

NORTH CAROLINA COURT OF APPEALS

)
 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 ALICIA)
 JONES; FELICIA SCOTT,)
 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)

From Halifax County
No. 15 CVS 767

Defendant.

PLAINTIFF-APPELLANTS' BRIEF

INDEX

	Page
TABLE OF CASES AND AUTHORITIES.....	ii
ISSUE PRESENTED.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW	3
STATEMENT OF THE FACTS	3
ARGUMENT	15
I. STANDARD OF REVIEW.....	15
II. PLAINTIFFS STATE A CLAIM FOR RELIEF AGAINST THE BOCC UNDER THE NORTH CAROLINA CONSTITUTION.....	16
A. The Complaint States a Constitutional Claim for Relief as Established and Recognized in the <i>Leandro</i> Cases.....	17
B. Constitutional Rights and Obligations Bind All Government Actors	21
C. In Addition to Its Constitutional Obligations, the BOCC Has Duties, Powers, and Responsibilities Under a Carefully Crafted Statutory Scheme that Must Effectuate Those Obligations	24
D. Plaintiffs Have No Other Avenue to Challenge the BOCC’s Unconstitutional Resource Allocation or Vindicate Their Constitutional Right to a Sound Basic Education	27
CONCLUSION.....	28
CERTIFICATE OF SERVICE.....	30
CERTIFICATE OF COMPLIANCE.....	31

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Bridges v. Parrish</i> , 366 N.C. 539, 742 S.E.2d 794 (2013)	3, 15
<i>Burgin v. Owen</i> , 181 N.C. App. 511, 640 S.E.2d 427 (2007)	15
<i>City-Wide Asphalt Paving, Inc. v. Alamance Cty.</i> , 132 N.C. App. 533, 513 S.E.2d 335 (1999)	23
<i>Concrete Service Corp v. Investors Group, Inc.</i> , 79 N.C. App. 678, 340 S.E.2d 755 (1986)	16
<i>Corum v. University of North Carolina Through Bd. Of Governors</i> , 330 N.C. 761, 413 S.E.2d 236 (1992)	22
<i>Guilford Cty. Dep't of Emergency Servs. v. Seaboard Chem. Corp.</i> , 114 N.C. App. 1, 441 S.E.2d 177 (1994)	22
<i>Hinson v. City of Greensboro</i> , 753 S.E.2d 822 (N.C. App. 2014).....	16
<i>Hoke County v. State (Leandro II)</i> 358 N.C. 605, 599 S.E.2d 365 (2004)	<i>passim</i>
<i>In re Q.V.</i> , 164 N.C. App 737, 596 S.E.2d 867 (2004)	21
<i>King ex rel. Harvey-Barrow v. Beaufort Cty. Bd. of Educ.</i> , 364 N.C. 368, 704 S.E.2d 259 (2010)	22
<i>Lanvale Properties LLC v. County of Cabarrus</i> , 366 N.C. 142, 731 S.E.2d 800 (2012)	21
<i>Leandro v. State ("Leandro I")</i> , 346 N.C. 336, 488 S.E.2d 249 (1997)	17, 18, 24
<i>Medley v. NC Dept. of Corrections</i> , 330 N.C. 837, 412 S.E.2d 654 (1992)	22

Moore v. City of Creedmoor,
345 N.C. 356, 481 S.E.2d 14 (1997)22

Newberne v. Dep’t of Crime Control & Pub. Safety,
359 N.C. 782, 618 S.E.2d 201 (2005)16

Rone v. Winston-Salem/Forsyth Cty. Bd. of Educ.,
207 N.C. App. 618, 701 S.E.2d 284 (2010)22

S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC,
189 N.C. App. 601, 659 S.E.2d 442 (2008)16

State v. Ingram,
774 S.E.2d 433 (N.C. App. 2015).....22

State v. Ladd,
782 S.E.2d 397 (N.C. App. 2016).....22

State ex rel. Cooper v. Ridgeway Brands Mfg.,
362 N.C. 431, 66 S.E.2d. 107 (2008)15

