



## The Latest in Leandro—Back at the Supreme Court

Jeanette Doran

February 21, 2024

The long-running *Leandro* case returns to the state Supreme Court yet again tomorrow. The background is a convoluted procedural mess. The case started in May 1994. In the thirty years since the case began, it had morphed to something that likely would have been unimaginable when it was filed. As North Carolina awaits a decision in the latest appeal, a review of the early history may make the current issues more understandable. Before we address the issues now before the court, we highlight some of the more notable developments and events in the case history.

### **Leandro Case History**

#### A. *Leandro v. State*, 346 N.C. 336 (1997)

May 1994: Parents and students in low-wealth rural counties filed *Leandro v. State*, alleging students in these counties were being denied their right to an adequate education under the North Carolina Constitution. The Complaint (the document which starts a lawsuit) is filed in Halifax County. The school boards from Cumberland, Halifax, Hoke, Robeson, and Vance Counties, along with students and parents from those districts, sued the State and State Board of Education, alleging that the conditions in their respective districts fell below the threshold necessary to provide them an opportunity for a sound basic education as guaranteed by the North Carolina Constitution. The original plaintiffs were joined by intervening plaintiffs from five wealthy school districts who alleged the opposite—that

by focusing resources on rural school districts, the State had ignored the needs of urban districts. Four of those intervening plaintiffs later dismissed their claims; Charlotte-Mecklenburg remains in the case but is now a realigned defendant.

- The **low wealth school district plaintiffs** alleged that even though they imposed higher taxes than some wealthier districts, those higher tax rates could not make up for their lack of resources or for the disparities between systems.” Id. They also alleged that the supplemental funding provided by the State to finance schools in “low-wealth” districts was not enough to meet the requirements of the State’s Basic Education Program, established in 1988 and required under statutes in place at the time.
- The **wealthier, urban school district plaintiffs** alleged the opposite: that the State gave certain rural districts supplemental state funding and the State had failed to recognize the comparable if not greater needs of urban school districts.

1997: The North Carolina Supreme Court partially overturned the Court of Appeals, which had held the case should be dismissed, and permitted the case to proceed to trial, declaring that all students in the state are entitled to “the opportunity to receive a sound basic education.” The Supreme Court’s decision has two key features:

- The Supreme Court defined what constitutes a “sound basic education” in terms of substance, like sufficient ability to read and sufficient knowledge of math to function in society. The Supreme Court does not define “sound basic education” in terms of funding or money. The Supreme Court acknowledges that “the legislative process provides a better form than the courts for discussing and determining what educational programs and resources are most likely to ensure that each child of the state receives a sound basic education.”
- The Supreme Court rejected the plaintiffs’ arguments for equal funding. The Supreme Court held that because the NC Constitution explicitly authorizes local governments to use local revenue to add to state funding, the NC Constitution “does not require substantially equal funding or educational advantages in all school districts.”)

B. *Hoke Cnty Bd. of Educ. v. State*, 358 N.C. 605 (2004) (*Hoke County I*)

October 1997: The case is reassigned to Superior Court Judge Howard Manning.

January-October 1998: Plaintiffs amend their complaint. Plaintiffs amend their complaint again. Plaintiff-Intervenors (various boards of education) amend their complaint. At the behest of the trial court, the plaintiffs amended the complaint to add paragraph 74(a) raising issues about Pre-K services for the first time in the case.

September 1999: The trial begins. The trial judge split the issues two parts (one for low wealth districts and the other for wealthier districts) and conducted a trial limited only to the conditions in Hoke County. The trial was conducted periodically over 14 months.

April 2002: The last part of the trial court’s 4-part decision is entered. In total, the trial judge’s decision was over 400 pages long.

- The trial judge concluded the State’s curriculum, system for licensing and employing teacher, standards for academic accountability, and educational funding delivery system were all sufficient to provide the constitutionally guaranteed opportunity to a sound basic education.
- The trial judge rejected the Plaintiffs’ arguments that the State was providing insufficient funding. The trial judge wrote: “Instead, the Court believes that the funds presently appropriated and otherwise available are not being effectively applied.”
- The trial judge did agree with Plaintiffs that at-risk students in Hoke County were not receiving an equal opportunity to receive a sound basic education.
- The trial judge ordered the state to develop a plan to address the deficiencies in the educational services provided to the students in Hoke County but stated the “nuts and bolts of how this task should be accomplished is not for the Court to do” because “this task belongs to the Executive and Legislative Branches of Government.” He also ordered an expansion of Pre-K programming.

