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A Sound, Basic Education: North Carolina Adopts an Adequacy Standard in *Leandro v. State*

"Is it not almost a self-evident axiom that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen?"[1] This question, posed by John Stuart Mill in his influential work *On Liberty*, intrinsically accepts that all children should not only be required to receive an education,[2] but also that each child should obtain a minimum qualitative level of education.[3] Although education has long been recognized as one of the most important functions of the state by Americans[4] and North Carolinians,[5] compulsory schooling did not gain general acceptance until the end of the nineteenth century.[6] However, Mill's belief that each child should obtain a certain standard of education has only

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1. JOHN STUART MILL, ON LIBERTY 128 (Currin V. Shields ed., 1987).

2. Mill did not endorse state establishment and control of education, but recognized that government-organized and controlled education, if it existed at all, would force other educators "up to a certain standard of excellence." *Id.* at 129.

3. *See id.* at 128.

4. *See, e.g.*, Plyler v. Doe, 457 U.S. 202, 221 (1982) ("We have recognized 'the public schools as a most vital civic institution for the preservation of a democratic system of government,' and as the primary vehicle for transmitting 'the values on which our society rests.' " (quoting Abington Sch. Dist. v. Schempp, 374 U.S. 203, 230 (1963); Ambach v. Norwick, 411 U.S. 68, 76 (1979))); Wisconsin v. Yoder, 406 U.S. 205, 213 (1972) ("Providing public schools ranks at the very apex of the function of a State."); Brown v. Board of Educ., 347 U.S. 483, 493 (1954) ("[E]ducation is perhaps the most important function of state and local governments .... [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." (citations omitted)).

5. *See, e.g.*, City of Greensboro v. Hodgin, 106 N.C. 182, 185-86, 11 S.E. 586, 587 (1890) (noting education's prime importance in the state constitution and arguing that education should be forever encouraged); Lane v. Stanly, 65 N.C. 153, 157 (1871) (finding education to be a "great governmental consideration" in the first case interpreting the educational provision of the North Carolina Constitution of 1868); *Introduction* to 2 EDUCATION IN THE UNITED STATES: A DOCUMENTARY HISTORY at viii (Sol Cohen ed., 1974) (recognizing that North Carolina's public school system was the best in the antebellum South); Margaret Rose Westbrook, Comment, *School Finance Reform Comes to North Carolina*, 73 N.C. L. REV. 2123, 2135 (1995) (noting that North Carolina was only one of six of the original 13 colonies to include an education article in its first constitution and was the second state to establish a state public school system).

6. *See* MARK G. YODOLF ET AL., EDUCATIONAL POLICY AND THE LAW 14 (3d ed. 1992). North Carolina's first compulsory school law was passed in 1923. *See* Delconte v. State, 313 N.C. 384, 397-98, 329 S.E.2d 636, 645 (1985) (citing Public Laws 1923, ch. 136 § 347). For a discussion of the evolution of North Carolina's compulsory school laws, see *id.* at 397-99, 329 S.E.2d at 645-46.

recently begun to manifest itself.[7]

Because education plays such a vital role in the lives of Americans, school finance systems that create significant funding disparities among the various school districts within a state have come under attack.[8] Since the late 1960s, over sixty lawsuits have been initiated nationwide in efforts to reform state public school funding schemes.[9] In *Leandro v. State*,[10] North Carolina joined the states that have held that all children are entitled to the same minimum qualitative level of education, regardless of which schools the children attend.[11] In *Leandro*, representatives from poor, rural school districts and relatively wealthy urban school districts sought declaratory and injunctive relief, claiming that North Carolina and the North Carolina State Board of Education failed to provide all of their students with adequate and equal educational opportunities under the North Carolina Constitution.[12] On an appeal from a dismissal of the school districts' claims, the North Carolina Supreme Court held that the children of North Carolina are entitled to a "sound basic education" under the North Carolina Constitution.[13]

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7. *See* Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151, 1153 (1995) (noting that recent litigation challenging state school systems concentrates on ensuring a certain minimum quality standard of education). For a discussion on the history of school finance litigation, see *infra* notes 122-28.

8. *See* Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307, 308 (1991).

9. *See* Heise, *supra* note 7, at 1151.

10. 346 N.C. 336, 488 S.E.2d 249 (1997).

11. *See id.* at 350-51, 488 S.E.2d at 255; *see also, e.g.*, Opinion of the Justices, 624 So. 2d 107, 110-11 (Ala. 1993) (upholding a lower court ruling that invalidated the school finance system on both adequacy and equality grounds); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212-13 (Ky. 1989) (holding that the state's entire education system failed to meet both equality and adequacy standards); McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516, 553-54 (Mass. 1993) (invalidating school finance system on adequacy grounds); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 150-52 (Tenn. 1993) (holding that an adequacy standard exists, but failing to define such a standard and instead invalidating the school finance system on equal protection grounds); Seattle Sch. Dist. No. 1 v. Washington, 585 P.2d 71, 94-95 (Wash. 1978) (en banc) (holding that the state constitution demands that each child receive a basic education); Pauley v. Kelly, 255 S.E.2d 859, 877-78 (W. Va. 1979) (invalidating the school finance system because the ambitious adequacy standards of the state constitution were violated).

12. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252; *see also* N.C. CONST. art. IX, § 2(1) (requiring the General Assembly to provide funding and support for "a general and uniform system of free public schools ... wherein equal opportunities shall be provided for all students").

13. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. The supreme court remanded the case to the trial court to determine if the State is providing a sound, basic education. *See id.* at 358, 488 S.E.2d at 261.

For the first time, the children of North Carolina have a recognized right to an opportunity to receive an education that will allow them to become productive citizens.[14] However, the real test of this constitutional right will be determined on remand, when the trial court decides whether the children in the plaintiffs' districts are receiving a sound, basic education.[15]

This Note first reviews the facts of *Leandro* and discusses the North Carolina Supreme Court's reasoning.[16] After examining North Carolina's current school finance system,[17] the Note traces the history of school finance litigation in the United States.[18] The Note then examines the supreme court's opinion in *Leandro* using a three-step analysis. First, it analyzes the supreme court's finding that the North Carolina Constitution guarantees a minimum substantive level of education.[19] Second, it examines the supreme court's definition of a "sound basic education" by comparison with similar definitions from other states granting the right to an adequate education.[20] Third, it uses a two-step analysis to explore whether a constitutional violation has occurred by studying the three factors to be used on remand by the trial court.[21] The Note concludes with a discussion of the ramifications of *Leandro* for the future of education in North Carolina.[22]

On May 25, 1994, five boards of education representing poor, rural North Carolina school districts[23] joined with twenty individuals in those districts ("the plaintiffs") and filed suit against the State of North Carolina and the State Board of Education (collectively "the State").[24] On October 17, 1994, the trial court permitted six boards of education, representing relatively wealthy, urban North Carolina school districts,[25] and twelve individuals from those districts ("the

14. *See id.* at 345, 488 S.E.2d at 254.
15. *See id.* at 355, 488 S.E.2d at 259.
16. *See infra* notes 23-105 and accompanying text.
17. *See infra* notes 106-21 and accompanying text.
18. *See infra* notes 122-38 and accompanying text.
19. *See infra* notes 142-59 and accompanying text.
20. *See infra* notes 160-81 and accompanying text.
21. *See infra* notes 182-260 and accompanying text.
22. *See infra* notes 261-77 and accompanying text.
23. The poor school districts were Cumberland, Halifax, Hoke, Robeson, and Vance Counties. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252.
24. *See* Leandro v. State, 122 N.C. App. 1, 3, 468 S.E.2d 543, 546 (1996), *rev'd in part and aff'd in part*, 346 N.C. 336, 488 S.E.2d 249 (1997). The suit was filed in Halifax County. *See id.*
25. The urban school districts were those in Buncombe, Durham, Forsyth, Mecklenburg, and Wake Counties and the City of Asheville. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252.

plaintiff-intervenors") to intervene in the suit.[26]

The rural and urban districts (collectively referred to as "the plaintiff-parties") contended that the North Carolina Constitution guarantees two educational rights.[27] First, the plaintiff-parties alleged that all North Carolina children are entitled to an adequate education.[28] This claim posited that every child is guaranteed the opportunity to receive a certain minimum qualitative level of education.[29] Second, the plaintiff-parties alleged that all North Carolina children are entitled to "equal educational opportunities."[30] The equal opportunities claim is based on the theory that each child should receive substantially the same level of funding and educational opportunities.[31] Both rural and urban districts claimed that the State had denied them these rights under the current state educational system.[32]

As a result of the vastly disparate value of taxable property

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26. *See Leandro*, 122 N.C. App. at 3-4, 468 S.E.2d at 546.

27. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252. Specifically, the plaintiff-parties relied on Article I, § 15 and Article IX, § 2 of the North Carolina Constitution. *See id.* at 345, 488 S.E.2d at 254; *see also* N.C. CONST. art. I, § 15 (providing that North Carolinians have a right to education and the State must guard and maintain that right); *id.* art. IX, § 2 (providing that the state shall provide a free system of public schools). The plaintiff-parties also alleged statutory violations under Chapter 115C of the North Carolina General Statutes. *See Leandro*, 346 N.C. at 353, 488 S.E.2d at 258; *see also* N.C. GEN. STAT. ch. 115C (1997) (providing the statutory scheme for elementary and secondary education in North Carolina). Specifically, the plaintiff-parties alleged that the State violated:

> (1) that part of N.C.G.S. § 115C-1 requiring a "general and uniform system of free public schools . . . throughout the State, wherein equal opportunities shall be provided for all students"; (2) that part of N.C.G.S. § 115C-81(a1) requiring that the state provide "every student in the State equal access to a Basic Education Program"; (3) that part of N.C.G.S. § 115C-122(3) requiring the state to "prevent denial of equal educational . . . opportunity on the basis of . . . economic status . . . in the provision of services to any child"; and (4) that part of N.C.G.S. § 115C-408(b) requiring that the state "assure that the necessary resources are provided . . . from State revenue sources [for] the instructional expenses for current operations of the public school system as defined in the standard course of study."

Leandro, 346 N.C. at 353-54, 488 S.E.2d at 258-59 (alterations in original) (quoting N.C. GEN. STAT. §§ 115C-1, -81, -122(3), -408(b)). However, the supreme court "found it unnecessary to dwell at length on these arguments by plaintiff-parties, as . . . the statutes they rely upon do little more than codify a fundamental right guaranteed by our Constitution." *Id.* at 353, 488 S.E.2d at 258. Thus, this Note does not discuss these claims in depth.

28. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252.

29. *See id.* at 344, 488 S.E.2d at 254.

30. *Id.* at 342, 488 S.E.2d at 252.

31. *See id.* at 348, 488 S.E.2d at 255.

32. *See id.* at 342, 488 S.E.2d at 252.

between the rural and urban school districts, the claims of these districts were fundamentally different. Because of low property values prevalent in rural areas, the rural districts claimed that they were unable to meet the funding burden imposed upon them under the state's current funding system.[33] The rural districts alleged that the state funding scheme requires local governments to provide funding for most of the districts' capital expenditures and for twenty-five percent of current school expenses.[34] Despite local tax rates that are often higher than those of many wealthy districts, as well as supplemental funding from the state,[35] the rural districts alleged that they could not raise sufficient funds to provide a constitutionally adequate education.[36] The poor districts complained that their

33. *See id.* The basic statutory source of school funding is the ad valorem property tax. *See* Plaintiffs' Amended Complaint at ¶ 46, *Leandro* (No. 94-CVS-520). In this sense, the term "poor" refers to counties or school districts where the value of taxable property is low. *See* PUBLIC SCH. FORUM OF N.C., NORTH CAROLINA LOCAL SCHOOL FINANCE STUDY 1994, at 20 (1994) [hereinafter LOCAL SCHOOL FINANCE STUDY]. Thus, even with high property tax rates, which are set by individual counties, "poor" counties receive a lower yield of tax revenue. *See id.* In 1994, the plaintiff-intervenors' urban counties had an average property tax base of $386,007 per student, and the rural plaintiffs' counties had an average property tax base of $148,209. *See id.* Many poor counties are approaching the upper limit of property tax rates, and one study has suggested that the state supplement low-wealth counties' revenues to meet state-mandated expenditures. *See* PUBLIC SCH. FORUM OF N.C., ALL THAT'S WITHIN THEM: BUILDING A FOUNDATION FOR EDUCATIONAL AND ECONOMIC GROWTH 16-17 (1990) [hereinafter ALL THAT'S WITHIN THEM].

34. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252 (noting the plaintiffs' allegation that the local school districts are responsible for 25% of current school expenses); NORTH CAROLINA DEP'T OF PUB. INSTRUCTION, NORTH CAROLINA PUBLIC SCHOOLS STATISTICAL PROFILE 1997, at 49 (1997) [hereinafter STATISTICAL PROFILE 1997] (noting that local school districts pay 23.1% of total expenses); Westbrook, *supra* note 5, at 2138 (noting that local governments are responsible for approximately 25% of school expenditures). For a detailed discussion on the statutory funding scheme, see *infra* notes 106-21 and accompanying text.

35. *See* Act of July 9, 1993, ch. 321, § 138, 1993 N.C. Sess. Laws 649, 789-94 (providing supplemental funds to low-wealth school districts), *amended by* Act of July 16, 1994, ch. 769, § 19.32, 1994 N.C. Sess. Laws 751, 865-70; *id.* § 138.1, at 794-96 (providing supplemental funds to school districts with enrollment under a certain level), *amended by* Act of July 16, 1994, ch. 769, § 19.32, 1994 N.C. Sess. Laws 751, 865-70. In 1993, the North Carolina General Assembly appropriated supplemental funding to poor and small school districts to help equalize educational expenditures among the state's school districts. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 2.

36. In 1994, the 10 poorest counties had an effective tax rate of $0.75 per $100 valuation, while the 10 wealthiest counties had an effective tax rate of $0.52 per $100 valuation. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 5. The state average is $0.60 per $100 valuation. *See id.* The disparity in property values between the poor and wealthy counties can create vast differences in ability to raise revenue for education. For instance, a one-cent property tax increase generates over $100 of revenue in the wealthiest county in North Carolina but generates only $11 of revenue in the poorest county. *See id.*

children suffer from "dilapidated school facilities, [a] short supply of textbooks, and limited curricula, among other things, all leading to difficulty in attracting and attaining qualified teachers."[37] The rural districts further alleged that their children were not receiving the education required under the Basic Education Program.[38] Finally, the rural districts argued that a lack of resources resulted in an inadequate education for their school children, as reflected by their poor standardized test scores.[39] The rural districts relied on the disparity in local funding between the wealthy and poor districts to illustrate their allegations.[40]

Due to a highly valued property tax base, the urban districts did not claim that they were unable to raise revenue.[41] Rather, the urban districts claimed they were unable to sufficiently support the regular

37. Leandro v. State, 122 N.C. App. 1, 4, 468 S.E.2d 543, 546 (1996), *rev'd in part and aff'd in part*, 346 N.C. 336, 488 S.E.2d 249 (1997). Under the current system, school districts may use local funds to supplement teacher salaries and hire teachers for programs not offered by the state. *See* Charles D. Liner, *Financing North Carolina's Public Schools*, SCH. L. BULL., Summer 1987, at 29. However, low property values fail to provide sufficient funds to hire supplemental teachers. In 1992-93, the five rural counties involved in the suit funded, on average, 0.74% of the teachers locally as opposed to a state average of 5.2%. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 3.

38. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252. The Basic Education Program is the state education program intended to define and fund a comprehensive educational program for North Carolina students. For an in-depth discussion of the Basic Education Program, see *infra* notes 111-14, 190-92 and accompanying text.

39. *See Leandro*, 346 N.C. at 343, 488 S.E.2d at 252. These districts submitted evidence that the majority of their students were failing end-of-grade examinations and that these students performed well below the average Scholastic Aptitude Test ("SAT") score. *See id.* at 342, 488 S.E.2d at 252; *Leandro*, 122 N.C. App. at 4, 468 S.E.2d at 546. In 1994, 37.3% of students statewide performed at or above the proficient level on the end-of-grade tests for the core courses in high school. *See* STATE BD. OF EDUC., 1994 REPORT CARD: THE STATE OF SCHOOL SYSTEMS IN NORTH CAROLINA 5 (1995) [hereinafter REPORT CARD]. Only 19.2% of students were at or above the proficient level in the rural school districts. *See id.* at 75, 111, 125, 193, 227. Even more dramatic are the results from Halifax County in 1993, reporting the following failure rates in the end-of-course proficiency exams: 79% in physical science, 90% in biology, 86% in chemistry, 79% in physics, 88% in algebra I, 82% in geometry, 90% in algebra II, 83% in economic, legal, and political systems, 89% in U.S. history, and 82% in English I. *See* Plaintiff's Amended Complaint at ¶ 76, *Leandro* (No. 94-CVS-520). In 1994, the average SAT score for all North Carolina students was 835 out of a possible 1600. *See* REPORT CARD, *supra*, at 6. The average SAT score in the rural districts was 765.6. *See id.* at 76, 112, 126, 194, 228.

40. *See Leandro*, 346 N.C. at 352, 488 S.E.2d at 258. The gap in local per-pupil funding has increased in the recent past, and the supplemental funds provided by the state to small and poor districts is only slowing down the growing disparity. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 4-5. A 1994 study found the gap between the counties with the highest and lowest local funding to be $1943 per pupil, or a $971,500 difference in a school of 500 children. *See id.* at 2.

41. *See supra* notes 33-36.

education programs with local revenues because the funds were necessarily diverted to three costs especially associated with urban areas.[42] First, the urban districts claimed that they serve "a large number of students who require special education services, special English instruction, and academically gifted programs."[43] Second, the urban districts maintained that their school facilities were inadequate due to the enormous growth in North Carolina's urban student population.[44] Third, the urban districts claimed that the state failed to account for the high costs associated with "municipal overburden."[45] The theory of municipal overburden maintains that a disproportionate share of urban tax receipts must be allocated to other needs acutely present in urban areas, such as "high levels of poverty, homelessness, crime, unmet health care needs, and unemployment."[46]

The urban districts also asserted that test scores, particularly those of economically at-risk students, reflected the inadequate education their students were receiving.[47] The urban districts did not submit any test scores to the court to substantiate these claims,[48] probably because those claims focused on the test results of particular schools rather than the entire district.[49]

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42. *See Leandro*, 346 N.C. at 343, 488 S.E.2d at 252.

43. *Id.*

44. *See id.* at 343, 488 S.E.2d at 253; *see also* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 7 (recognizing that several wealthy counties are "severely pressed to keep up with the building facility demands placed on them by an exploding student population"); Charles D. Liner, *Update: School Enrollment Projections*, SCH. L. BULL., Winter 1997, at 10-12 (projecting the increase in average daily enrollment in the decade from 1995 to 2005 in the six urban districts to be 16.1%, and projecting the increase for the five rural districts to be 6.38%).

45. Leandro v. State, 122 N.C. App. 1, 5, 468 S.E.2d 543, 547 (1996), *rev'd in part and aff'd in part*, 346 N.C. 336, 488 S.E.2d 249 (1997).

46. *Leandro*, 346 N.C. at 344, 488 S.E.2d at 253.

47. *See* Intervening Complaint at ¶ 42, *Leandro* (No. 94-CVS-520). The urban districts' complaint noted that "approximately 64 schools in the urban school districts had greater than 50% of their students eligible for free or reduced-price lunches" and that in "approximately 22 of those 64 schools, the percentage of such poor students is at least 80%." *Id.* ¶ 55.

48. The urban districts did submit reports showing that less than 60% of their high school graduates completed the minimum courses required for admission to the University of North Carolina system in 1993. *See id.* ¶ 48. However, this statistic is not very remarkable in light of the fact that the state average for high school graduates completing the required courses was 48.5% in 1994. *See* REPORT CARD, *supra* note 39, at 6.

49. *See* Intervening Complaint at ¶¶ 55-56, *Leandro* (No. 94-CVS-520) (noting that the urban districts have a high concentration of poor schools and finding that the children in those schools generally perform very poorly on standardized tests); Plaintiff-Intervenor-Appellants' New Brief at 29-30, *Leandro* (No. 179-PA-96) (noting that poor

The urban districts also alleged that the state supplemental funds allocated to poor and small school districts denied the children in urban districts equal protection of the laws under the North Carolina Constitution.[50] The urban districts claimed that the supplemental state funding, earmarked only for poor and small school districts, was arbitrary and capricious because the legislature established those programs without regard for the actual needs of other school districts.[51]

In response to the allegations of the plaintiff-parties, the State moved to dismiss, asserting that the plaintiff-parties failed to state a claim upon which relief could be granted.[52] The State contended that the claim for adequate educational opportunities was unfounded because "the Constitution is silent on the issue of 'adequate education[]' and ... [provides] no such constitutional right."[53] The State interpreted the constitutional silence as leaving all determinations of adequacy to the legislature.[54]

After reviewing the parties' positions, the trial court denied the State's motion to dismiss for lack of subject matter and personal jurisdiction and for failure to state a claim upon which relief could be granted.[55] The State filed a timely notice of appeal to the North Carolina Court of Appeals, after which the parties filed a joint petition to the North Carolina Supreme Court for discretionary review prior to a determination by the court of appeals.[56] Following a denial by the supreme court,[57] the State filed an alternative petition for writ of certiorari with the court of appeals, which was allowed.[58] Reversing the trial court, the court of appeals held that the lawsuit should be dismissed on the grounds that "the [fundamental] right to education guaranteed by the North Carolina Constitution is limited

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or at-risk students require extra attention to receive an adequate education).

50. *See Leandro*, 346 N.C. at 352, 488 S.E.2d at 258; *see also* N.C. CONST. art. I, § 19 (guaranteeing every person equal protection of the laws).

51. *See Leandro*, 346 N.C. at 353-54, 488 S.E.2d at 258.

52. *See* Leandro v. State, 122 N.C. App. 1, 5, 468 S.E.2d 543, 547 (1996), *rev'd in part and aff'd in part*, 346 N.C. 336, 488 S.E.2d 249 (1997). The State also claimed that Halifax County was an improper venue for an action against public officers. *See Leandro*, 346 N.C. at 341-42, 488 S.E.2d at 251. The trial court granted the State's petition for transfer of venue and ordered the suit moved to Wake County because Wake County was the only proper venue for an action against public officers. *See id.* at 341-42, 488 S.E.2d at 251-52.

53. *Leandro*, 122 N.C. App. at 11, 468 S.E.2d at 550.

54. *See* New Brief for Defendants at 18, *Leandro* (No. 179-PA-96).

55. *See Leandro*, 346 N.C. at 344, 488 S.E.2d at 253. The motion to dismiss was denied on January 10, 1995. *See Leandro*, 122 N.C. App. at 5, 468 S.E.2d at 547.

56. *See Leandro*, 346 N.C. at 344, 488 S.E.2d at 253.

57. *See* Leandro v. State, 455 S.E.2d 662 (N.C. 1995).

58. *See Leandro*, 122 N.C. App. at 5, 468 S.E.2d at 547.

to one of equal access to ... education, and [it] does not embrace a qualitative standard."[59] The plaintiff-parties once again petitioned the North Carolina Supreme Court for discretionary review,[60] and the supreme court allowed those petitions.[61]

After determining that the case raised justiciable questions,[62] Chief Justice Mitchell, writing for the majority of the court, proceeded to analyze the plaintiff-parties' adequacy claims.[63] The supreme court began by identifying two provisions of the North Carolina Constitution that could be interpreted as recognizing such a right.[64] Article I, § 15 provides: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."[65] Article IX, § 2 provides: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students."[66]

Reversing the court of appeals, the court held that these constitutional provisions guarantee every child in North Carolina the opportunity to receive what it called "a sound basic education."[67]

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59. *Leandro*, 346 N.C. at 344, 468 S.E.2d at 253 (citing Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432 (1987)). The court of appeals found the plaintiff-parties' claims to be indistinguishable from the claims in *Britt*. *See id.* The plaintiffs in *Britt* challenged the educational finance system on an equal educational opportunity theory, but the court concluded that the constitutional provisions requiring equal opportunities only guaranteed "equal access to our public schools—that is, every child has a fundamental right to [receive] an education in our public schools." *Britt*, 86 N.C. App. at 283, 289, 357 S.E.2d at 432-33, 436 (citing Sneed v. Greensboro City Bd. of Educ., 299 N.C. 609, 264 S.E.2d 106 (1980)).

60. *See Leandro*, 346 N.C. at 344, 468 S.E.2d at 253.

61. *See* Leandro v. State, 343 N.C. 512, 472 S.E.2d 11, 12, 13, 15 (1996) (granting the State's, the plaintiffs', and the plaintiff-intervenors' petitions for review).