Treants Enterprises, Inc. v. Onslow County,
83 N.C. App. 345, 350 S.E.2d 365 (1986)22

Wake County ex rel. Carrington v. Townes,
53 N.C. App. 649, 281 S.E.2d 765 (1982)22

CONSTITUTIONAL PROVISIONS

N.C. Const. Art. I, § 1517

N.C. Const. Art. IX, § 217

N.C. GEN. STATUTES

§ 7A-27(b)(1).....3

§ 115C-68.126

§ 115C-218.3525

§ 115C-24925

§ 115C-40825

§115C- 426(c).....24
 § 115C-43124, 27, 28
 § 115C-431(c).....24
 § 115C-51825
 § 115C-52125
 § 115C-522(c).....25
 § 115C-524(b).....25
 § 115C-53025

RULES

N.C. R. Civ. P. (G.S. 1A-1)

9.....2
 12(b)(6)2, 3, 7, 24
 12(b)(7)2
 17.....2
 19.....2
 General Rules of Practice 2.1.....2

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 THE HALIFAX COUNTY BOARD OF)
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From Halifax County
No. 15 CVS 767

ISSUE PRESENTED

I. IS THE HALIFAX COUNTY BOARD OF COMMISSIONERS A PARTY AGAINST WHOM HALIFAX COUNTY SCHOOLCHILDREN MAY ASSERT THEIR CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION, AND DOES THE COMPLAINT STATE A CLAIM FOR VIOLATION OF THAT RIGHT?.

STATEMENT OF THE CASE

Appellants LaTonya Silver, individually and as guardian ad litem of Appellants Brianna Silver, Larry Silver, and Dominick Silver; Brenda Sledge, individually and as guardian ad litem for Appellant Alicia Jones; Felicia Scott, individually and as guardian ad litem for Appellant Jamier Scott; the Coalition for Education and Economic Security (“CEES”); and the Halifax County Branch #5401 of the National Association for the Advancement of Colored People (“NAACP”) (collectively, “Appellants”), commenced this action against the Halifax County Board of Commissioners (“BOCC”) alleging violations of the North Carolina Constitution with the filing of a complaint and issuance of a summons on 24 August 2015. (R p 5). Pursuant to an Order of the Chief Justice of the Supreme Court of North Carolina entered on 4 September 2015, this case was designated as “exceptional” pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, and the Honorable W. Russell Duke, Jr. was assigned to the case. (R p 4). The BOCC filed Motions to Dismiss (based on Rules 12(b)(6), 12(b)(7), 9, 17, and 19 of the N.C. Rules of Civil Procedure), a Motion to Strike, and an Answer on November 2, 2015. A hearing was held on the BOCC motions on December 22, 2015 (R p 91), and an order granting the Rule 12(b)(6) motion and dismissing the Complaint was entered on February 2, 2016. (R pp 93-4). Appellants filed and served a notice of appeal on February 22, 2016. (R pp

95-6). The record on appeal was settled by stipulation on March 30, 2016 (R p 97), and filed and docketed in the Court of Appeals on April 1, 2016. (R p 3).

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Duke's order dismissing Appellants' claims with prejudice is a final judgment of the superior court, and appeal to the Court of Appeals is proper pursuant to N.C. Gen. Stat. § 7A-27(b)(1).

STATEMENT OF THE FACTS¹

There are three school districts in Halifax County: Halifax County Public Schools ("HCPS"), Weldon City Schools ("WCS"), and Roanoke Rapids Graded School District ("RRGSD"). HCPS's student population is 85% black and 4% white. In 2014-2015, HCPS had 2,988 students enrolled in seven elementary schools, two middle schools, and two high schools. 94.4% of students at HCPS were eligible for Free or Reduced Lunch (FRL), the standard metric for poverty in schools. In the 2015-2016 school year, two of HCPS's elementary schools were closed. WCS's student population is 94% black and 4% white. In 2014-2015, WCS had 940 students enrolled in one elementary school, one middle school, and one high school, and 88.9% of those students were FRL eligible. RRGSD's

