

No. 338A17

SIX-A DISTRICT

SUPREME COURT OF NORTH CAROLINA

LATONYA SILVER, individually)
 And as guardian ad litem of BRIANNA)
 SILVER, LARRY SILVER III, and)
 DOMINICK SILVER; BRENDA)
 SLEDGE, individually and as guardian)
 ad litem of JAMIER SCOTT;)
 COALITION FOR EDUCATION)
 AND ECONOMIC SECURITY;)
 HALIFAX COUNTY BRANCH)
 #5401, NATIONAL ASSOCIATION)
 FOR THE ADVANCEMENT OF)
 COLORED PEOPLE,)
 Plaintiffs,)
 v.)
 THE HALIFAX COUNTY BOARD)
 OF COMMISSIONERS,)
 Defendant.)

From Halifax County
No. COA 16-313

BRIEF OF AMICUS CURIAE

CHILDREN’S LAW CLINIC AT DUKE LAW SCHOOL
ADVOCATES FOR CHILDREN’S SERVICES OF LEGAL AID OF NORTH CAROLINA
PUBLIC SCHOOLS FIRST NC

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INTRODUCTION

Twenty years ago, this Court stated that every student in the State has a fundamental constitutional right to a “sound basic education.” *Leandro v. State (Leandro I)*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997). Ten years later, this Court stated that “If inordinate numbers of [students] are wrongfully being denied their constitutional right to the opportunity for a sound basic education, our state courts cannot risk further and continued damage because the perfect civil action has proved elusive.” *Hoke Cty. Bd. of Educ. v. State (Leandro II)*, 358 N.C. 605, 616, 599 S.E.2d 365, 377 (2004). Since these statements were made by this Court, an entire generation of students has passed through Halifax County Schools without a minimally adequate education. In its search for the perfect civil action, the majority in the Court of Appeals held that even though the Halifax County Board of Commissioners exercises significant control over the operation of local schools and has many delegated duties regarding school operations, it cannot be held liable *in any way* for violating the North Carolina Constitution as it carries out its delegated duties. *See Silver v. Halifax Cty. Bd. of Comm’rs*, 805 S.E.2d 320, 338 (N.C. Ct. App. 2017). This holding is wrong and must be reversed. For these plaintiffs, against this defendant, this is a proper—even if not perfect—civil action. As alleged in the Complaint, Defendant, the Halifax County Board of Commissioners, has denied Plaintiffs’ access to their constitutional rights to a sound basic education. It should therefore be possible to hold Defendants’ liable for the constitutional violation. We respectfully urge the Court to reverse the Court of Appeals’ holding with instructions to remand the matter to the trial court for further proceedings.

ARGUMENT

I. If the State delegates authority to a local entity, then the local entity must exercise its power in conformity with the constitution.

The North Carolina Court of Appeals affirmed the dismissal of this case upon its reading of the *Leandro* cases. *See id.* at 334 (discussing the Court of Appeals' interpretation of *Leandro I* and *Leandro II*). Because *Leandro* established that the State had the ultimate responsibility to assure that every student in North Carolina has the opportunity to obtain a sound basic education, the Court of Appeals held that the State was the only possible defendant in an action to enforce that constitutional right. *See id.* at 330 (“[T]he constitutional duty is on the State . . .”).

Although the Court of Appeals recognized that the State has chosen to delegate significant aspects of its duty to provide a public education system to local entities, *see id.* at 343 (describing the responsibilities of the county boards of commissioners), it found that those local entities cannot be held to account for their statutorily-required contributions toward creating and maintaining a constitutionally-compliant public school system. *See id.* The Court of Appeals' holding is inconsistent with holdings of this Court that have held local entities liable for their actions that deny students their constitutional rights to the opportunity to obtain a sound basic education. Just as those other cases were allowed to proceed against a local entity as a defendant, so should this one.