62. *See Leandro*, 346 N.C. at 344-45, 488 S.E.2d at 253-54. In its original motion to dismiss, the State alternatively argued that the plaintiff-parties' claims were "nonjusticiable political questions." *See Leandro*, 122 N.C. App. at 12, 468 S.E.2d at 550. The court of appeals never reached this question. *See id.* at 11-12, 468 S.E.2d at 550-51. Thus, the State contended that this "threshold question" should be addressed. *See Leandro*, 346 N.C. at 345, 488 S.E.2d at 253-54. The supreme court disposed of this claim by finding a judicial duty to determine whether the State's actions exceeded constitutional limits. *See id.* (citing Maready v. City of Winston-Salem, 342 N.C. 708, 716, 467 S.E.2d 615, 620 (1996)).

63. *See Leandro*, 346 N.C. at 345, 488 S.E.2d at 254.

64. *See id.*

65. N.C. CONST. art. I, § 15.

66. *Id.* art. IX, § 2(1).

67. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255. The court was careful to distinguish between the *opportunity to receive* an adequate education and the actual receipt of an adequate education, and to limit the right to the former. *See id.* at 350, 488 S.E.2d at 257.

The court found that "[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate."[68] The court drew support for this conclusion from judicial and legislative sources. In addition to reciting corroborating language from an earlier case finding that the " 'constitutional provisions were intended to establish a system of public education *adequate to the needs of a great and progressive people*,' "[69] the court quoted recent statutory language that seemed to recognize a right to an adequate education.[70]

The court also found that the urban districts made sufficient allegations to challenge, as arbitrary and capricious, the state's supplemental funding system, which earmarks additional funds strictly for poor and small school districts.[71] The court held that the legislature has a duty to distribute supplemental funds in a manner reasonably related to providing an opportunity for a sound, basic

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The court recognized that "[s]ubstantial problems have been experienced in those states in which the courts have held that the state constitution guaranteed the *right to* [*receive*] a sound basic education." *Id.* (emphasis added) (citing various state court decisions and multiple articles). The court found that granting the right to an adequate education was an "impractical and unattainable goal." *Id.* (noting the difficulty Connecticut, Texas, and West Virginia had in interpreting court mandates to restructure school finance systems and implementing new school finance schemes).

68. *Leandro*, 346 N.C. at 345, 488 S.E.2d at 254.

69. *Id.* at 346, 488 S.E.2d at 254 (quoting Board of Educ. v. Board of Comm'rs, 174 N.C. 469, 472, 93 S.E. 1001, 1002 (1917) (emphasis in original)).

70. *See id.* at 347, 488 S.E.2d at 254-55. The supreme court quoted the following language from a statute governing the use of state education funds:

> "(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. . . .
>
> (b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study."

Id. (alteration in original) (quoting N.C. GEN. STAT. § 115C-408 (1994)). The court also cited statutory language stating that local boards of education have a duty " 'to provide *adequate* school systems within their respective local school administrative units, as directed by law.' " *Id.* (alteration in original) (quoting N.C. GEN. STAT. § 115C-47(1) (1997)).

71. *See id.* at 353, 488 S.E.2d at 258. The urban districts did not argue that the State had no right to distribute additional funds; instead, they argued that the State's scheme for supplemental funding was "arbitrar[y] and without regard for the actual supplemental educational needs of particular school districts throughout the state." *Id.* at 352-53, 488 S.E.2d at 258.

education.[72] A failure to meet this duty "could result in a denial of equal protection or due process."[73]

The supreme court then addressed the plaintiff-parties' claims that the equal opportunity clause in Article IX, § 2(1) of the North Carolina Constitution requires equal educational opportunities.[74] Although Article IX, § 2(1) requires a "general and uniform system ... wherein equal opportunities shall be provided for all students," the court held that this language does not require substantially equal funding in every school district.[75] The court relied upon three grounds to uphold the current method of state funding for the public schools.[76] First, because the constitution expressly provides that local school districts may supplement state education funds,[77] the court concluded that the framers could not have intended that the

72. *See id.* at 353, 488 S.E.2d at 258.

73. *Id.* Because the trial court will review this claim under an equal opportunity analysis rather than an adequacy analysis, this claim will not be discussed further. However, a cursory look at this claim reveals serious weaknesses in the urban districts' claims. Many of these alleged urban costs are already compensated for under the current school finance system. For example, the State provides funds for special education to which handicapped children are entitled. *See* N.C. GEN. STAT. § 115C-110 (1997) (distributing responsibility for funding between the state and the local educational agencies). The State also provides funds for gifted children. *See* Act of July 16, 1994, ch. 769, § 19.5A, 1994 N.C. Sess. Laws 751, 844-45. Furthermore, the General Assembly recently provided for a $1.8 billion dollar bond for school facilities, of which 45% is allocated to school districts based on student population growth projections. *See* Act of June 21, 1996, ch. 631, 1996 N.C. Sess. Laws 182; Laurie L. Mesibov, *1996 North Carolina Legislation Pertaining to Elementary and Secondary Education*, SCH. L. BULL., Fall 1996, at 12. Moreover, the matching county welfare payments mandated by the State may have a greater impact on the poor, rural districts than on the urban districts. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 5-6 (noting that Hoke County, one of the plaintiff rural districts, spends over 30% of its entire budget on mandated welfare payments, while Mecklenburg County, one of the urban plaintiff-intervenors, spends less than seven percent of its budget on these payments). The supreme court noted the irony of allowing the relatively wealthy districts to benefit from the Supplemental Fund. *See Leandro*, 346 N.C. at 351-52, 488 S.E.2d at 257. Therefore, the trial court will likely be reluctant to grant supplemental funds to these urban districts because the funds would increase the funding gap. *See id.* ("Ironically, if plaintiff-intervenors' argument should prevail, they would be entitled to an unequally large per-pupil allocation of state school funds for their relatively wealthy urban districts.").

74. *See Leandro*, 346 N.C. at 348, 488 S.E.2d at 255. Although the plaintiff-parties' equality claims formed a major part of their action, this Note limits its discussion of the equality issues to summarizing the opinion of the supreme court. It is beyond the scope of this Note to analyze the equality claims because they will have no bearing on remand. *See id.* at 357, 488 S.E.2d at 261 (defining the issues for the trial court on remand).

75. *Id.* at 349, 488 S.E.2d at 256.

76. *See id.* at 358, 488 S.E.2d at 261 (Orr, J., dissenting in part and concurring in part).

77. *See* N.C. CONST. art. IX, § 2(2) ("The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.").

inequities resulting from local funding would be unconstitutional.[78] Second, the court found that counties have a long history of funding local school districts.[79] Third, the court noted that, due to the difficulty inherent in defining equality, granting the right to substantially equal educational opportunities would lead to a "steady stream of litigation" that would, ironically, deplete the resources of the educational system and the courts.[80]

The court next examined the plaintiff-parties' argument that North Carolina's education statutes afforded children a right to equal educational opportunities.[81] However, the supreme court found it unnecessary to analyze the plaintiff-parties' statutory arguments in detail, finding that the statutes were a mere codification of the educational rights found in the constitution.[82] Thus, the court held that none of the statutes required equal educational opportunities because the constitution fails to recognize that right.[83] Because the constitution does grant the right to an adequate education, the court found that the plaintiff-parties were entitled to a trial to produce evidence that the State has committed violations of chapter 115C of the General Statutes and that those violations have prevented the children in the plaintiff-parties' districts the opportunity to receive a sound, basic education.[84]

Having concluded that the plaintiff-parties' only valid claims were those related to an adequate education, the supreme court proceeded to clarify the constitutional right to an adequate education by defining a "sound basic education."[85] Under the North Carolina Constitution, all children of the state are entitled to the opportunity

78. *See Leandro*, 346 N.C. at 349-50, 488 S.E.2d at 256 (relying on *Britt v. State Board of Education*, 86 N.C. App. 282, 288, 357 S.E.2d 432, 435-36 (1987), for the proposition that this provision precludes an interpretation that the constitution requires that equal educational opportunities be offered).

79. *See id.* at 349, 488 S.E.2d at 256. The court cited the following language for support: " 'The Constitution plainly contemplates and intends that the several counties, as such, shall bear a material part of the burden of supplying such funds.' " *Id.* (quoting City of Greensboro v. Hodgin, 106 N.C. 182, 187-88, 11 S.E. 586, 588 (1890)).

80. *See id.* at 350, 488 S.E.2d at 257. If the right to substantially equal educational opportunities were granted, the court noted that "no matter how much money was spent on the schools of the state, at any given time some of those districts would be out of compliance." *Id.* at 350, 488 S.E.2d at 256-57.

81. *See id.* at 353-54, 488 S.E.2d at 258-59.

82. *See id.* at 353, 488 S.E.2d at 258.

83. *See id.* at 354, 488 S.E.2d at 259.

84. *See id.*

85. *See id.* at 347, 488 S.E.2d at 255. A "sound basic education" is the term, created by the court, to define the qualitative level of education required by the North Carolina Constitution. *See id.* No prior decision has delineated these rights.

to develop the following four skills: (1) sufficient ability to read, write, and speak English and a fundamental knowledge of mathematics and physical science; (2) a fundamental knowledge of geography, history, and basic economic and political systems; (3) sufficient skills to enable students to engage successfully in further education or vocational training; and (4) sufficient skills to allow students to compete equally with others in further education or employment.[86]

The court announced that definition "with some trepidation" because it recognized that judges are not education experts and are not well-suited to identify those curricula best designed to provide a sound, basic education.[87] The court determined that the legislature, which can consider the views of the public and educational experts, is a superior forum to ensure that each child has the opportunity to receive an adequate education.[88] Moreover, the court acknowledged that the determination of the educational system that will best provide the opportunity for a sound, basic education is initially the province of the legislative and executive branches.[89]

The court's deference to the legislature influenced the framework it established for the trial court's analysis on remand. The supreme court determined that the judicial branch "must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children ... a sound basic education."[90] If the trial court is convinced by a clear showing that the State is denying children a sound, basic education, a denial of a fundamental

86. *See id.* (citing Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989); Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979)). The court's full definition of a sound, basic education was:

> (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 or vocational 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.

Id.

87. *See id.* at 354, 488 S.E.2d at 259.

88. *See id.* at 354-55, 488 S.E.2d at 259.

89. *See id.* at 357, 488 S.E.2d at 261.

90. *Id.*

right will have been established and the trial court must apply strict scrutiny.[91] Thus, the State may still extricate itself from liability by proving that the denial of this fundamental right is " 'necessary to promote a compelling governmental interest.' "[92] If the State fails to prove that it has a compelling interest, the court has a duty to enter a judgment granting relief sufficient to correct the wrong while minimizing interference with other branches of government.[93]

In order to aid the trial court, the supreme court delineated three factors to be used in determining whether children have received a sound, basic education: (1) "educational goals and standards adopted by the legislature"; (2) "the level of performance ... on standard achievement tests"; and (3) "the level of the state's general educational expenditures and per-pupil expenditures."[94] However, the court made it clear that these factors are neither dispositive nor exclusive.[95]

The supreme court included several caveats on utilizing standardized tests and state educational expenditures as factors. The court cautioned that standardized tests are still the "subject of much debate."[96] Despite this controversy, the supreme court seemed to favor the use of standardized tests by stating that "such 'output' measurements may be more reliable than measurements of 'input' such as per-pupil funding or general educational funding provided by the state."[97] The court had clear misgivings about the correlation of educational expenditures and the quality of education.[98] Nonetheless, although it noted that " 'substantial increases in funding

91. *See id.*

92. *Id.* (quoting Town of Beech Mountain v. County of Watauga, 324 N.C. 409, 412, 378 S.E.2d 780, 782 (1989)).

93. *See id.* (citing Corum v. University of N.C., 330 N.C. 761, 784, 413 S.E.2d 276, 291 (1992)).

94. *Id.* at 355-57, 488 S.E.2d at 259-60.

95. *See id.* (noting that legislative goals are not determinative, that standardized tests are not absolutely authoritative, and that educational funding is not the sole factor for determining educational adequacy). Additionally, the court made it clear that other factors may be used in the determination on remand. *See id.* at 357, 488 S.E.2d at 260.

96. *Id.* at 355, 488 S.E.2d at 260.

97. *Id.* (citing McUsic, *supra* note 8, at 329).