¹ This Statement of Facts is drawn primarily from the allegations in Plaintiff-Appellants' complaint (Rec pp 5-41), which as noted *infra*, should be treated as true for the purpose of evaluating the motion under Rule 12(b)(6). *Bridges v. Parrish*, 366 N.C. 539, 541; 742 S.E.2d 794 (2013).

student population is only 26% black and 65% white. In 2014-2015, RRGSD had 2,929 students enrolled in two elementary schools, one middle school, and one high school, with 62.2% FRL eligible. (R pp 12-13). Together, the three districts serve fewer than 7,000 students, and the overwhelming majority of them are “at-risk.”² This tripartite educational structure—with two “black districts” and one “white district”—that the BOCC has chosen to keep and maintain deters investment in and stigmatizes the majority African American districts (WCS and HCPS), and obstructs the ability of all students across the county, but particularly at-risk students, to secure their constitutional opportunity to a sound basic education. (R pp 6-7, 10).

I. Standardized Test Scores and Dropout Rates

All three districts consistently fail to meet Level III proficiency for most students on statewide composite end-of-grade (“EOG”) and end-of-course (“EOC”) exams, which is the benchmark for measuring a sound basic education as established by *Hoke County v. State (Leandro II)*. (R p 8). According to the State

² In North Carolina students are considered at risk due to factors such as poverty, family background, race, and language barriers. For example, a child is at risk if he or she is a member of a low-income family, is eligible to participate in a free or reduced school lunch (“FRL”) program, has parents with a low level of education, has limited English proficiency, is a member of a racial or ethnic minority, or lives in a single parent household. *Hoke County v. State (Leandro II)* 358 N.C. 605, 636, 599 S.E.2d 365, 389 (2004).

Department of Public Instruction (“DPI”), in 2015 HCPS ranked last on those exam scores out of North Carolina’s 115 school districts. (R p 13). Since 2008, no more than 47.7% of students at WCS and 31.7% of students at HCPS have scored at or above grade level (“Level III Proficiency”) on standardized statewide composite (grades three through eight) EOG exams in any given year. (R p 14).

RRGSD students have generally performed better, with a peak of 61.4% of students scoring at or above grade level during the 2012-2013 school year, but even that mark fell below the statewide average for 2012-2013 of 67.5%. More recently, RRGSD’s students have fared worse. In 2014, 48.9% of RRGSD students achieved Level III proficiency on EOG exams, while 54.5% achieved Level III proficiency on EOC exams. (R p 14).

Metrics other than standardized test scores further demonstrate that students in Halifax County are not receiving the opportunity for a sound basic education. Since 2003, students at HCPS and WCS have consistently scored 150 to 250 points lower on the SAT college entrance exam than students at RRGSD, and students in all three districts have consistently scored below the North Carolina average. (R p 14). During the 2013-2014 school year, the statewide North Carolina dropout rate was 2.28%, while the dropout rates in HCPS, WCS, and RRGSD were higher, at 3.10%, 2.68%, and 4.66%, respectively. (R p 16). While all three school districts had dropout rates above the statewide rate during 2013-2014, RRGSD

reported the fourth highest dropout rate in the State with black students contributing disproportionately to the dropout rate. Despite constituting less than one quarter of RRGSD's student population, black students comprised half of all dropouts—ten out of twenty—from Roanoke Rapids High School in 2013-2014. (R p 16).

II. Facilities, Teachers, And Other Educational Resource Disparities

Further exacerbating the constitutional harm to the students in HCPS and WCS, the BOCC fails to live up to its statutory responsibility to meet all educational facilities requirements in the county, including capital expenditures, school building construction and maintenance, furniture and apparatus, classroom equipment, instructional supplies and resources, and infrastructure. (R p 10).