2004: The Supreme Court stated that because the trial was limited to the conditions in Hoke County, “our consideration of this case is properly limited to the issues relating in Hoke County as raised at trial.” For this reason, the Supreme Court held that its mandates did not extend beyond Hoke County and trials on the conditions in other counties would be necessary.

- The Supreme Court held the trial judge properly considered both “outputs”

(evidence regarding student performance, including results from standardized testing) and “inputs” (evidence of available resources put into the district).

- The Supreme Court wrote that it could not determine whether the trial court’s findings applied to all students or only at-risk students in Hoke County.
- The Supreme Court refused to accept Plaintiffs’ argument that the court should ignore federal funding when considering whether the State has satisfied its obligations to provide for education.
- The Supreme Court rejected the trial court’s order requiring the State to provide Pre-K.
- The Supreme Court ordered the trial court to proceed with trials for the other rural schools involved in the lawsuit and the urban districts involved in the lawsuit.

2004-2016: Despite the Supreme Court’s opinion remanding the case for trials for the districts other than Hoke County, no such trial occurred. The trial court and the parties moved to the “remedial phase,” seeking enforcement of the prior decision. The trial judge held a series of status conferences, and the Defendants produced several reports and updates. Over time, these reports and updates began to address progress across North Carolina, not just Hoke County (the district for which the court had conducted a trial).

February 2018: The Plaintiffs and the NC Department of Justice asked the trial court to appoint WestEd, a progressive education research group from San Francisco, CA, to conduct a remedial study and prepare recommendations to remedy alleged ongoing constitutional violations. The DOJ and the Plaintiffs ask that the court instruct WestEd to develop recommendations not only for Hoke County but for “every public school in North

Carolina.” The parties asked that WestEd work with the Governor’s Commission on Access to a sound Basic Education. They did not ask WestEd to work with the General Assembly.

June 2019: The trial court and the parties with their lawyers receive a report from consultants at WestEd. Judge Lee does not make the report recommendations public. The report is sealed by the court.

- According to the WestEd report, the consultants “engaged with 1,310 stakeholders including superintendents, teachers, central office staff, school board members, and members of the Governor’s Commission.
- The report shows no indication that WestEd consulted with the General Assembly. January 2020: The West Ed report is made public, and the trial court signed a consent order agreed to by the parties. The order directed the State to create a plan to implement the WestEd reports’ recommendations.

March 2021: The DOJ submits the “Comprehensive Remedial Plan” to the trial court. For the most part, it regurgitates WestEd’s report and echoes the Governor’s budget proposal. The Plan includes 146 proposed action items to be implemented across the State, even though the only trial in this case was limited to at-risk children in Hoke County. The Plan, created by executive branch agencies, repeatedly acknowledge that any proposal would require legislative approval.

November 2021: The trial court orders the State to implement the Comprehensive Remedial Plan, which would cost roughly \$5.4 BILLION each year by 2028, according to an appendix to the Plan itself. The trial court acknowledged the Appropriations Clause

prohibits drawing money from the treasury unless “in consequence of appropriations made by law.” N.C. Const. Art. V, § 7. It also acknowledged that this Court’s cases hold that the General Assembly has the exclusive power over appropriations. Nevertheless, the trial court adopted Plaintiffs and the Attorney General’s briefing, including their reasoning that it could order the requested appropriation based on a made-up theory that “Article I, Section 15 of the North Carolina Constitution represents an ongoing constitutional appropriation of funds,” and thus grant the courts “inherent power” to order the appropriations from the treasury. The trial court also ordered the Treasurer and the Controller to transfer funds, which became the subject of a petition for a Writ of Prohibition to block stop the transfer order. The Court of Appeals issued the Writ of Prohibition.

March 2022: The Supreme Court granted the Attorney General’s bypass petition (so that the case skipped the Court of Appeals and went to the Supreme Court), but simultaneously remanded the case for 30 days “for the purpose of allowing the trial court to determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted” in the November 2021 Order. At the same time, the Court issued an Order directing that Plaintiffs’ petitions and appeals from the Court of Appeals’ Writ of Prohibition be “held in abeyance, with no other action, including the filing of briefs, to be taken until further order of the Court.”