98. The court recognized that " 'one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education.' " *Id.* at 356, 488 S.E.2d at 260 (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 42-43 (1973)); *see also id.* (citing *Missouri v. Jenkins*, 515 U.S. 70, 70 (1995), in which the Supreme Court recognized that students in the Kansas City schools had very high funding levels that provided unparalleled opportunities but that the "learner outcomes" of the students remained at or below national norms).

produce only modest gains,' "[99] the court concluded that the level of funding may have enough impact to warrant consideration when determining whether a violation has occurred.[100]

In the lone dissent, Justice Orr disagreed with the majority's denial of the right to equal educational opportunities.[101] Justice Orr argued that, under the constitution, the ultimate responsibility resided with the State to " 'guard and maintain' " the right to an adequate education by providing sufficient funding.[102] Justice Orr contended that the constitutional provisions allowing local governments to supplement state funding did not diminish the State's responsibility, where poor counties "simply cannot tax themselves to a level of educational quality that its tax base cannot supply."[103] In response to the potential stream of litigation, Justice Orr found that the majority misinterpreted the equal opportunities clause as requiring strict equality rather than substantial equality which, he argued, would not result in increased litigation.[104] Justice Orr contended that the fundamental issue was the substantial equality of educational opportunities, not simply the equality of funding.[105]

In order to understand the claims in *Leandro* fully, it is necessary to examine North Carolina's statutory scheme of educational funding. While most states rely primarily on local governments to raise educational funds, North Carolina's school finance system places most of the funding burden on the state.[106] In North Carolina, the State directly provides the primary funding for the costs of operating the public school system, whereas the counties are primarily responsible for the construction of school buildings and

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99. *Id.* (quoting William H. Clune, *New Answers to Hard Questions Posed by* Rodriguez*: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy*, 24 CONN. L. REV. 721, 726 (1992)). Additionally, the court would not have listed educational expenditures as a factor if it determined that there was no correlation between funding and the quality of education. *See id.* at 355-57, 488 S.E.2d at 260 (listing the State's educational expenditures as a factor in determining whether the State is providing an adequate education).

100. *See id.* at 355, 488 S.E.2d at 260.

101. *See id.* at 358, 488 S.E.2d at 261 (Orr, J., dissenting in part and concurring in part). Justice Orr did agree with the majority's granting of the right to an adequate education. *See id.* at 364, 488 S.E.2d at 265 (Orr, J., dissenting in part and concurring in part).

102. *Id.* at 358, 488 S.E.2d at 261 (Orr, J., dissenting in part and concurring in part) (quoting N.C. CONST. art. I, § 15).

103. *Id.* at 359, 488 S.E.2d at 262 (Orr, J., dissenting in part and concurring in part).

104. *See id.* at 360-61, 488 S.E.2d at 263 (Orr, J., dissenting in part and concurring in part).

105. *See id.* (Orr, J., dissenting in part and concurring in part).

106. *See* Liner, *supra* note 37, at 37.

other capital expenditures.[107] However, the state's current education funding is insufficient to cover all the operating costs; thus, local funding provides for approximately twenty-five percent of educational expenses.[108] Additionally, the local governments are responsible for about ninety-five percent of all capital expenditures.[109] This reliance on local governments to supplement state support has led to wide funding disparities between wealthy and poor school districts.[110]

In North Carolina, the majority of state education funds are allocated on roughly a per-student basis under the Basic Education Program (the "BEP").[111] By utilizing state funds, the BEP was intended to provide all North Carolina students a comprehensive educational program, regardless of a school district's ability to raise local funds.[112] However, the State has never fully funded the BEP.[113] Additionally, any education costs outside the scope of the BEP must be funded from alternate sources, usually local governments.[114]

Because the BEP distribution plan fails to account for a district's ability to fund its schools adequately, the legislature has sought to

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107. *See* New Brief for Defendants at 7, *Leandro* (No. 179-PA-96).

108. *See* Plaintiffs' Amended Complaint at ¶ 44, *Leandro* (No. 94-CVS-520) (citation omitted); Westbrook, *supra* note 5, at 2138-39.

109. *See* Plaintiffs' Amended Complaint at ¶ 44, *Leandro* (No. 94-CVS 520).

110. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 2. In 1994, the difference between the highest and lowest districts in local per-pupil expenditures was $2410 to $467, or $1943. *See id.* Similar disparities in local expenditures have resulted in constitutional violations in other states. The gap in per-pupil revenues in Alabama in 1989-90 was $2449. *See* Opinion of the Justices, 624 So. 2d 107, 115 (Ala. 1993) (rendering an advisory opinion that the state legislature was required to comply with a circuit court order to provide substantially equitable and adequate educational opportunities). The gap in Arkansas was $1505. *See* Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90, 92 (Ark. 1983). The gap in funds per pupil in Tennessee in the 1987 school year was $1846. *See* Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 145 (Tenn. 1993).

111. N.C. GEN. STAT. § 115C-81 (1997); *see also* Westbrook, *supra* note 5, at 2137 (noting that the BEP was enacted to increase state education funding and better define the state's obligation to finance education).

112. *See* Westbrook, *supra* note 5, at 2137. For a more detailed discussion of the BEP's curriculum, see *infra* note 190-92 and accompanying text.

113. *See Leandro*, 346 N.C. at 342, 488 S.E.2d at 252 (noting the plaintiffs' allegations to this effect). According to the statute, "[i]t is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local administrative unit by July 1, 1995." N.C. GEN. STAT. § 115C-81(a). As of 1994, the BEP was underfunded by about $333 million. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 2.

114. *See* ALL THAT'S WITHIN THEM, *supra* note 33, at 8 (recognizing that if a community wishes to offer a course outside the scope of the BEP, such as calculus, that community will have to pay for it). Local governments may use local funds to supplement teachers' salaries or to provide personnel beyond that provided by the state. *See* Liner, *supra* note 37, at 29.

provide supplemental funds to low-wealth counties in order to enable those counties to enhance educational programs and student performance.[115] The State's effort to equalize funding has taken two major forms. In 1993, the legislature enacted a statute providing supplemental funding to small and low-wealth school districts.[116] Nevertheless, the funds appropriated have not been sufficient to reduce the widening disparities between poor and wealthy school districts.[117] In 1996, the legislature passed the Public School Building Bond Act of 1996 (the "Bond Act"),[118] which authorized the issuance of a $1.8 billion bond for funding new construction of school buildings, the renovation of existing school buildings, and the purchase of equipment for school buildings.[119] The Bond Act reserves thirty-five percent of these bond funds for counties that are least able to provide adequate funding for their schools.[120] Although insufficient, these steps evidenced the legislature's intent to close the educational gap.[121]

North Carolina is not the first state to struggle with school finance litigation. Numerous other states have undergone similar litigation, and their experiences shed light on the claims raised in

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115. *See* N.C. GEN. STAT. § 115C-81(a).

116. *See* Act of July 9, 1993, ch. 321, § 138, 1993 N.C. Sess. Laws 649, 789-94 (providing supplemental funds to low-wealth school districts), *amended by* Act of July 16, 1994, ch. 769, § 19.32, 1994 N.C. Sess. Laws 751, 865-70; *id.* § 138.1, at 794-96 (providing supplemental funds to school districts with enrollment under a certain level), *amended by* Act of July 16, 1994, ch. 769, § 19.32, 1994 N.C. Sess. Laws 751, 865-70.

117. In 1995, $46.5 million was appropriated for low-wealth counties, and $538,000 was appropriated for small school systems. *See* Mesibov, *supra* note 73, at 2. "While the supplemental funds ... have slowed the increase in the gap, there continues to be a growing disparity between the amount of funding support available to schools." LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 5. In the 1992-93 school year, the year before the General Assembly enacted supplemental funding, the difference between the ten school districts with the highest total per-pupil expenditure and the ten school districts with the lowest per-pupil expenditure was $1,543.92. *See* NORTH CAROLINA DEP'T OF PUB. INSTRUCTION, PUBLIC SCHOOLS OF NORTH CAROLINA STATISTICAL PROFILE 1994, at 54-56 (1994) [hereinafter STATISTICAL PROFILE 1994] (excluding child nutrition funds). In the 1995-96 school year, the difference between the ten school districts with the highest total per-pupil expenditure and the ten school districts with the lowest per-pupil expenditure had increased to $1,966.06. *See* STATISTICAL PROFILE 1997, *supra* note 34, at 54-56 (excluding child nutrition funds). In the 1995-96 school year, the difference between the school districts with the highest and the lowest total per-pupil funding was $3,697.42. *See id.* at 55.

118. Act of June 21, 1996, ch. 631, 1996 N.C. Sess. Laws 182.

119. *See* Mesibov, *supra* note 73, at 12.

120. *See id.*

121. *See* N.C. GEN. STAT. § 115C-81(a) (1997) (stating that a goal of supplemental funding was "to allow those counties to enhance the instructional program and student achievement").

Leandro. Judicial intervention in public school financing has undergone three phases.[122] In the late 1960s, the first wave of lawsuits challenged school funding discrepancies between poor and rich school districts on the theory that they violated the Equal Protection Clause of the United States Constitution.[123] In *San Antonio Independent School District v. Rodriguez*,[124] the United States Supreme Court effectively closed the door to federal actions based on equal educational opportunity and, consequently, ended the first wave of litigation.[125] The *Rodriguez* Court concluded that education was not a protected fundamental right under the United States Constitution and found that Texas's school finance system satisfied a rational relation test despite dramatic funding disparities between rich and poor school districts.[126]

Cases in the second wave remained focused on challenging the financial discrepancies or the school finance systems on equal educational opportunity grounds, but the plaintiffs shifted their attack to state constitutions.[127] Unlike the Federal Constitution,

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122. William Thro suggested classifying school finance litigation into this framework. *See* William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & EDUC. 219, 222 (1990). Commentators have generally accepted this framework. *See, e.g.*, Gail F. Levine, *Meeting the Third Wave: Legislative Approaches to Recent Judicial School Finance Rulings*, 28 HARV. J. ON LEGIS. 507, 507-08 (1991); William F. Dietz, Note, *Manageable Adequacy Standards in Education Reform Litigation*, 74 WASH. U. L.Q. 1193, 1194 n.5 (1996).

123. *See* Heise, *supra* note 7, at 1153; Frank J. Macchiarola & Joseph G. Diaz, *Disorder in the Courts: The Aftermath of* San Antonio Independent School District v. Rodriguez *in the State Courts*, 30 VAL. U. L. REV. 551, 553 (1996).

124. 411 U.S. 1 (1973).

125. *See id.* at 54-55 (holding that the property-tax based school financing system in Texas did not require strict scrutiny under the Equal Protection Clause because there was no suspect class and no fundamental right; thus the system, which resulted in per-pupil spending differences, passed constitutional muster by "rationally further[ing] a legitimate state purpose or interest"); Heise, *supra* note 7, at 1156 ("[T]he *Rodriguez* decision essentially closed the door to school finance challenges based on the federal Equal Protection Clause."). There is some support for the contention that the U.S. Constitution may guarantee an adequate level of education. *See* Papasan v. Allain, 478 U.S. 265, 285 (1986) ("[T]his Court has not yet definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review."); *Rodriguez*, 411 U.S. at 36 (noting, in dicta, that there may be "some identifiable quantum of education" guaranteed by the Constitution to ensure a meaningful exercise of other rights).

126. *See Rodriguez*, 411 U.S. at 36, 54-55.

127. *See* William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. REV. 597, 601-02 (1994). During the second wave, two states recognized the right to an adequate education. *See* Seattle Sch. Dist. No. 1 v. Washington, 585 P.2d 71, 94 (Wash. 1978) (en banc); Pauley v.

every state constitution mandates that the states provide for public education.[128] The second-wave suits concentrated on state equal protection clauses and, to a smaller degree, state education clauses.[129] These cases, although resulting in some victories for the plaintiffs,[130] were largely unsuccessful.[131] The second wave ended in early 1989.[132]

The third and current wave shifted the focus from financial equity under state equal protection clauses to the quality of education under education clauses of state constitutions.[133] Although often coupled with equal opportunity claims,[134] the third wave's hallmark is challenging the adequacy of education rather than the equality of financing.[135] Commentators have noted several political

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Kelly, 255 S.E.2d 859, 877 (W. Va. 1979).

128. *See* Allen W. Hubsch, *The Emerging Right to Education Under State Constitutional Law*, 65 TEMP. L. REV. 1325, 1343-48 (1992) (listing each state's education clause in an appendix).

129. *See* Thro, *supra* note 127, at 601-02.

130. *See* Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90, 95 (Ark. 1983); Serrano v. Priest, 557 P.2d 929, 952-53 (Cal. 1976); Horton v. Meskill, 376 A.2d 359, 374-75 (Conn. 1977); Robinson v. Cahill, 303 A.2d 273, 296-97 (N.J. 1973); *Seattle Sch. Dist. No. 1*, 585 P.2d at 104; *Pauley*, 255 S.E.2d at 883-84.

131. *See* Thro, *supra* note 127, at 602-03 (citing several unsuccessful second wave suits).

132. *See id.* at 601. The second wave is generally considered to have ended with the adequacy decision in Kentucky. *See* Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989).

133. *See* Heise, *supra* note 7, at 1162.