The quality of educational resources provided to students in Halifax County, and especially students in HCPS and WCS, falls well below constitutional standards. More than half of HCPS school buildings were built in or before 1961, and only five have undergone any renovations since their construction. (R p 17). Many HCPS school buildings are in subpar condition. At Northwest High School in HCPS, toilets have flooded hallways and students have had to step through sewage to travel between their lockers and classes, and pieces of the ceiling have crumbled and fallen onto desks and students mid-lesson, potentially exposing students to the

mold that grows in the ventilation system. Weldon Middle School suffers from mold and crumbling ceilings, as well as pests and rodents. (R p 17).

Meanwhile, RRGSD's high school has been repeatedly renovated (most recently in 2004) since its initial construction in 1921, and has a building dedicated solely to physical education and music, as well as a pristine athletic field. (R pp 17-18). RRGSD's Manning Elementary School ("Manning") was built in 1957 and renovated in 1976 and 1990. In February 2015, the BOCC approved a \$19 million project to demolish Manning and replace it with a brand new RRGSD elementary school. (R p 18).

The mis-allocation and related competition for resources resulting from the tripartite system makes it difficult for WCS and HCPS to attract and retain high quality and experienced teachers and principals. (R p 21). In 2014, half of HCPS and WCS teachers reported insufficient access to appropriate instructional materials, such as textbooks, overhead slides, workbooks, and worksheets; inadequate access to reliable communication technologies, such as phones, fax machines, and email; and insufficient internet access to support instruction. (R p 19). During the 2013-2014 school year, *every* principal in WCS and 82% of principals in HCPS had three or fewer years of experience. (R p 21). At HCPS, 32% of elementary school teachers, 34% of middle school teachers, and 36% of high school teachers in 2014 had fewer than three years of teaching experience. At

WCS, 23% of elementary school teachers, 50% of middle school teachers, and 47% of high school teachers in 2014 had fewer than three years of teaching experience. (R p. 19).

Between 2013 and 2014, students in HCPS and WCS were two to three times more likely than their RRGSD peers to have an unqualified teacher, including a substitute teacher with no credentials in a given subject area, or an uncertified teacher, for a significant portion of the school year. (R p 20). Among elementary schools, the teacher turnover rate in 2014 was 34% in HCPS and 25% in WCS, compared with just 7% in RRGSD. At the high school level, the teacher turnover rate in 2014 was 34% in HCPS but only 13% in RRGSD. Across all grade levels, HCPS and WCS had the second and third highest teacher turnover rates, respectively, statewide in 2013-2014. When measured over a five-year period, HCPS has had the highest teacher turnover rate overall of any school district in North Carolina. (R p 21). In order to meet staffing needs, the black districts rely in part upon Teach for America (“TFA”), an organization which places uncertified, recent college graduates in low-income classrooms for a two-year minimum commitment. In 2011-2012, 9.5% of all teachers at HCPS were placed through TFA, as were 17.5% of teachers at WCS. TFA places no teachers at RRGSD. (R p 20).

Students in HCPS and WCS also have limited educational and curricular resources, including outdated and tattered textbooks, workbooks, and other classroom materials. Opportunities to enroll in advance academic courses (such as Advanced Placement and International Baccalaureate) are minimal, if available at all, in the two black school districts. The percentage of students enrolled in advanced academic courses at RRGSD is four times greater than the percentage of such students at HCPS. (R p 23).

In 2013, RRGSD implemented a special “Outreach Academy” program designed to decrease the dropout rate in the district, which provides after-school, technology-based enrichment, tutoring, and remediation for students identified as being at risk of dropping out, as well as additional training and support for teachers to identify and work with these students and their parents. There are no similar programs available for students in HCPS or WCS. (R p 24). In addition, extracurricular and athletic offerings, and the resources available to support them, vary widely between the black and white districts. HCPS and WCS schools are unable to offer their students opportunities to access the quality or variety of music, art, physical education, and theater programs as those available to students who attend RRGSD schools. (R p 24).

III. The BOCC's Statutory Responsibilities

The BOCC has the statutory responsibility to meet all educational facilities requirements in the county, including capital expenditures, school building construction and maintenance, furniture and apparatus, classroom equipment, instructional supplies and resources, and infrastructure. (R p 10). The BOCC's continuing support of the tripartite structure forces the three districts into a competition for resources that continually disadvantages the students in the majority African American districts. (R p 11).