The Court of Appeals' holding contradicts the principle established by *King ex. rel Harvey-Barrow v. Beaufort County Board of Education*, 364 N.C. 368, 370, 704 S.E.2d 259, 261 (2010) that local entities can be held liable for their actions that deprive students of a sound basic education. In *King*, a student was suspended long-term following a fight at school. The school board did not offer the student an alternative educational placement. 364 N.C. at 371, 704 S.E.2d 259 at 261. The student subsequently filed a lawsuit against the county board of education and its

superintendent, alleging that their failure to provide access to alternative education “violated her state constitutional right to a sound basic education.” *Id.* The courts at every level—trial court, Court of Appeals, and Supreme Court—were untroubled that the constitutional claim was made against a local entity rather than the State. Indeed, this Court held that because school administrators had a specific statutory duty to provide access to long-term suspended students, they could not “arbitrarily deny access without violating the state constitution.” *Id.* at 378, 704 S.E.2d at 265 (citing N.C. Const. art. IX, § 2 and *Leandro I*, 346 N.C. at 347, 488 S.E.2d at 255). *King* therefore clarified that, as a matter of constitutional law, school board officials were required to “articulate an important or significant reason for denying students access to alternative education.” *Id.* *King* also clarified that because the State had delegated the authority to implement a discipline system to the local school board, the school board could be sued for its failure to implement the system in a constitutional manner.

Sneed v. Greensboro City Board of Education, 299 N.C. 609, 264 S.E.2d 106 (1980), demonstrates the same principle. In *Sneed*, plaintiffs sued the local school board, arguing that the school board’s practice of charging supplemental “instructional fees” was unconstitutional and denied student access to a “uniform system of free public schools.” 299 N.C. at 610–11, 264 S.E.2d. at 109–10. Again, no concern was raised by any court that the local entity was an improper defendant. The Court held that while it was constitutional to charge “modest, reasonable fees,” *id.* at 610, 264 S.E.2d. at 108, the school board had violated the Constitution by failing to implement an appropriate waiver policy for families who could not afford the fees. *Id.* at 619, 264 S.E.2d. at 114. The Court held that this policy did not “fairly guarantee[] to low income and indigent students their constitutional right of equal access to the educational opportunities available at their schools” and was unconstitutional. *Id.* Thus, although the State

had the ultimate duty to protect the equal access to education for all students, the local board was the proper defendant in that action and was held accountable for the implementation of the unconstitutional policy. This Court in *Leandro* later cited *Sneed* and reiterated the principle that local entities could be liable for constitutional violations: “[T]he *school system’s failure* to provide poor students and their parents with adequate notice of provisions for the waiver of fees was unconstitutional.” *Leandro I*, 346 N.C. at 346, 488 S.E.2d at 254 (emphasis added).

These cases make abundantly plain that the constitutional duty to provide education under Article IX of the North Carolina Constitution is not the State’s duty alone; the duty flows to the local entities when the State delegates portions of its authority to them. In both of these cases, the State delegated portions of its authority on education to local entities, and therefore, the local entity in question was under a duty to execute its duties in a constitutionally-compliant manner. When the local school board violated the constitution, that local school board was the proper defendant, even though its authority ultimately flowed from the State.

The Court of Appeals’ finding that *Leandro* forecloses the possibility of local actors being held liable for constitutional violations cannot be squared with these cases. In *Leandro I*, it was the State government’s task to “create a supplemental state funding program” to provide “additional state funds to poor districts.” 346 N.C. at 353, 488 S.E.2d at 258. Therefore, the State was the proper defendant in that case. This does not mean that the State bears the entire burden or that local entities cannot be held liable as well for unconstitutional conduct. *See Silver*, 805 S.E.2d at 346 (McGee, J., dissenting) (“*Leandro I* and *Leandro II* do not address whether other entities may be responsible under our Constitution for a sound basic public education.”). Since county commissioners were not even parties in *Leandro*, the Court had no opportunity to discuss their constitutional duties or address whether they could be held accountable for deficits on their

part in assuring that students in their jurisdiction have access to a sound basic education. This case presents the opportunity to address that issue.