134. The end of the third wave did not signal the end of all equity claims. In fact, several state school finance systems have been struck down on equity grounds since 1989. *See* Opinion of the Justices, 624 So. 2d 107, 165 (Ala. 1993) (upholding a lower court ruling that invalidated the school finance system on both adequacy and equality grounds); Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806, 815-16 (Ariz. 1994) (en banc) (holding that the public school finance structure violated the "general and uniform" requirement of the education clause due to funding disparities arising from the reliance on property taxes, and determining that the adequacy claims were not properly before the court); *Rose*, 790 S.W.2d at 215-16 (holding that the state's entire education system failed to meet both equality and adequacy standards); Helena Elementary Sch. Dist. No. 1 v. Montana, 769 P.2d 684, 693 (Mont. 1989) (invalidating the school finance system on the grounds that equal educational opportunities were not provided), *modified*, 784 P.2d 412 (Mont. 1990) (granting an extension of the effective date of the earlier judgment to allow the legislative and executive branches additional time to enact a sufficient system of funding); Abbott v. Burke, 575 A.2d 359, 411-12 (N.J. 1990) (invalidating the school finance system for stark disparities in opportunities between poor urban districts and wealthy districts, and requiring funding of poor urban schools at levels commensurate with wealthy districts); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 156 (Tenn. 1993) (holding that an adequate standard exists, but failing to define such a standard, and instead, invalidating the school finance system on equal protection grounds); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 397-98 (Tex. 1989) (invalidating school finance system on grounds that substantially equal access to education funding is required).

135. *See* Heise, *supra* note 7, at 1153. For discussions on the shift from equality to

advantages of adequacy over equality claims, that should result in greater success for adequacy claims.[136] To date, several third-wave plaintiffs have been successful in their claims,[137] while others have been unsuccessful.[138]

This Note will analyze the North Carolina Supreme Court's rationale for holding that the state constitution guarantees the right to a minimum qualitative level of education by examining two aspects of the opinion and foreshadowing the analysis of the trial court on remand. First, this Note will discuss the supreme court's finding that the constitution guarantees a minimum level of education.[139] Second, this Note will analyze the supreme court's definition of a sound, basic

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adequacy claims, see generally Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101 (1995), and Heise, *supra* note 7.

136. *See* Heise, *supra* note 7, at 1174-75 (stating that adequacy "exhibits greater appeal to widely accepted norms of fairness and opportunity" and "cohere[s] with the emerging educational standards movement"); McUsic, *supra* note 8, at 327 (arguing that adequacy claims are "less likely to disrupt local control of schools, pit the judiciary against the legislature, or require legislators to enact a funding scheme that thwarts the interests of their wealthier constituents"); Thro, *supra* note 127, at 603-04 (asserting that because the education clause has fewer ramifications on other areas of the law, adequacy claims are more likely to be successful challenges to school financing systems).

137. *See supra* note 134; *see also* McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993) (invalidating school finance system on adequacy grounds). *Leandro* falls within this category.

138. *See* Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996) (finding that the plaintiffs had failed to define an appropriate adequacy standard that would not pose a substantial risk of intruding into the domain of the legislature); Committee for Educ. Rights v. Edgar, 641 N.E.2d 602, 605 (Ill. App. Ct. 1994) (concluding that the plaintiff's claims did not rely "on the adequacy of education in a district, but on differences in benefits and opportunities offered from district to district"); Unified Sch. Dist. No. 229 v. Kansas, 885 P.2d 1170, 1196-97 (Kan. 1994) (holding that the school financing system met constitutional requirements by uniform application throughout the state, despite the disparities that resulted from such an application); Skeen v. Minnesota, 505 N.W.2d 299, 315 (Minn. 1993) (concluding that the standards set by the State Board of Education provided an adequate education, even though the plaintiffs conceded that the State provided an adequate education and made no adequacy claims); Gould v. Orr, 506 N.W.2d 349, 353 (Neb. 1993) (rejecting adequacy claims for failure to allege that unequal funding affected the qualitative level of education); Bismarck Pub. Sch. Dist. No. 1 v. North Dakota, 511 N.W.2d 247, 263 (N.D. 1994) (upholding the school finance system on procedural grounds, despite the constitutionally suspect disparities in funding between districts); Coalition for Equitable Sch. Funding, Inc. v. Oregon, 811 P.2d 116, 121-22 (Or. 1991) (en banc) (rejecting equality claims on the grounds that the constitution presupposes use of local revenues); Scott v. Virginia, 443 S.E.2d 138, 141-43 (Va. 1994) (upholding the school finance system against equality claims on the grounds that substantial equality of funding or educational opportunity is not required); Kukor v. Grover, 436 N.W.2d 568, 584-85 (Wis. 1989) (holding that school finance system was constitutional, even though the system failed to allocate supplemental funds to poor districts).

139. *See infra* notes 142-59 and accompanying text.

education.[140] Third, this Note will examine the three factors to be utilized on remand to determine whether a constitutional violation has occurred.[141]

The North Carolina Supreme Court first had to determine whether the constitution guarantees a minimum qualitative level of education. Although there is precedent interpreting the North Carolina Constitution's provision for equal educational opportunities,[142] the plaintiff-parties' adequacy claims were an issue of first impression.[143] Textually, the North Carolina Constitution is silent as to whether an individual has a constitutional right to an adequate education,[144] and consequently some commentators have asserted that it grants only minimal qualitative rights.[145] Nevertheless, despite the absence of specific textual language, a review of the framers' intent suggests that an adequacy standard was a consideration.[146] In a statement designed to encourage ratification of the constitution, the framers stated that the constitution was "to give every child, as far as the State can, an opportunity to develop to the fullest extent, all his intellectual gifts."[147] The plaintiff-parties in *Leandro* encouraged the court to interpret this statement as an intent to mandate a constitutional right to an adequate education.[148] On the other hand, the State argued that the framers failed to make that intent explicitly clear in the language; thus, the State urged the court

140. *See infra* notes 160-81 and accompanying text.

141. *See infra* notes 182-260 and accompanying text.

142. *See* Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 290, 357 S.E.2d 432, 436-37 (1987) (rejecting a claim of equal educational opportunity).

143. *See* Westbrook, *supra* note 5, at 2164 (noting that scholars disagreed as to whether the North Carolina Constitution granted the right to an adequate education before the decision in *Leandro*).

144. *See* McUsic, *supra* note 8, at 321; William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 EDUC. L. REP. 19, 23-24 & n.28 (1993); *see also* N.C. CONST. art. I, § 15 ("The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."); *id.* art. IX, § 2(1) (requiring the General Assembly to provide funding and support for "a general and uniform system of free public schools ... wherein equal opportunities shall be provided for all students"). These provisions clearly guarantee the right to a free public education but have no language intimating adequacy.

145. *See* McUsic, *supra* note 8, at 321 (finding that constitutions granting a "general" and "uniform" education, like North Carolina's, "express a minimal commitment to educational quality"); Thro, *supra* note 144, at 23-24 & n.28 (noting that the language of North Carolina's constitution requires a minimal level of quality).

146. *See* JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NORTH CAROLINA 487 (1868).

147. *Id.*

148. *See* Plaintiff-Appellants' New Brief at 10-11, *Leandro* (No. 179-PA-96); Plaintiff-Intervenor-Appellants' New Brief at 14, *Leandro* (No. 179-PA-96).

to apply the constitutional maxim that all authority not expressly provided for in a constitution remains with the legislature.[149] The court resolved this ambiguity by finding that the text of the North Carolina Constitution itself guarantees the right to a sound, basic education.[150]

As the *Leandro* court recognized, there is support in case law and statutes for granting the right to an adequate education. The support upon which the court relied, however, is quite limited.[151] In *Board of Education v. Board of Commissioners*,[152] the North Carolina Supreme Court stated that "these constitutional provisions were intended to establish a system of public education adequate to the needs of a great and progressive people."[153] This early judicial interpretation is bolstered by more recent pronouncements from the General Assembly, which has adopted language that clearly connotes the right to an adequate education.[154]

The supreme court's recognition of the right to an adequate education appeared to be motivated more by the plight of North Carolina's children and the recent acceptance of adequacy claims in other states than strong legal precedent in North Carolina law. Absent this right to an adequate education, the plaintiff-parties asserted that the State could fulfill its constitutional duties by providing children with mandatory, tuition-free access to "warehouses" for nine months a year where no real learning occurred.[155] It was reported that Chief Justice Mitchell, during oral

149. *See* New Brief for Defendants at 18, *Leandro* (No. 179-PA-96). Specifically, the State argued that " '[a]ll power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution.' " *Id.* (quoting State *ex rel.* Martin v. Preston, 325 N.C. 438, 448, 385 S.E.2d 473, 478 (1989)).

150. *See Leandro*, 346 N.C. at 345, 488 S.E.2d at 254.

151. The supreme court cited only one case and two statutes in support, neither of which speaks directly of a constitutional right. *See Leandro*, 346 N.C. at 346-47, 488 S.E.2d at 254-55; *see also* Westbrook, *supra* note 5, at 2164 (noting that scholars disagreed as to whether the North Carolina Constitution granted the right to an adequate education before the decision in *Leandro*).

152. 174 N.C. 469, 93 S.E. 1001 (1917).

153. *Id.* at 472, 93 S.E. at 1002.

154. *See, e.g.*, N.C. GEN. STAT. § 115C-81 (1997) (stating, in the BEP, that "the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential"); *id.* § 115C-12(9b) (directing the State Board of Education to "implement high school exit exams, grade-level student proficiency benchmarks, ... and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce"); *supra* note 70 (quoting statute governing the use of state education funds).

155. *See* Plaintiff-Appellants' New Brief at 13, *Leandro* (No. 179-PA-96); Plaintiff-Intervenor-Appellants' New Brief at 10-11, *Leandro* (No. 179-PA-96).

testimony, commented to an attorney for the State, " 'Shouldn't there be something at the end of the bus ride?' "[156] The supreme court seemed persuaded by the plaintiff-parties' argument that the constitution required a meaningful education, as it held that "[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate."[157] Additionally, recent cases from other states bolstered the force of the plaintiff-parties' adequacy claims.[158] The supreme court was clearly aware of this recent trend granting the right to an adequate education;[159] apparently, the court unanimously believed that adequacy was a right whose time had come.

Once the supreme court determined that a right to an adequate education exists, it reached the second step of its analysis: defining what constitutes a constitutionally adequate education. The definition of "adequate education" is important because it may "effectively determine[] the outcome of the litigation."[160] One commentator hypothesized that almost all school finance schemes will be struck down under a high adequacy standard, and in contrast, school finance systems will almost always pass constitutional muster under a low adequacy standard.[161] Thus, it is instructive to compare *Leandro*'s framework of a sound, basic education with those from other states that have granted this right.

Courts have tended to take one of two basic approaches in delineating the minimum qualitative level of a constitutionally required education. First, some courts have taken a "deferential" approach, granting broad discretion to the legislature.[162] Minnesota[163]

156. Steve Ford, *A Sound, Basic Step Toward Better Schools*, NEWS & OBSERVER (Raleigh, N.C.), July 27, 1997, at A28 (quoting Chief Justice Burley Mitchell).

157. *Leandro*, 346 N.C. at 345, 488 S.E.2d at 254.

158. *See, e.g.*, Opinion of the Justices, 624 So. 2d 107 (Ala. 1993); McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516 (Mass. 1993); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139 (Tenn. 1993); *see also* Westbrook, *supra* note 5, at 2164 (noting that recent decisions in Massachusetts and Tennessee were based on weaker constitutional provisions than North Carolina's).

159. In its opinion, the court cited cases from West Virginia and Kentucky granting similar rights when defining a sound, basic education. *See Leandro*, 346 N.C. at 347, 488 S.E.2d at 255 (citing Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989); Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979)). The court also cited several law review articles highlighting the adequacy suits in other states. *See id.* at 355-56, 488 S.E.2d at 259-260 (citing Clune, *supra* note 99, at 726; McUsic, *supra* note 8, at 332; Thro, *supra* note 127, at 602).

160. Thro, *supra* note 127, at 607.

161. *See id.*

162. *See* Dietz, *supra* note 122, at 1204 (asserting that courts taking this approach are

and Rhode Island[164] have followed this approach. In Minnesota, the supreme court determined that an adequate level of education is equal to the minimum standards required by the State Board of Education.[165] In Rhode Island, the court determined that the legislature was solely responsible for quantifying the minimum adequacy standards.[166] States implementing a deferential definition are considered to have a low standard,[167] and neither the Minnesota nor the Rhode Island court found a constitutional violation.[168]

States applying the second approach forcefully guide educational policy by implementing "wide-ranging and ambitious standards" that "define the contours of educational adequacy."[169] These definitions usually emphasize education as the key to individual success and the importance of education as a basis for our nation's democratic institutions and economic success.[170] Due to its ambitious nature, this policy approach is thought to set a high standard for an adequate education.[171]

Several states have followed this policy approach by delineating several educational capacities guaranteed by their constitutions.[172]

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either "mindful of the difficulties inherent in adequacy measurement or perhaps fearful of overstepping the bounds of judicial competence").

