 10<sup>th</sup> graders failed to score at the benchmark level in reading on Plan, which is a 57.3% below benchmark percentage.**

#### **PLAN Reading Test Results for North Carolina 10<sup>th</sup> graders for School Year 2012-2013.**

97,578 10<sup>th</sup> grade students took the Plan Test. Out of 97,578 students only 35,421 (36.3%) met or exceeded the reading test benchmark on Plan. **62,157 10<sup>th</sup> graders failed to score at the benchmark level in reading on Plan, which is a 63.7% below benchmark percentage.**

#### **ACT Reading Test Results for North Carolina 11<sup>th</sup> graders for School Year 2011-2012.**

92,478 11<sup>th</sup> grade students took the ACT. On the ACT reading test, only (33.8%) 31,258 out of 92,478 students met or exceeded the reading test benchmark on ACT. **61,220 11<sup>th</sup> graders failed to score at the benchmark level in reading on ACT, which is 66.2% below benchmark percentage.**

#### **ACT Reading Test Results for North Carolina 11<sup>th</sup> graders for School Year 2012-2013.**

92,816 11<sup>th</sup> grade students took the ACT. On the ACT reading test, only (26.9%) 24,968 out of 92,816 students met or exceeded the reading test benchmark on ACT. **67,848 11<sup>th</sup> graders failed to score at the benchmark level in reading on ACT, which is 73.1% below benchmark percentage.**

Attached to this Report are copies of the Explore, Plan and Act results statewide- disaggregated by LEA (school district) and by individual school. The Act tests results in English, math, reading, science are reported by benchmark percentage met in the state, individual school district and individual school. Reduced to essentials, the results are there for all to see in high schools, charter schools with high school grades, middle schools (EXPLORE) and for each subject tested, the benchmark percentage of students who met the benchmark in each subject and on all 4 tests, is recorded. All of these results have been received in evidence in this case.

**The bottom line from the ACT series of nationally validated tests tends to show that North Carolina's 8<sup>th</sup> graders up through the 11<sup>th</sup> grade are not meeting the national benchmarks established by ACT. A thorough examination of multiple high schools shows that students there are by and large not proficient in multiple subjects. Take a**

look at the science test results. By these standards, multiple thousands of high school children have not obtained a sound basic education as set forth in Leandro.

## CONCLUSION

North Carolina's children, regardless of race, creed, color or national origin have a constitutional right the equal opportunity to obtain a sound basic education which has been defined by the North Carolina Supreme Court:

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; (*Leandro I p. 347*).....

The academic results of North Carolina's school children enclosed in this Report show that there are way too many thousands of school children from kindergarten through the 11<sup>th</sup> grade in high school who have not obtained the sound basic education mandated and defined above and reaffirmed by the North Carolina Supreme Court in November, 2013. *Hoke County Bd. of Educ. v. State (supra.)*

The bottom line is that the constitutional right belongs to the children. The right does NOT belong to the adults who are supposed to be ensuring that the children of North Carolina obtain a sound basic education in each and every classroom in this state by providing the following to be *Leandro compliant*.

SECOND: *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.*

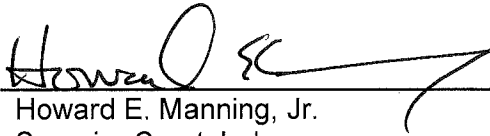
*Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that 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. 358 N.C. 605 et seq.*

**The Court will now await the 2013-14 results of the EOG and EOC, EXPLORE, PLAN and ACT assessments and measures of student academic achievement for this school year. Hopefully, there will be substantial and material improvement in student achievement on these assessments.**

Notwithstanding the results of these assessments, the State of North Carolina cannot “cut and run” from the results by reducing standards and deleting the assessments because they do not bring good news. The children of North Carolina have a constitutional right to a sound basic education and the adults who are paid and charged with the responsibility of providing that education in every school and classroom have no valid right to cover up the results of their failure to provide that opportunity, parents and the public included.

This the 5<sup>th</sup> day of May, 2014.

  
Howard E. Manning, Jr.  
Superior Court Judge

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY:

95 CVS 1158

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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**REPORT FROM THE COURT RE: THE READING PROBLEM – EXHIBIT INDEX**

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The Following Exhibits to the Report from the Court Re: The Reading Problem are incorporated by reference in the Report from the Court Re: The Reading Problem and made part and parcel thereof:

MASTER WINSTON-SALEM/FORSYTH READING SCORE DATA 08-13

MASTER GUILFORD READING SCORE DATA 08-13

MASTER DURHAM READING SCORE DATA 08-13

BEGINNING OF GRADE 3 (BOG3) READING SCORES STATEWIDE 2013

ACT EXPLORE ;8<sup>TH</sup> GRADE ASSESSMENT STATEWIDE 2013

ACT PLAN 10<sup>TH</sup> GRADE ASSESSMENT STATEWIDE 2011-2012

ACT PLAN 10<sup>TH</sup> GRADE ASSESSMENT STATEWIDE 2012-2013

THE ACT (11<sup>TH</sup> GRADE) STATEWIDE 2011-2012

THE ACT (11<sup>TH</sup> GRADE) STATEWIDE 2012-2013