In 2011, the BOCC sought "an in-depth study of Halifax County's three public school systems [,]" including "a feasibility study and options for consolidating two or more school systems and the pros and cons of each option." (R pp 25, 74). Consulting firm Evergreen Solutions presented its proposal to the BOCC in late 2011. The BOCC subsequently decided that exploring consolidation of the three districts would not be the intent of the study. The final Evergreen Report acknowledged that the BOCC's maintenance of the three district system educational system contributes to resource allocation inefficiencies, and specifically noted inefficiencies with respect to the use of and spending on facilities. (R pp 26, 75). Evergreen recommended consolidating specific school functions, such as grant reporting and monitoring, bussing operations, food service,

FRL qualification programs, and maintenance systems, but the BOCC has not implemented any of the recommendations in the Report. (R p 26).

The BOCC also has the statutory authority to select the method to distribute sales tax revenues collected each year within the county. Under the per capita method, local sales tax revenue is divided between the BOCC and all municipalities within the county on a pro rata basis using the resident population of each. Under the ad valorem method, local sales tax revenue is divided between all “taxing entities” in the county, including municipalities and eligible school districts. (R pp 27, 77).

Every year, the BOCC has selected the ad valorem method of sales tax distribution, which provides additional funding to RRGSD and WCS, but not HCPS. As a result of the BOCC decision to use the ad valorem method to distribute sales tax revenue, RRGSD received approximately \$4.5 million and WCS \$2.5 million in additional local revenue between 2006 and 2014. HCPS received no sales tax money, even though residents within HCPS boundaries, just like residents within RRGSD and WCS boundaries, pay sales tax for all purchases made in the county. (R pp 27-28, 78). Under the per capita method of distributing the sales tax revenue, the BOCC would retain a greater portion of monies. Any portion of that revenue spent on education would have to be distributed to all three of the school districts on an equalized per-pupil basis. The BOCC has repeatedly

refused to adopt the per capita method, preferring to maintain a public education system that denies additional funding to HCPS. (R pp 28, 78).

The BOCC's annual decision to use the ad valorem sales tax distribution method exacerbates funding disparities already in place as a result of the supplemental property tax revenue collected in RRGSD and WCS, but not HCPS. (R p 28). The BOCC sets the supplemental property tax rate for WCS, which is currently \$0.1818 per \$100 of taxable property value. (R p 80). The supplemental property tax in WCS generates between \$1 and \$1.3 million per year; between 2006 and 2014, WCS received approximately \$11 million in additional revenue through the supplemental tax set by the BOCC. (R p 29). RRGSD has authority to levy its own taxes. RRGSD sets its supplemental property tax rate at \$0.2250 per \$100 of taxable property value. (R p 80). The supplemental property tax in RRGSD generates between \$1.5 and \$2 million per year; between 2006 and 2014, RRGSD received approximately \$15 million in additional revenue through its supplemental tax. (R p 28). HCPS does not have a supplemental property tax. (R p 29).

IV. The DPI Turnaround Plan

In 2009, HCPS entered into a Consent Order with the State Board of Education and DPI that recognized that a majority of students in HCPS were not receiving the opportunity to receive a sound basic education. (R p 11). The

Consent Order required the State Board of Education, DPI and HCPS to develop and implement a “district transformation” or “turnaround” plan (“Plan”) for HCPS which included teacher and administrator training and support, the addition of over ten instructional and administrative coaches, and direct engagement and oversight by DPI staff. The Plan had an initial projected budget of approximately \$1.8 million. (R p 29).

In 2010, DPI reported that, pursuant to the Consent Order, new training programs were in place in HCPS, new staff evaluation processes implemented, and that all DPI efforts were focused on improving student achievement. Two years later DPI reported that while some improvement had been made in HCPS, it remained the lowest-performing district in the State, and that of the seventeen lowest-performing elementary and middle schools in North Carolina that year, five were in HCPS. At that time, DPI also reported difficulties in recruiting and retaining qualified teachers, and reliance on non-certified substitutes and programs like TFA to fill positions. (R p 30).