163. *See* Skeen v. Minnesota, 505 N.W.2d 299, 315 (Minn. 1993).

164. *See* City of Pawtucket v. Sundlun, 662 A.2d 40, 62 (R.I. 1995).

165. *See Skeen*, 505 N.W.2d at 315. Despite the plaintiffs' stipulation that they were already receiving an adequate education, the *Skeen* court proceeded to analyze the plaintiffs' claims under an adequacy standard. *See id.*; *see also* Michele M. Hanke, *Have Money, Will Educate: Wealth Versus Equality in the Minnesota School Finance System*, 19 HAMLINE L. REV. 135, 144 (1995) ("The court reasoned that, because the state provided an adequate education, and because no constitutionally guaranteed fundamental right to any particular funding scheme existed, the legislature was free to craft a system that achieved the constitutional mandates.").

166. *See City of Pawtucket*, 662 A.2d at 56, 58-59.

167. *See* Thro, *supra* note 127, at 613 (maintaining that courts which rely on the legislature or state board of education to define adequacy standards will rarely find a violation).

168. *See Skeen*, 505 N.W.2d at 315 ("Because the present system provides uniform funding to each student in the state in an amount sufficient to generate an adequate level of education which meets all state standards, the state has satisfied its constitutionally-imposed duty of creating a 'general and uniform system of education.' " (quoting MINN. CONST. art. XIII, but omitting the word "public" before "education")); Dietz, *supra* note 122, at 1205 (noting that in Rhode Island students "have a right to an adequate education with essentially no way to enforce it judicially").

169. Enrich, *supra* note 135, at 174, 175; *cf.* Dietz, *supra* note 122, at 1207-12 (calling this the "intrusive approach" because it either constrains the legislature with details or implements goals that are impossibly high).

170. *See* Enrich, *supra* note 135, at 167.

171. *See* Thro, *supra* note 127, at 612.

172. *See* Opinion of the Justices, 624 So. 2d 107, 107-08 (Ala. 1993) (upholding a lower court ruling requiring that an adequate education give every child the opportunity to

Typical capacities include: oral and written communication skills; knowledge of economic, social, and political systems; sufficient knowledge of governmental processes to enable the student to make informed choices regarding his or her own governance; mathematic and scientific skills; self-knowledge of health and mental wellness; sufficient understanding of the arts to appreciate his or her cultural heritage; sufficient academic or vocational training to enable students to choose and pursue life work intelligently; and sufficient academic or vocational training to enable students to compete favorably with other students for jobs and further education.[173] As a result of these high standards, the courts in these states have found constitutional violations.[174]

North Carolina's standard should be classified as a high standard. North Carolina closely followed the form used in high-standard states by listing several capacities required to meet the adequacy standard.[175] Moreover, the North Carolina Supreme Court directly cited the Kentucky and the West Virginia definitions when formulating its own definition.[176] Thus, if history follows form, on remand the trial court in *Leandro* is likely to find that the high standards of a sound, basic education have been violated.

Formulating these definitions is not easy,[177] and a high adequacy standard, such as the one adopted in North Carolina, requires a complicated balancing of power between the judiciary and the legislature.[178] If the courts leave too many details to the legislature,

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obtain nine specified capacities); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989) (requiring that each child have the opportunity to obtain seven skills in order to meet the constitutional standard); McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993) (holding that each child should have the opportunity to receive the same seven skills delineated in the Kentucky decision in order to receive an adequate education); Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979) (requiring that each child master eight capacities to the best of their abilities).

173. *See* Opinion of the Justices, 624 So. 2d at 107-08; *Rose*, 790 S.W.2d at 212; *McDuffy*, 615 N.E.2d at 554; *Pauley*, 255 S.E.2d at 877.

174. *See supra* notes 11, 134, 137 and accompanying text.

175. *See Leandro*, 346 N.C. at 347, 488 S.E.2d at 255; *see also supra* text accompanying note 94 (setting forth the three factors).

176. *See Leandro*, 346 N.C. at 347, 488 S.E.2d at 255 (citing *Rose*, 790 S.W.2d at 212; *Pauley*, 255 S.E.2d at 877).

177. The Kansas Supreme Court determined that a constitutional provision requiring that the legislature make "suitable" provisions for school funding "does not imply any objective, quantifiable ... standard against which schools can be measured by a court." Unified Sch. Dist. No. 229 v. Kansas, 885 P.2d 1170, 1185 (Kan. 1994). Nebraska and Tennessee both recognized that there was a quality standard under their constitutions, but neither court defined that standard. *See* Gould v. Orr, 506 N.W.2d 349, 353 (Neb. 1993); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 156 (Tenn. 1993).

178. *See* Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d

the judiciary may subsequently disagree with the legislature's interpretation of these nebulous policy standards and find enforcement difficult.[179] Given great deference, the legislature may lower the bar if its educational standards are challenged or if it finds that the budget will not support the current educational program. Yet, a detail-oriented policy approach leads the courts into the unfamiliar territory of educational policy, which is usually reserved for the legislature.[180] More importantly, a detailed approach provides the opportunity to adopt judicially enforceable substantive standards that will allow the courts to remain in a traditional enforcement role.[181] Although the North Carolina Supreme Court has initially provided broad educational goals for a sound, basic education, in the future the judiciary must remain cognizant of the delicate balance of power between it and the legislature and of the implications a shift in the balance may have for the level and stability of the minimum qualitative level of adequacy.

The third question—whether a constitutional violation has occurred—rests with the trial court on remand.[182] The North Carolina Supreme Court listed three factors to be used in determining whether the state is providing students the opportunity to receive a sound, basic education: legislative educational goals and standards, students' performance on standardized tests, and the state's general educational expenditures and per-pupil expenditures.[183] These factors may be used in a two-pronged analysis to determine whether the State has violated its duty to provide a

400, 408 (Fla. 1996) (finding that the plaintiffs had failed to define an appropriate adequacy standard that would not pose a substantial risk of intruding into the domain of the legislature).

179. *See* McUsic, *supra* note 8, at 332 (suggesting that the court could find enforcement difficult without designating quantifiable standards); Dietz, *supra* note 122, at 1203 (finding that "a court must carefully craft definitional standards so as to maintain both legitimacy and enforceability").

180. *See* Enrich, *supra* note 135, at 171-72 (recognizing that defining adequacy forces courts to enter the realm of policy decisions usually reserved for legislatures); Dietz, *supra* note 122, at 1210-11 (noting that the Massachusetts court "defined the legislature's policy objectives for them, leaving only the details of implementation"). This division-of-powers argument was advanced by the State in *Leandro*. *See* Leandro v. State, 122 N.C. App. 1, 11, 468 S.E.2d 543, 550 (1996), *rev'd in part and aff'd in part*, 346 N.C. 336, 488 S.E.2d 249 (1997).

181. *See* McUsic, *supra* note 8, at 330-31 (finding that incorporating standardized test results into the adequacy standard will allow courts to avoid playing the role of legislator or educator).

182. *See Leandro*, 346 N.C. at 355, 488 S.E.2d at 259.

183. *See id.* at 355-56, 488 S.E.2d at 259-60; *see also supra* notes 94-100 and accompanying text (describing the three factors and the North Carolina Supreme Court's thoughts on each).

sound, basic education. The first step gauges whether the current educational goals and standards adopted by the legislature are capable, in theory, of providing children with the skills that comprise a sound, basic education.[184] If the current educational program in North Carolina is insufficient to provide these skills, then the State will have failed to provide the fundamental right to an adequate education.[185] In the second step, the latter two factors (standardized test results and educational funding) are used as measuring sticks to judge whether North Carolina's current educational program is, in fact, providing students an opportunity to receive a sound, basic education.

The first step in determining whether the State has violated its constitutional duty is to ascertain whether North Carolina's current legislative programs are capable of providing a sound, basic education. In order to do this, it is necessary to examine the current legislative educational goals and standards.[186] This Note compares North Carolina's statutory educational programs and those of Kentucky, which has similar constitutional adequacy requirements. This comparison, combined with the supreme court's reluctance to encroach on the legislature's domain, shows that the basic statutory framework for education will likely remain intact. Three major educational programs will be examined: the BEP,[187] the School-Based Management and Accountability Program (the "ABCs Plan"),[188] and the Excellent Schools Act.[189]

The legislature's qualitative educational goals are primarily found in the BEP. The BEP was intended to provide all North Carolina students with a comprehensive educational program.[190] Under the BEP, the state funds an approved program that includes "a core curriculum, performance and promotion standards, remedial

184. For the purposes of this first step, the current educational goals and standards are assumed to be operating as provided in legislative provisions.

185. *See Leandro*, 346 N.C. at 357, 488 S.E.2d at 261. Unless the State can prove that a compelling governmental interest is the reason for denying this right, the trial court will be compelled to grant the plaintiffs' relief. *See id.*

186. These legislative goals and standards, as discussed in this analysis, do not encompass the statutory framework for funding educational programs. For a discussion on the school funding aspects of the educational statutes, see *supra* notes 106-21 and accompanying text.

187. N.C. GEN. STAT. § 115C-81 (1997).

188. *Id.* § 115C-105; *see also* Mesibov, *supra* note 73, at 1 (stating that this act is better known as the ABCs Plan).

189. Excellent Schools Act, ch. 221, 1997 N.C. Adv. Legis. Serv. 231 (codified at scattered sections of N.C. GEN. STAT. ch. 115C).

190. *See* Westbrook, *supra* note 5, at 2137.

programs, and requirements regarding class size, staffing, equipment, and facilities."[191] The BEP's core curriculum requires that every student receive instruction in "the areas of the arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education."[192]

The rural districts asserted that the BEP cannot provide their students with an adequate education.[193] They argued that, even if they received the required programs and classes,[194] the lack of a requirement for advanced courses[195] indicates that the BEP fails to fully incorporate the necessities for an adequate education.[196] If the rural districts can prove on remand that optional courses, such as calculus and advanced science classes, are necessary to meet one or more of the four requirements of a sound, basic education, the trial court would be forced to remedy these shortcomings, absent a compelling governmental interest in not providing these courses.[197]

The ABCs Plan[198] is a program designed to improve student performance by holding individual schools accountable for their students' results on statewide standardized tests.[199] The primary goal of the ABCs Plan is to improve student performance by setting annual performance goals that focus on: (1) student performance in basics in elementary and middle schools, (2) student performance in courses required for graduation in high school, and (3) holding

191. Liner, *supra* note 37, at 30.

192. N.C. GEN. STAT. § 115C-81(a1).

193. *See* Plaintiffs-Appellants' New Brief at 44, *Leandro* (No. 94-CVS-520). On the other hand, the urban districts stated that current state "statutes, regulations, resolutions, and other pronouncements" do provide for an adequate education. Intervening Complaint at 10, *Leandro* (No. 94-CVS-520). In fact, the urban districts pointed out to the supreme court that the BEP provides guidance as to what constitutes an adequate education. *See* Plaintiff-Intervenors-Appellants' New Brief at 19, *Leandro* (No. 94-CVS-520).

194. The rural districts asserted that they were not receiving the required programs and classes due to a lack of funding. *See* Plaintiff's Amended Complaint at ¶ 60, *Leandro* (No. 94-CVS-520).

195. These advanced courses include calculus, advanced biology, advanced chemistry, advanced physics, journalism, and creative writing. *See* Plaintiffs-Appellants' New Brief at 44, *Leandro* (No. 94-CVS-520).

196. *See id.* The rural districts allege that their districts cannot afford to provide the programs, such as calculus and advanced science classes, not required by the BEP. *See infra* note 249 and accompanying text. The rural districts view these classes as a necessity for an adequate education. *See* Plaintiffs-Appellants' New Brief at 44, *Leandro* (No. 94-CVS-520).

197. *See supra* note 185.

198. N.C. GEN. STAT. § 115C-105 (1997).

199. *See id.* § 115C-105.27.

schools accountable for educational growth of students.[200] The ABCs Plan attempts to accomplish these goals by implementing several steps at the school level.[201] First, the State Board of Education must set annual performance standards for each school to measure the growth of student achievement.[202] Second, each school must formulate a school improvement plan through a school improvement team.[203] Third, the school's performance is based on end-of-grade examinations in core classes.[204] Fourth, individual schools are accountable for their performance. If a school exceeds its goals, the school will receive recognition and possible financial rewards.[205] If a school fails to meet its minimum growth standard and the majority of students are performing below grade level, the school is held accountable and steps are taken to improve the school's performance.[206]

The ABCs Plan and the Excellent Schools Act[207] attempt to increase the quality of teaching in North Carolina Schools. The ABCs Plan directs the State Board of Education to develop a plan that encourages teachers to seek employment with or remain employed in low-performing schools.[208] The specific goals of the Excellent Schools Act are to concentrate student learning in the core academic areas, improve teacher skills to enhance student

200. *See* Mesibov, *supra* note 73, at 2.