---

<sup>1</sup> In *Hoke Cnty Bd. Of Educ. v. State*, 367 N.C. 156 (2013) (“*Hoke County II*”), the Supreme Court dismissed as moot an appeal in this case. The Plaintiffs had challenged changes to the pre-K programs for at-risk

April 2022: The trial court amended the November 2021 Order. Plaintiffs, the Attorney General and the Legislative Intervenors all appealed different aspects of the April 2022 Order.

C. *Hoke Cnty Bd. Of Educ. v. State* (2023) (*Hoke County III*)<sup>1</sup>

November 2022: The majority held that in “exceedingly rare and extraordinary circumstances,” the judiciary could use its “inherent power” to “direct the transfer of adequate available state funds.” See *Hoke County III*, 382 N.C. at 464. The majority thus reinstated the transfer provisions in Judge Lee’s 10 November 2021 order and remanded the case to the trial court to “recalculate” the amounts necessary to fund years 2 and 3 of the CRP in light of the State Budget, which was amended while the case was on appeal. “To enable the trial court to do so,” the majority announced that it would issue a special order staying the Writ of Prohibition “on its own motion.” *Id.* at 467 n. 2.

On the same day as its decision *Hoke County III*, the Court issued an Order in the appeal from the Writ of Prohibition, in which it (i) consolidated the two appeals “to the extent necessary” to address issues concerning the Writ of Prohibition that were also addressed in the opinion, and (ii) stayed (but did not vacate) the Writ of Prohibition pending any filings on additional issues.

March 2023: The Supreme Court reinstated the Writ of Prohibition by special order. The remand from *Hoke County III* continued at the trial court. The remand was limited to a

four-year-olds. The General Assembly enacted certain changes to the program which made that controversy moot.

recalculation of the amounts supposedly required to fund Years 2 and 3 of the Comprehensive Remedial Plan.

April 2023: The trial court entered a judgment against the State, finding that “the underfunding of the action items called for in Years 2 and 3 of the CRP on a per- entity basis are as follows:

1. Programs for which DHHS is responsible: \$133,900,000;
2. Programs for which DPI is responsible: \$509,701,707
3. Programs for which UNC System is responsible: \$34,200,000.

The Legislative Intervenors appealed and asked the Supreme Court to take the case without a determination by the Court of Appeals.

October 2023: The Supreme Court grants the bypass petition (thus the case skipped the Court of Appeals) in order to determine whether the trial court lacked subject matter jurisdiction to enter its orders requiring the State to implement the Comprehensive Remedial Plan.

### **The Current Issues**

The North Carolina Supreme Court will focus on questions of subject matter jurisdiction now. Specifically, those related to whether the trial court had jurisdiction to issues orders, including the Comprehensive Remedial Plan, that purport to dictate education policy on a statewide basis when the claims in the case were limited to certain school districts. Do the plaintiffs in this case even have standing to assert claims or get court orders concerning districts they do not live in and that were never made a part of their claims in the

lawsuit. The justices will also tackle issues about whether the political question doctrine deprives the courts of jurisdiction to order the State to implement and fund the Comprehensive Remedial Plan.

The Supreme Court’s first decision in *Leandro* was unanimous. Justice Burley Mitchell, writing for the court, explained that “administration of the public schools of the state is best left to the legislative and executive branches of government.” *Leandro v. State*, 346 N.C. 336, 357 (1997). For this reason, “courts of this state must grant every reasonable deference to the legislative and executive branches” and that only a “clear showing to the contrary” will be sufficient “to justify a judicial intrusion into an area so clearly the province, initially at least, of the legislative and executive branches as the determination of what course of action will lead to a sound basic education.” *Id.*

In *Hoke County I*, the Court went even further. The Court emphasized that, because the Plaintiffs’ claims turn on the alleged conditions in their individual school districts, they only have standing to represent, at most, the students who live in those districts—not those that live in other districts. *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 615 (2004). As a result, the Court held that, because the only trial ever conducted in this case “was premised on evidence as it pertains to Hoke County in particular, our holding mandates cannot be construed to extend to the other four rural districts named in the complaint.” *Id.* at 614, n. 5. The Court stated that further proceedings would be necessary to establish the Plaintiff’s claims with respect to any district other than Hoke County. *Id.*

In the roughly 20 years since *Hoke County I*, the plaintiffs, their allies, and even some

judges have recast that case as a decision establishing a statewide violation and allowing a judicial fix on a statewide basis.