In July 2015, Dr. Pat Ashley, former director of the DPI District and School Transformation division, testified that during her oversight of the Plan in HCPS, it was difficult to recruit and retain teachers, who often left for nearby districts that offered a teacher salary supplement. Dr. Ashley also testified that there were extended periods during which HCPS classrooms were not staffed by certified

teachers or teachers certified in the subject area, and that there was a possibility that a student in HCPS would have no certified math teacher in middle or high school. (R p 30). After five years of additional expenditures and engagement by DPI, students in HCPS still do not have the opportunity to receive a sound basic education. (R pp 13-15).

During this same five-year period, although not part of the Plan, DPI also directed “District and School Transformation” resources to WCS, including the assignment of a “District Transformation” coach and other direct assistance to WCS. (R p 31). Despite these efforts, WCS remained one of the lowest-performing districts in the State, and students in WCS still do not have the opportunity to receive a sound basic education. (R pp 9-11).

V. RRGSD Boundary Lines

When RRGSD was established in 1907, the district’s boundaries included not only the corporate city limits of Roanoke Rapids, but certain contiguous parcels that were almost exclusively white. Meanwhile, majority black neighborhoods that were within the Roanoke Rapids city limits were excluded from RRGSD. Although the city of Roanoke Rapids has annexed a number of predominantly black neighborhoods, the RRGSD school district lines have not been extended to include majority black neighborhoods within the city limits. Today, RRGSD includes at least one predominantly white area outside city limits

and excludes at least three predominantly black areas within the city limits in southeast Roanoke Rapids. As a result, many black children who reside within Roanoke Rapids municipal boundaries are bussed to schools in HCPS, allowing RRGSD to preserve its longstanding majority white student enrollment. (R p 36-37)

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the trial court's order granting the motion to dismiss *de novo*. *Burgin v. Owen*, 181 N.C. App. 511, 640 S.E.2d 427 (2007). A plaintiff states a claim for relief where "the allegations of the complaint, if treated as true" afford relief "under some legal theory." *Bridges v. Parrish*, 366 N.C. 539, 541, 742 S.E.2d 794, 796 (2013). North Carolina's pleading standard affords plaintiffs wide latitude and complaints are "to be liberally construed." *State ex rel. Cooper v. Ridgeway Brands Mfg.*, 362 N.C. 431, 444, 66 S.E.2d. 107, 116 (2008) (internal quotation omitted). A complaint must not be dismissed "unless it appears *beyond doubt* that [the] plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Id.* (emphasis added) (internal quotation omitted).

Accordingly, a court may dismiss a complaint under Rule 12(b)(6) only in narrowly-defined circumstances: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of

facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Hinson v. City of Greensboro*, 753 S.E.2d 822, 826 (N.C. App. 2014) (citing *Newberne v. Dep't of Crime Control & Pub. Safety*, 359 N.C. 782, 784, 618 S.E.2d 201, 2014 (2005)).

In considering a 12(b)(6) motion, the court review is limited to the allegations in the plaintiffs' complaint and whether those allegations state a claim. A 12(b)(6) evaluation should not exceed this limited scope and evaluate the merits of the claim or the requested remedy. "The motion does not present the merits, but only whether the merits may be reached." *Concrete Service Corp v. Investors Group, Inc.*, 79 N.C. App. 678, 681, 340 S.E.2d 755, 758 (1986). "The issue is not whether a plaintiff will ultimately prevail but whether the plaintiff is entitled to offer evidence to support the claim." *S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC*, 189 N.C. App. 601, 607, 659 S.E.2d 442, 448 (2008) (internal citation omitted).