201. By focusing at the school level, the state addressed the urban districts' plight, where the entire district performs adequately, but schools in poor areas suffer from low test scores. *See supra* note 49 and accompanying text. The ABCs Plan is designed to help low-performing schools. *See* N.C. GEN. STAT. § 115C-105.20(b)(3).

202. *See* N.C. GEN. STAT. § 115C-105.20; *see also id.* §§ 115C-174.10 to .11 (containing the purposes and components of the testing program).

203. *See* Mesibov, *supra* note 73, at 6.

204. *See id.* at 2. The State Board of Education has been directed to "implement high school exit exams, grade-level student proficiency benchmarks, ... and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce." N.C. GEN. STAT. § 115C-12(9b).

205. *See* N.C. GEN. STAT. § 115C-105.20 (providing that schools that meet or exceed their goals will receive recognition); *id.* § 115C-105.36 (providing that personnel in schools that meet or exceed their goals are eligible for financial reward); Act of Aug. 28, 1997, ch. 443, § 8.36, 1997 N.C. Adv. Legis. Serv. 323, 395 (appropriating money to provide bonuses of up to $1500 for teachers and teacher assistants in schools that achieve higher than expected under the ABCs Plan).

206. Several consequences could result: each school must notify the parents of its students of its low-performing status; the state may assign an assistance team to aid the school in meeting its goals; and if the assistance team fails to improve the school's performance, the state is authorized to dismiss school personnel. *See* N.C. GEN. STAT. §§ 115C-105.37 to .39.

207. Excellent Schools Act, ch. 221, 1997 N.C. Adv. Legis. Serv. 231 (codified at scattered sections of N.C. GEN. STAT. ch. 115C).

208. *See* Mesibov, *supra* note 73, at 2.

performance, and reward teachers for their improved skills and improved student performance.[209] The Excellent Schools Act attempts to attain these goals by testing the competency of teachers in low-performing schools,[210] enhancing the standards for teacher preparation programs,[211] providing for more rigorous and frequent evaluations before granting a teacher tenure,[212] streamlining the process for removing poor teachers,[213] and increasing the salary of teachers.[214] These acts, if successful, would alleviate many of the concerns of the plaintiffs about attracting the best teachers and, as recognized by *Leandro*, require additional funding for schools across the state.[215]

It is instructive to examine the educational reform in a state that has previously granted the right to an adequate education in order to predict whether North Carolina's current educational programs will pass the first prong. In *Rose v. Council for Better Education, Inc.*,[216] the Kentucky Supreme Court struck down the entire Kentucky education system.[217] In response, the legislature adopted a comprehensive educational reform package called the Kentucky Educational Reform Act ("KERA"),[218] which "mandated school-

209. *See* Excellent Schools Act, ch. 221, 1997 N.C. Adv. Legis. Serv. 231, 233.

210. *See* N.C. GEN. STAT. § 115C-105.38A (1997). If teachers in low performing schools fail to pass a general competency exam three times, the State Board of Education will begin dismissal proceedings. *See id.*

211. *See id.* § 115C-296.

212. *See id.* § 115C-326.

213. *See id.* § 115C-325.

214. *See* Excellent Schools Act, ch. 221, 1997 N.C. Legis. Serv. 231, 262-67.

215. *See Leandro*, 346 N.C. at 356-57, 488 S.E.2d at 260. Ironically, the provision of bonuses for teachers in schools that perform above their expectations may inhibit low-performing schools from attracting teachers. *See* Michele Kurtz, *Teachers See Disincentive to Helping Low-Rated Schools*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 18, 1998, at A1 (recognizing that this disincentive is a very serious problem).

216. 790 S.W.2d 186 (Ky. 1986). *Rose* was one of the first and most successful adequacy cases, and its reasoning served as a model for subsequent decisions. *See* McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993) (adopting the Kentucky standard as its own interpretation of the educational guarantees under the Massachusetts Constitution); John A. Nelson, *Adequacy in Education: An Analysis of the Constitutional Standard in Vermont*, 18 VT. L. REV. 7, 47 (1993) (viewing Kentucky's standard as a model).

217. *See Rose*, 790 S.W.2d at 215. In *Rose*, numerous school districts and students sued Kentucky, claiming that the state school system violated the Kentucky Constitution. *See id.* at 190. The plaintiffs maintained that the state failed to "provide for an efficient system of common schools throughout the State," as required by § 183 of the Kentucky Constitution. *Id.* The Kentucky Supreme Court found that the state failed to meet the provisions of § 183, which required "equal educational opportunities" and an "adequate" education. *See id.* at 212-13.

218. Kentucky Education Reform Act of 1990, ch. 476, 1990 Ky. Acts 1208 (codified as

based decision making, statewide curriculum frameworks, and an ambitious accountability system with rewards and sanctions for schools tied to the achievement of high academic standards for all students."[219] The details of KERA are strikingly similar to North Carolina's BEP and ABCs Plan. KERA, like the BEP, provides a statewide model curriculum, although KERA is directly tied to the required educational capacities under *Rose*.[220] KERA, like the ABCs Plan, also provides greater control over school governance at the local level and holds low performing schools accountable.[221] KERA has produced encouraging results since its inception.[222] Thus, the reform undertaken in KERA is quite similar to the educational system found in North Carolina.[223]

Unlike the Kentucky Supreme Court, the trial court in *Leandro* will likely not direct that the current statutory framework be completely reworked for several reasons. First, the plaintiff-parties did not seek a complete overhaul of North Carolina's current education system. The rural districts argued that the BEP failed to provide certain courses necessary for an adequate education,[224] but

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amended in scattered sections of KY. REV. STAT. ANN. chs. 156-65 and other scattered chapters). In 1990, KERA formed the most comprehensive level of reform, beyond which any other state had ever attempted. *See* C. Scott Trimble & Andrew C. Forsaith, *Achieving Equity and Excellence in Kentucky Education*, 28 U. MICH. J.L. REFORM 599, 609 (1995).

219. Trimble & Forsaith, *supra* note 218, at 599.

220. *Compare* KY. REV. STAT. ANN. § 158.6451 (Michie 1996) (providing for a statewide model curriculum), *with supra* notes 191-92 and accompanying text (discussing the curriculum required under the BEP).

221. *Compare* KY. REV. STAT. ANN. § 158.6453 (Michie 1996) (requiring the Kentucky Board of Education to create a performance-based assessment program to ensure school accountability), *and id.* § 158.6455 (providing a system of rewards for successful schools and sanctions for low-performing schools), *and id.* § 160.345 (implementing school-based decisionmaking over a wide variety of issues), *with supra* notes 198-208 and accompanying text (describing the ABCs Plan).

222. *See* John Waldron, *Education and Equality: The Battle for School Funding Reform*, HUM. RTS., Summer 1997, at 10, 17 (recognizing that "student performance in reading, writing, mathematics, science, and social studies increased 19% between 1992 and 1994").

223. KERA remains valid law. KERA has survived an attack on the grounds that it delegated too much authority to local school councils. *See* Board of Educ. v. Bushee, 889 S.W.2d 809, 816 (1994) (analyzing KERA by considering it in the historical context of *Rose*). KERA has also survived an attack on its anti-nepotism provisions, *see* KY. REV. STAT. ANN. §§ 160.180, 160.380 (Michie 1994), which prevent school board members and school employees from being closely related, *see* Chapman v. Gorman, 839 S.W.2d 232, 242 (1992) (finding that the *Rose* decision would support characterizing the General Assembly's passage of anti-nepotism statutes as rational).

224. *See* Plaintiff-Appellants' New Brief at 44, *Leandro* (No. 94-CVS-520).

that the BEP did provide "useful benchmarks."[225] The urban districts asserted that the current system did have the capability of providing an adequate education.[226] Thus, the only allegation of inadequacy to the educational programs could be remedied by supplementing the required curriculum with additional courses. Second, the supreme court recognized that the legislature is the better forum for determining what educational programs are required to provide a sound, basic education.[227] Consequently, North Carolina courts will intrude into the legislature's province only upon a clear showing that the State has failed to provide a sound, basic education, granting every reasonable deference to the State.[228] Third, the core curriculum in the current BEP generally requires teaching the same sound, basic education skills listed by the supreme court in *Leandro*.[229] Fourth, the current North Carolina system mirrors, in many respects, the successful educational reform in Kentucky, which was created in response to a judicial ruling granting educational adequacy as a constitutional right.[230] Thus, the trial court in *Leandro* will likely follow the existing standards, with possible slight variations.[231]

The second step in determining whether the state has provided an adequate education is to measure the performance of the current educational system.[232] Standardized tests and the state's educational

225. *See* Plaintiff-Appellants' New Brief at 44, *Leandro* (No. 94-CVS-520).

226. The urban districts stated that current state "statutes, regulations, resolutions, and other pronouncements" do provide for an adequate education. Intervening Complaint at 10, *Leandro* (No. 94-CVS-520). In fact, the urban districts pointed out to the supreme court that the BEP provides guidance as to what constitutes an adequate education. *See* Plaintiff-Intervenors-Appellants' New Brief at 19, *Leandro* (No. 94-CVS-520).

227. *See Leandro*, 346 N.C. at 357, 488 S.E.2d at 261.

228. *See id.*

229. *Compare supra* note 86 (quoting the skills requisite in a sound, basic education under the supreme court's definition), *with supra* note 192 and accompanying text (listing the requirements of the BEP's core curriculum).

230. *See supra* notes 216-23 and accompanying text.

231. *See* Dietz, *supra* note 122, at 1212-13 (arguing that following an existing standards approach is the best means of resolving the school finance litigation because the court can maintain its role of interpreter of the constitution and statutory language while retaining an enforceable standard).

232. For purposes of the second step in this analysis, this Note measures the current system's performance. This analysis assumes that the current system, or a slight deviation therefrom, will be found capable of providing a sound, basic education. If the trial court determined that the current system did not have the capacity to provide an adequate education, the question of performance would be moot absent a compelling state interest for failing to provide a sound, basic education. This second step can be utilized only after an educational program is deemed capable of providing a sound, basic education.

funding are used as determining factors in gauging that performance.[233] Because the basic education framework is likely to remain intact,[234] this step becomes critical in determining whether the State has met its constitutional duties.

Before analyzing whether a violation has occurred using standardized test results as the measuring stick, it is important to recognize that the supreme court clearly indicated that it favors the use of standardized tests.[235] The supreme court appeared to value highly the use of standardized test results, finding that test results "may be more reliable" than educational funding in measuring the quality of education.[236] Although acknowledging that standardized tests are still controversial and that they should not be used as "absolute authorit[y]," the court recognized the tests as useful indicators of the quality of education.[237] Indeed, standardized tests are the most logical means of testing whether a child is receiving a minimum qualitative level of education.[238]

The evidence that will be exhibited on remand using the standardized test results will be dramatic, perhaps more so for the rural districts. Standardized test scores for students in rural school systems are abysmal.[239] In 1994, six school systems were categorized as "warning-status" systems for failure to meet the new accountability standards; of those six, four are rural districts in the suit.[240] In contrast, the urban districts did not submit any specific standardized test scores to the supreme court, so it is unclear what the test results for the urban districts will be on remand.[241] However,

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233. *See Leandro*, 346 N.C. at 355-56, 488 S.E.2d at 259-60 (recognizing standardized test results and the state's level of educational expenditures as factors to be used on remand in determining whether the state is providing children the opportunity to receive a sound, basic education).

234. *See supra* notes 224-31 and accompanying text.

235. *See Leandro*, 346 N.C. at 355-57, 488 S.E.2d at 259-60.

236. *Id.* at 355, 488 S.E.2d at 260 (citing McUsic, *supra* note 8, at 329).

237. *Id.*

238. *See* McUsic, *supra* note 8, at 330 (noting that minimum qualitative educational standards may readily be measured by standardized tests).

239. *See supra* note 39.

240. *See* Plaintiff's Amended Complaint ¶ 75, *Leandro* (No. 94-CVS-520) (alleging that four of the rural districts were failing under the Performance Based Accountability Program under N.C. GEN. STAT. § 115C-238.1-38.4 (recodified as § 115C-105.20 to .35)); *see also* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 4 (noting that four of the five plaintiffs in *Leandro* were considered warning-status systems).