Here, the State has delegated significant authority and duties relating to the operation of local schools to the Halifax County Board of Commissioners. Under its delegated authority, the Halifax County Board of Commissioners, like other boards of county commissioners, can create and distribute local taxes, *id.* at 338, purchase school buses, and approve school district budgets. *Id.* at 343. The county boards of commissioners also have many duties allocated by statute. For example, they are responsible for funding maintenance of school facilities, N.C. Gen. Stat. § 115C-408, “provid[ing] suitable supplies” for instruction, and ensuring that schools have a “good supply of water.” N.C. Gen. Stat. § 115C-408; *see also* N.C. Gen. Stat. § 115C-521(b) (“The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.”). As a local entity with delegated power, a county board of commissioners is obligated to fulfill its duties in a way that does not violate the constitution. Where Plaintiffs have alleged that the Halifax County Board of Commissioners has failed to maintain adequate school facilities and provide adequate instructional supplies, thus depriving students in Halifax County of their rights to the opportunity for a sound basic education, the Court must assess whether that governmental entity has executed its duties in a manner complaint with the constitution.

Plaintiffs’ Complaint adequately alleges that the Halifax County Board of Commissioners has completely failed to maintain adequate school facilities. According to the Complaint, many of the Halifax County and Weldon City Schools are in shocking disrepair. In Halifax County

Schools, toilets often flood the hallways and “students have had to step through sewage to travel between their lockers and classes.” Compl. ¶ 59. School ceilings crumble and fall onto student desks during the school day. Compl. ¶ 60. School buses often break down, causing students to miss instruction. Compl. ¶ 61. In Weldon City Schools, the high school is infested by mold, rodents, and other pests. Compl. ¶ 62. Elementary school bathrooms do not have stall doors or soap in the dispensers. Compl. ¶ 63. The Halifax County Board of Commissioners was tasked, by the State, to maintain these facilities and has failed to do so. *See* N.C. Gen. Stat. § 115C-408; N.C. Gen. Stat. § 115C-521(b) (detailing the duties of the county boards of commissioners to maintain adequate school facilities).

Likewise, the State has delegated the duty to provide adequate supplies to the county boards of commissioners. *See* N.C. Gen. Stat. § 115C-522(c) (“It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.”). As alleged in the Complaint, however, the Halifax County Board of Commissioners has failed to ensure that students in Halifax County and Weldon City Schools have access to adequate instructional supplies. Almost half of the teachers in the two school districts “reported insufficient access to appropriate instructional materials.” Compl. ¶ 76. Students in the two districts are often “forced to share old and worn down textbooks, workbooks, and other classroom materials.” Compl. ¶ 108. This lack of academic resources, coupled with the condition of the facilities, affects academic performance as well as teacher retention. *See* Compl. ¶ 98–100 (describing the relatively higher teacher turnover rates in Halifax County and Weldon City schools, as compared to Roanoke Rapids Schools). Yet under

the Court of Appeals' holding, the Halifax County Board of Commissioners has free rein to sabotage the Plaintiffs' constitutional rights in contravention of their statutory obligations with no accountability whatsoever.

Like the entities with delegated duties in *King* and *Sneed*, the Halifax County Board of Commissioners must carry out its delegated authority in a constitutional manner. In *King*, the State delegated the tasks of establishing an alternative learning program and “creat[ing] strategies for assigning long-term suspended students to it” to the local school board. 364 N.C. at 378, 704 S.E.2d at 265. School administrators, in implementing this program, were obliged to implement a policy that was constitutional. *See id.* (“Since the General Assembly has chosen to grant this statutory right to long-term suspended students, school administrators cannot arbitrarily deny access without violating the state constitution.”). In *Sneed*, the defendant school board was given the authority to charge fees for supplemental materials and implement a waiver policy. Because the school board had failed to develop a waiver policy that was consistent with the constitution, the school board was the appropriate defendant to modify the waiver policy to protect the constitutional rights of low-income students. *See* 299 N.C. at 619, 264 S.E.2d at 114. The Halifax County Board of Commissioners is likewise obligated to maintain facilities and provide instructional resources. Therefore, it is an appropriate defendant if its actions have deprived students of their rights to the opportunity to a sound basic education. The Court of Appeals should have reversed the trial court’s decision to dismiss Plaintiff’s case under Rule 12(b)(6); at this juncture, this Court should reverse the decision of the Court of Appeals and remand the case for reinstatement at the trial court level.