II. PLAINTIFFS STATE A CLAIM FOR RELIEF AGAINST THE BOCC UNDER THE NORTH CAROLINA CONSTITUTION

To determine whether the trial court committed reversible error, this Court must essentially consider two questions. First, whether the BOCC is a party against whom students may assert a violation of their constitutional right to a sound basic education. Because local county governments are instruments of the State subject to the requirements of the North Carolina constitution, and because

counties have significant statutory responsibility for the appropriation of funds to and maintenance of school districts, the answer to the first question must be yes. Second, this Court must consider whether Plaintiffs' Complaint states a claim for a violation of Halifax County schoolchildren's right to a sound basic education. The factual statement above and analysis below clearly establishes that the unequivocal answer to that question must be yes. As a result, the trial court's order granting the motion to dismiss for failure to state a claim must be reversed.

The trial court's order demonstrates that the court failed to apply the appropriate 12(b)(6) standard by considering the underlying merits of the claims. (R p 94). Reviewed correctly, and with all allegations taken as true and viewed in the light most favorable to the Plaintiffs, the Complaint states a claim for relief under established North Carolina law. The trial court's ruling should be reversed.

A. The Complaint States a Constitutional Claim for Relief as Established and Recognized in the *Leandro* Cases

The North Carolina Constitution guarantees all children in the state an opportunity to receive a sound basic education. *Leandro v. State* ("*Leandro I*"), 346 N.C. 336, 488 S.E.2d 249 (1997); *Hoke County Bd. of Educ. v. State* ("*Leandro II*"), 358 N.C. 605, 599 S.E.2d 365 (2004); N.C. Const. Art I, § 15; N.C. Const. Art. IX, § 2. In practice, the constitutional right assures that a public education system in North Carolina must be structured to provide children with

certain skills and substantive knowledge to be able to participate, compete, and effectively engage in society. *Leandro I*, 346 N.C. at 347, 488 S.E.2d at 259.

The North Carolina Supreme Court concluded that determining whether students are being provided the opportunity to obtain a sound basic education requires assessing specific educational “inputs,” “outputs,” and “delivery mechanisms.” *Leandro II*, 358 N.C. at 623, 632, 599 S.E.2d at 338. Inputs are the educational resources provided to children in school, and they include, *inter alia*, the quality of teachers, administrators, programs, curricula, and funding. *Id.* at 632, 599 S.E.2d at 386-87. Outputs are the various measures of student performance, including standardized test score data, student graduation rates, employment outcomes, and rates of success in post-secondary education. *Id.* With regard to standardized test scores, the Supreme Court has adopted a bright line rule: “Level III [grade-level] proficiency is the proper standard for demonstrating compliance with the *Leandro* decision.” *Id.* at 625, 599 S.E.2d at 382.

In looking at delivery mechanisms, or the “education delivery system,” the court specifically focused on whether resources were being allocated in a manner to ensure that students were receiving the ability “to avail themselves of an opportunity to receive a sound basic education.” *Id.* at 632, 599 S.E.2d at 387. The court concluded that the constitution required, *at a minimum*, “a rational, comprehensive plan which strategically focuses available resources and funds on

meeting the needs of all children, including at-risk children, to obtain a sound basic education.” *Id.* at 635, 599 S.E.2d at 389. Crucially, the court noted that even if adequate resources are available *generally*, the *ineffective* allocation of resources could result in a violation of the opportunity to secure a constitutionally compliant education. *Id.* at 637, 599 S.E.2d at 390. The court then affirmed the lower court’s conclusion that it was not the amount of funding or resources provided, but the failure “to oversee *how* educational funding and resources were being used and implemented” that gave rise to the constitutional violation. *Id.* (emphasis added).