Media coverage and public discourse have often focused on generalized statements of public education support and funding. But the sweeping Comprehensive Remedial Plan the plaintiffs and their friends in the Attorney General's Office and the Governor, would dictate education policy and spending for the whole of North Carolina for eight years. It includes 146 action items that reach nearly every aspect of public education. The plan covers teacher development, recruitment, and pay; school finance, standards for measuring academic performance; university programming; universal visits by social workers to new mothers; and pre-K programs.

By the executive branch's own estimate, the Comprehensive Remedial Plan will require at least \$5.4 billion each year in recurring appropriations, with another \$3.6 billion in non-recurring appropriations over the course of the eight-year plan. Those massive sums don't include several items for which funding is marked "TBD."

The North Carolina Constitution explicitly recognizes that decisions regarding education policy and spending are left to the people, through their representatives in the General Assembly. N.C. Const. Art. IX, §§ 2, 5; *see also Rhyne v. K-Mart*, 358 N.C. 160, 169 (2004) (holding that the General Assembly is the "policy making agency of our government"). As far back as 1895, the Supreme Court has seen that the General Assembly serves as the policy making branch of government because "[a]ll political power is vested and derived from the people." *State ex rel. Ewart v. Jones*, 116 N.C. 570, 570 (1895).

The April 2023 Order imposing the Comprehensive Remedial Plan suffers from at least four jurisdictional flaws:

First, the trial court purported to decide the rights of parties which were not before the court. The Plaintiffs' claims were limited to certain school district and the conditions they alleged exist in those districts. The trial court's order dictates education policy and spending for the State including districts where no claim has ever been alleged.

Second, the trial court order imposes a remedy without proof of a violation. The only trial in this case concerned the conditions in Hoke County. The supreme Court was unambiguous in explaining that because the only trial in this matter related to Hoke County, its mandates could not extend beyond that district, and that further adversarial proceedings would be necessary to establish Plaintiffs claims regarding the remaining counties. Those proceedings never occurred, and Plaintiffs have never proven the existence of a violation outside of Hoke or Halifax County by clear and convincing evidence.

Third, the trial court order gives relief in what has become, in essence, a collusive lawsuit or "friendly suit" where there was no actual adversity between the parties. That lets the Plaintiffs and the executive branch to make an "end-run" around the legislative process and the people.

Fourth, the trial court's imposition of the Comprehensive Remedial Plan answers a political question. Under the political question doctrine, courts do not answer questions that are left to the legislative or executive branches.

The Supreme Court should hold that the trial court lacked subject matter jurisdiction to enter the orders requiring the State to develop, implement, and fund the Comprehensive Remedial Plan. Those orders should be vacated, and the Supreme Court should order that any further proceedings be limited to the scope of the claims actually alleged by the Plaintiffs and that any further proceedings comply with the limits established two decades ago in *Hoke County I*.

###

### About NCICL

NCICL envisions a North Carolina of individual liberty and a thriving, innovative economy, with state and local governments committed to following the state and federal constitutions.

NCICL is a 501(c)(3) organization and is funded solely from voluntary contributions from individuals, corporations, and charitable foundations. NCICL is not funded by or affiliated with any federal, state, or local government.

### Our Mission

- To help the public hold policymakers accountable by providing resources to understand constitutional law issues as they develop.
- To educate the public, bar, and policymakers about constitutional principles--why they are important, when they are at risk, and how to preserve them.
- To promote liberty by encouraging a limited and transparent government and promoting free enterprise.

### About the Author

Jeanette Doran is President and General Counsel of the North Carolina Institute for Constitutional Law ([ncicl.org](http://ncicl.org)). She can be reached at [jeanette.doran@ncicl.org](mailto:jeanette.doran@ncicl.org)



PO Box 30601  
Raleigh, NC 27622  
984.884.7451  
[www.ncicl.org](http://www.ncicl.org)

*"A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty."*

Constitution of 197, art. I, §35  
Constitution of 1868, art. I, § 29  
Constitution of 1176, Declaration of Rights, § 21