II. The Halifax County Board of Commissioners is a necessary defendant because its failure to maintain adequate school facilities has a direct and negative impact on student academic performance, impairing the opportunities for affected students to obtain a sound basic education.

Significant academic research shows that the quality of school facilities is directly linked to academic performance. Thus, the poor facilities in Halifax County Schools and Weldon City Schools create an impediment to the ability of the students there to obtain their constitutional right to a sound basic education. The Halifax County Board of Commissioners is directly responsible for the decisions that have led to the maintenance of these poor facilities and must, therefore, be held accountable in this action for those decisions.

In 2014, researchers from the University of Washington and the University of California Berkeley summarized a host of academic literature on the subject and found that there was “a significant relationship between quality of physical infrastructure and student achievement.” Sapna Cheryan et al., *Designing Classrooms to Maximize Student Achievement*, 1 Pol’y Insights from Behavioral & Brain Sci. 4, 4–6 (2014). In at least four separate studies, inadequate school facilities strongly correlated with lower test scores, even when socioeconomic status and the racial composition of the student body were controlled variables. *See id.* at 5; *see also* Glen I. Earthman, UCLA’s Inst. for Democracy Educ. & Access, *School Facility Conditions and Student Academic Achievement* 1 (2002) (“Researchers have repeatedly found a difference of between 5-17 percentile points difference between the achievement of students in poor buildings and those students in standard buildings . . .”).

A study from 2008 explains this link between school facilities and academic performance. Valkiria Durán-Narucki, *School Building Condition, School Attendance, and Academic Achievement in New York City Public Schools: A Mediation Model*, 28 J. Envtl.

Psychol. 278 (2008). School conditions (such as inadequate temperature control and plumbing) may “directly disrupt the learning activities taking place.” *Id.* at 283. For instance, if a student avoids using dilapidated school bathrooms, the subsequent discomfort would distract the student from learning. *Id.* at 284. Inadequate school facilities may also deter school attendance—therefore harming academic performance when students miss instructional material. *See id.* at 283 (“Overall, the models showed that in run down school buildings[,] students attend fewer days in percentage”). For students in Halifax County and Weldon City Schools, crumbling ceilings, inadequate plumbing, and pest infestations are daily disruptions that thwart students’ efforts to learn new material.

Outside of direct disruptions, the overall environment of an inadequate school facility can also indirectly impact student performance. For instance, teachers and administrators working in a run-down school “may become frustrated with the daily obstacles they face, which can create an unwelcoming environment” for the students. *Id.* at 284; *see also* Glen I. Earthman & Linda K. Lemasters, *Teacher Attitudes about Classroom Conditions*, 47 J. Educ. Admin. 323, 333 (2009) (“Teachers in satisfactory buildings . . . have more positive attitudes about their classrooms and how that space influences them and their students.”). Even more troubling, the overall learning environment can have a developmental impact on all children and their sense of self-worth. *See* Durán-Narucki, *supra*, at 284. During development, children “actively look for cues on how to behave, who they are, or what they can accomplish.” *Id.* Through these daily interactions in their “physical and social environment[,] individuals learn about their place in society [and] their value.” *Id.* For the students in Halifax County and Weldon City Schools, the dismal and inadequate school facilities (compared to the superior facilities of the Roanoke Rapids Schools) has a daily impact on the students’ self-esteem and view of their own academic potential. The

facilities send the majority-minority students in Halifax County and Weldon City School Districts the unacceptable message that they are less important, less valued, and less likely to be academically successful compared to their white counterparts.

In summary, persuasive academic research shows that adequate school facilities are an important component of the opportunity to obtain a sound basic education. Providing adequate school facilities ensures that students are in an environment that is conducive to learning, *see, e.g.,* Cheryan, *supra*, at 5; Durán-Narucki, *supra*, at 283, and enables teachers and administrators to create a positive school environment. *See, e.g.,* Earthman & Lemasters, *supra*, at 333. The quality of the school environment also serves to reinforce students' views of their own self-worth and academic potential. *See* Durán-Narucki, *supra*, at 284. Since the Halifax County Board of Commissioners is responsible by statute for this aspect of providing a sound basic education, it must be possible to hold them accountable as a defendant.

