

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