241. *See supra* note 48 and accompanying text (noting that the only test score submitted by the plaintiff-intervenors was the percentage of their students failing to complete the minimum courses required for admission to the University of North Carolina system).

it is clear that the urban districts' claims rest largely on test scores in schools with large concentrations of students from socio-economically deprived families rather than on district-wide student assessments.[242] Focusing on the level of the individual school, rather than on the district level, comports with the legislative goals in the ABCs Plan.[243] Thus, both the rural and urban districts should be able to make strong claims that the State's current educational programs are inadequate as reflected by standardized test scores.

A determination of whether a violation occurred using the state's level of educational funding as a measuring stick should be prefaced by reiterating the supreme court's skepticism of utilizing funding as a measure of an adequate education.[244] The supreme court acknowledged the existence of a major debate surrounding the effects of educational expenditures on the quality of education imparted to students.[245] The court seemed to concede that large increases in funding may produce modest increases in the quality of education.[246] Nevertheless, despite recognition of the dubious correlation between funding and the quality of education, the supreme court chose to include the level of the state's funding as a factor.[247]

A determination of whether the State's education program

242. *See* Intervening Complaint ¶ 47, *Leandro* (No. 94-CVS-520).

243. *See supra* notes 198-206 and accompanying text.

244. *See supra* note 98 and accompanying text.

245. *See Leandro*, 346 N.C. at 356, 488 S.E.2d at 260 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 42-43 (1973)).

246. *See id.* (citing Missouri v. Jenkins, 515 U.S. 70, 70 (1995)); Clune, *supra* note 99, at 726; *see also supra* note 98 and accompanying text (elaborating on the cases cited by the North Carolina Supreme Court to exemplify its misgiving about the correlation between money and the quality of education).

247. It is not entirely clear why the court included funding as a factor. There are at least three possible explanations. First, the court could be alluding to the legislature's general appropriations for the state's educational programs. The supreme court cited the percentage of the general fund operating appropriations dedicated to education. *See Leandro*, 346 N.C. at 356-57, 488 S.E.2d at 260. However, the state's percentage of the general fund appropriated for education cannot logically be an appropriate measure of an adequate education, given the court's skepticism of the correlation between funding and quality of education. *See supra* note 98 and accompanying text. Second, the court may be referring to current educational programs, such as the BEP, that are not fully funded by the legislature. *See supra* note 113 and accompanying text. Thus, this factor could be intended to ensure that the legislature properly appropriates funds for existing educational programs and standards. Third, there is obviously a minimum level of funding that will be required to offer students whatever educational program is deemed a sound, basic education. The courts could say with reasonable certainty that without X number of dollars, a school district of Y students cannot provide the educational programs required to provide the opportunity to receive a sound, basic education.

passes constitutional muster under a funding analysis will likely result in the finding of a violation of the constitutional duties of the State. The court will recognize clear shortcomings in legislative goals due to insufficient appropriations. The BEP, the foundation of the State's educational programs, has never been fully funded.[248] The rural districts alleged that the State's own reports recognized that students in their districts did not have access to certain programs and classes required by the BEP, due to lack of funding.[249] If school districts are unable to provide the educational programs deemed necessary for an adequate education as a result of any lack of state funding, this would be a violation of the BEP.[250] In addition to the BEP, the legislature has shown one of its goals as decreasing the gap in per-pupil spending between poor and wealthy districts by passing legislation to supplement funding in low-wealth counties.[251] However, as with the BEP, the legislature has failed to provide sufficient funds to meet its goal of reducing funding disparities between rich and poor districts.[252] The legislature initially projected the need for additional funds at $200 million, but this figure was halved to $100 million in 1993.[253] Thus, the court will likely be persuaded that the plaintiff-parties have made a showing of violation under the funding factor.

Although the trial court may use either or both standardized test

248. *See Leandro*, 346 N.C. at 343, 488 S.E.2d at 252. According to the statute: "It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local administrative unit by July 1, 1995." N.C. GEN. STAT. § 115C-81(a) (1997). As of 1994, the BEP was under-funded by about $333 million. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 2.

249. *See* Plaintiff's Amended Complaint ¶ 60, *Leandro* (No. 94-CVS-520).

250. *See* N.C. GEN. STAT. § 115C-81(a1) (providing that North Carolina "shall provide every student in the State equal access to a Basic Education Program").

251. *See* Act of July 9, 1993, ch. 321, § 138, 1993 N.C. Sess. Laws 649, 789-94 (providing supplemental funds to low-wealth school districts), *amended by* Act of July 16, 1994, ch. 769, § 19.32, 1994 N.C. Sess. Laws 751, 865-70. In addition to closing the funding gap, the General Assembly intended that the supplemental funding also "enhance the instructional program and student achievement" in low-wealth school districts. N.C. GEN. STAT. § 115C-81(a).

252. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 5 (concluding that the supplemental funding has only slowed the widening gap). The trial court will find that the funding gap between the plaintiff school districts and plaintiff-intervenor school districts has only decreased slightly since the supplemental funding program was enacted in 1993. In the 1992-93 school year, the difference in total funding between the plaintiff school districts and plaintiff-intervenor school districts was $761. *See* STATISTICAL PROFILE 1994, *supra* note 117, at 54-56 (excluding child nutrition funds). In the 1995-96 school year, that gap had only shrunk to $658. *See* STATISTICAL PROFILE 1997, *supra* note 34, at 54-56 (excluding child nutrition funds). *See also supra* note 117 (showing that the gap between the school districts with the ten highest and ten lowest total per pupil expenditures has increased during this same time period).

253. *See* LOCAL SCHOOL FINANCE STUDY, *supra* note 33, at 2.

results and state funding levels to determine whether the current system is in fact providing the opportunity to receive an adequate education, the court should predominantly rely on standardized testing. An adequacy standard requires that the quality of education be measured. Although standardized tests are not perfect,[254] the use of standardized tests is the best means for measuring the quality of education received by students.[255] In order for funding to be used as a qualitative measure of education, the court must accept that money spent is linked to the quality of education received.[256] However, the supreme court is clearly skeptical of this link.[257] Moreover, funding is a poor measure of adequacy because a dollar cannot purchase the same amount of education in a small school district as it can in a large school district.[258] Despite the fact that funding is an easier factor to quantify,[259] standardized testing is a superior means of testing the qualitative level of education.[260]

There are numerous possible outcomes on remand. Of course, the trial court may determine that the State did not violate the students' right to an adequate education. At the other extreme, the trial court may find a violation and completely reject the existing statutory framework. If this occurs, there is no precedent as to what form of relief the court will fashion.[261] However, if the trial court

254. *See Leandro*, 346 N.C. at 355, 488 S.E.2d at 260 (recognizing that the value of standardized tests is still debated).

255. *See* McUsic, *supra* note 8, at 316 (finding that the level of education received is best measured by standardized tests).

256. *See id.* at 310 (noting that it is preferable for litigants to avoid having to prove a link between money spent and educational quality).

257. *See supra* note 98 and accompanying text. Theoretically, a school district could spend well above a required level of expenditures while failing to graduate any students and still be deemed to have provided the opportunity for an adequate education. This is clearly against the spirit of the opinion, which requires that education prepare students to participate and compete in society. *See Leandro*, 346 N.C. at 345, 488 S.E.2d at 254.

258. The marginal per-pupil costs of educating children varies with the size of schools. *See* ALL THAT'S WITHIN THEM, *supra* note 33, at 13 (recognizing that the marginal cost per student of an instructional program is more expensive in the smaller schools in North Carolina because the state provides roughly equal amounts of funding per student regardless of the size of the school). This marginal cost difference can be dramatic. *See id.* (finding that the per-student cost of teachers was $1298 in a class of 26 students versus $2813 in a class of 12 students).

259. *See* McUsic, *supra* note 8, at 316.

260. *See id.*

261. This complete rejection would be similar to the *Rose* decision, but since the North Carolina statutes already mirror those of Kentucky, there is no indication of what relief might be granted. See *supra* notes 111-14, 190-92, 198-206 and accompanying text for a discussion of the North Carolina BEP and ABCs Program, and *supra* notes 218-23 and accompanying text for a discussion of KERA.

finds the current educational statutes helpful, there are several approaches the court could take.[262] The trial court could approve the existing statutory framework but insist that the BEP and Supplemental Funding be fully funded.[263] Alternatively, the court could direct the State to fully fund the statutory educational provisions and require the State to make alterations to the current system.[264] The court could also take a more deferential approach, adopting the position that the current system is sufficient and that the new educational programs adopted by the legislature have not had time to bring about results.[265]

If the trial court does find a violation[266] and uses standardized tests as the predominant factor in measuring adequacy,[267] difficult questions arise as to the scope of future causes of action. The legislature has stated its belief that "all children can learn,"[268] and the supreme court held that every child is guaranteed the opportunity to receive a sound, basic education.[269] But if a school district provides an adequate educational program, with adequate funding, and one child fails to perform "adequately" on standardized tests, does that lone child have a cause of action against the State? Fundamentally, if the State subscribes to the theory that every child is capable of learning if provided with the proper instruction, the answer to that question is in the affirmative. These policy standards imply that the failure of any child to receive an adequate education will provide a cause of action against the State.[270] However, this would clearly be

262. The trial court must seriously look at the current system because this would certainly lead to the least "encroachment upon the other branches of government," as directed by the supreme court. *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261.

263. By taking this approach, the court would appear to be serving as a "backstop" to the legislature's educational goals. *See* Enrich, *supra* note 135, at 176.

264. The court could require the State Board of Education to adopt the definition of a sound, basic education as the goal of the public school system, as in Kentucky. *See* Trimble & Forsaith, *supra* note 218, at 606. The court could also require that the curriculum of the BEP be expanded to include courses such as calculus. *See supra* note 224 and accompanying text.

265. The Kentucky court assumed that it will take 20 years to reach the established goals. *See* Trimble & Forsaith, *supra* note 218, at 648. However, the trial court should be reluctant to allow the state to monitor its own programs for constitutional validity because such monitoring rarely results in a finding of a violation. *See* Thro, *supra* note 127, at 613.

266. This Note suggests that a violation is likely. *See supra* notes 239-43, 248-53, and accompanying text.

267. This Note suggests that the court's reliance on this factor is the most logical. *See supra* notes 254-60 and accompanying text.

268. N.C. GEN. STAT. § 115C-81, -105.20 (1997).

269. *See Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

270. *See* Thro, *supra* note 127, at 613. The court was clearly aware of this when it

an unworkable standard.[271] At the other extreme, the courts could severely limit the scope of the right by holding that every child who attended a school with an adequate instructional program and funding is deemed to have received his opportunity to receive a sound, basic education, regardless of the fact that the entire school may have failed to be promoted to the next grade level.[272] Obviously, a practical standard that best ensures that all children receive a minimum qualitative level of education is somewhere in the middle. Given the importance of the scope of the constitutional claim, the courts may defer to the legislature to define the limits of the constitutional claim.[273]

Whatever the results on remand, *Leandro* is an important step in improving the level of education in North Carolina. The right to an adequate education shifts the education debate from money to results.[274] Although improvements in the quality of education will not be instantaneous,[275] at least one state has seen marked improvement after moving to an adequacy standard.[276] Hopefully, over time, every child in North Carolina, no matter where he or she resides, will be afforded a substantive, meaningful education at the end of the bus ride.[277]

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limited the constitutional guarantee to an *opportunity to receive* a sound, basic education, and this Note suggests that current legislation can effectively deal with this mandate by focusing efforts for enforcement at the school level.

271. The courts could possibly be flooded with claims by parents who want their children to succeed.

272. This approach is analogous to simply relying on funding. Just because schools have the resources to provide appropriate facilities, curricula, teachers, and textbooks does not mean that the children will learn.

273. The threshold for deeming a school "low-performance" under the ABCs Plan may provide a good framework. *See supra* notes 198-206 and accompanying text (describing the ABCs Plan).

274. *See* William H. Clune, *Educational Adequacy: A Theory and Its Remedies*, 28 U. MICH. J.L. REFORM 481, 485 (1995).

275. *See* Trimble & Forsaith, *supra* note 218, at 648 (noting that the Kentucky Supreme Court assumed that it would take 20 years to reach the established goals).

276. *See* Waldron, *supra* note 222, at 17 (recognizing that student performance in Kentucky in reading, writing, mathematics, science, and social studies increased 19% between 1992 and 1994).

277. *See* Ford, *supra* note 156, at A28 (quoting Chief Justice Mitchell's question during oral argument: " 'Shouldn't there be something at the end of the bus ride?' ").