III. *Leandro* does not foreclose the possibility that the Halifax County Board of Commissioners can be held liable for creating disparities among the three school districts.

While *Leandro* addresses potential funding differences among school districts, it does not address the problem of vast disparities in resources, educational outcomes, and facility maintenance created by funding allocations to three school districts in the same county. In *Leandro I*, the Court assumed that separate counties were synonymous with single school districts. For instance, in describing the history of local school district funding, the *Leandro I* court cited language from *City of Greensboro v. Hodgin*: “The Constitution plainly contemplates and intends that the several *counties* . . . shall bear a material part of the burden of supplying such funds.” 346 N.C. at 349, 488 S.E.2d at 256, (quoting *City of Greensboro v. Hodgin*, 106 N.C. 182, 187–88 (1890)) (emphasis added). In adopting language from *Britt v. North Carolina*

State Board of Education, Leandro I further assumed that disparities among school districts would be due to wealth disparities among the counties themselves: “Clearly, then, a county with greater financial resources will be able to supplement its programs to a greater degree than less wealthy counties” *Id.* at 256 (quoting *Britt v. N.C. State Bd. of Educ.*, 86 N.C. App. 282, 288, 357 S.E.2d 432, 436 (1987)).

Unlike the case now before this Court, *Leandro* does not confront the issue of a local entity that controls funding of three separate school districts, and through its actions actively exacerbates disparities in funding among the county school districts. The Halifax Board of County Commissioners has implemented a supplemental sales tax on retailers throughout Halifax County. *Silver*, 805 S.E.2d at 325. All residents of Halifax County pay these taxes, regardless of their school district assignment. In distributing the county-wide taxes, the board has consistently chosen the ad valorem method with the result that Halifax County Schools do not receive any portion of the local tax revenue. *See id.* Essentially, Halifax County School District residents pay these taxes, and as a result of the board’s actions, do not receive any of the benefits. These funds are instead used to subsidize the renovations, “computer labs, music rooms, art rooms,” and “pristine athletic field[s]” of the Roanoke Rapids school district, while the Halifax County Schools are left in a state of disrepair. *See id.* at 326 (describing the disparities between facilities and school resources between the districts). Instead of simply supplementing local funds, the Halifax County Board of Commissioners is choosing to transfer funds to Roanoke Rapids *at the expense of the residents in the Halifax County School District*. The Halifax County Board of Commissioners is not simply adding and supplementing local revenues, it has adopted a policy that grants supplements to one district, while denying another school district any resources from supplemental local revenue. *Leandro* does not address the

issue of whether it is constitutional to make residents of one school district supplement the local education funds of another school district, and only a case that includes the board of county commissioners as a defendant can address that issue. This is such a case and the defendant Halifax County Board of Commissioners must be required to defend the constitutionality of its actions.

CONCLUSION

Amici ask this Court to look carefully at the overall facts of this case as it decides whether the Halifax County Board of Commissioners has any constitutional responsibility to ensure students have an opportunity to obtain a sound basic education. The relevant facts, as alleged in the Complaint, are these: The Halifax County Board of Commissioners through its actions, has propagated a tripartite school system that is largely divided along racial lines. The majority-white school district enjoys frequently renovated and pristine facilities, while students in the almost completely African American school districts are forced to study in schools with crumbling ceilings and inadequate heating, air conditioning, and plumbing. A single entity, the Halifax County Board of Commissioners, delegated by statute to maintain adequate facilities and instructional resources, not only fails to carry out its duties, but also enacts a policy that transfers even more funds to the majority-white school district. For the reasons stated in this Brief, we urge this Court to reverse the decision of the Court of Appeals affirming the dismissal entered by the trial court, and remand the case to the trial court for further proceedings.

This the 7th day of December, 2017.

Electronically submitted

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N.C.R. App. P 33(b) Certification: I, Jane R. Wettach, certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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*The work of Duke Law student Kevin Zhao in the preparation of this Brief is gratefully
acknowledged by counsel for Amici.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing BRIEF OF *AMICI CURIAE* was served upon the parties in the matter by placing a copy of same in the U.S. Mail, first-class postage paid, addressed to:

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