The court’s deliberate language distinguishing “funding” and “resources” demonstrates that the two are not coextensive categories, such that the latter necessarily includes more than merely the former. *Leandro II* recognized that *how* resources are allocated locally—a matter exclusively within the control of local government officials—is just as important constitutionally as the *amount* of resources provided. While insufficient direct funding could undermine students’ access to a *Leandro* sufficient education, so too could the ineffective allocation of available resources, particularly by local actors that exercise broad discretion in the distribution of funds and other resources, including school facilities themselves. In affirming the trial court’s ruling that the constitutional rights of students in Hoke County had been violated, the Supreme Court cited both the defendants’ failure to fulfill their responsibilities for “strategically allocating the available resources to

see that at-risk children have the equal opportunity to obtain a sound basic education,” and Hoke County’s failure to develop “a rational . . . comprehensive plan which strategically focuses available resources and funds towards meeting the needs of all children, including at-risk children.” *Leandro II*, 358 N.C. at 635, 599 at 388-89. At the trial in this case, Plaintiffs will establish through the evidence that the BOCC’s maintenance of a three-district school system and corresponding inefficient misallocation of resources among the districts deprive students, and particularly at-risk students, the opportunity to secure a sound basic education. The trial court erred when it failed to properly apply the Rule 12(b)(6) standard, and dismissed Plaintiffs’ case based on a presumption that no such evidence exists.

The complaint is wholly consistent with the claims recognized by the Supreme Court in *Leandro II*. First, the Complaint contains numerous allegations regarding inadequate achievement for large numbers of students (R pp 12-16), which demonstrates “a systemic weakness” in the provision of a constitutionally adequate education. *Id.* at 627, 599 at 384. It also describes how the BOCC’s chosen methods for allocating educational resources and funding impede students across all three districts, and at-risk students especially, from securing the opportunity for a sound basic education. (R pp 17-18 (school facilities), 18-21 (teachers), 22-25 (classroom and educational materials), 25-29 (funding and distribution)). The Complaint clearly alleges sufficient facts to state a claim for

relief under the North Carolina Constitution and the controlling *Leandro* precedents; the ruling below must be reversed.

B. Constitutional Rights and Obligations Bind All Government Actors

In its Motion to Dismiss, the BOCC argued that it had only minimal responsibilities for education in the county, describing its role as merely a “pass-through” for funds (R p 53), and asserting that *Leandro I* and *II* had no bearing on local county boards of commissioners. (R p 48). This argument contravenes the most basic principles of constitutional law and fails to acknowledge that any reference to “the State” implicitly includes all of its constituent parts, with no exception for counties. *See In re Q.V.*, 164 N.C. App 737, 596 S.E.2d 867 (2004). “In the exercise of ordinary governmental functions [counties] are simply agencies of the State constituted for the convenience of local administration in certain portions of the State’s territory [A] county is . . . an instrumentality of the State.” *Lanvale Properties LLC v. County of Cabarrus*, 366 N.C. 142, 150, 731 S.E.2d 800, 807 (2012) (internal citations omitted). The North Carolina Supreme Court has highlighted that “the civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights entitled to protection against state action,” and further that “[w]e give our Constitution a liberal interpretation in favor of its citizens with respect to those provisions which were designed to safeguard the liberty and security of the citizens

in regard to both person and property.” *Corum v. University of North Carolina Through Bd. Of Governors*, 330 N.C. 761, 782-3, 413 S.E.2d 236, 289-90 (1992).

North Carolina courts have broadly recognized that the rights guaranteed under the state constitution are protected from encroachment or violation by *any* government official or agency, at every level of government, including the public university system, *Corum v. University of North Carolina Through Bd. Of Governors*, 330 N.C. 761, 413 S.E.2d 276 (1992), the Department of Corrections, *Medley v. NC Dept. of Corrections*, 330 N.C. 837, 412 S.E.2d 654 (1992), local police departments, *State v. Ingram*, 774 S.E.2d 433 (N.C. App. 2015), county sheriff departments, *State v. Ladd*, 782 S.E.2d 397 (N.C. App. 2016), municipal governments, *Moore v. City of Creedmoor*, 345 N.C. 356, 481 S.E.2d 14 (1997), county administrative agencies, *Guilford Cty. Dep’t of Emergency Servs. v. Seaboard Chem. Corp.*, 114 N.C. App. 1, 441 S.E.2d 177 (1994), and public K-12 school systems, *King ex rel. Harvey-Barrow v. Beaufort Cty. Bd. of Educ.*, 364 N.C. 368, 704 S.E.2d 259 (2010); *Rone v. Winston-Salem/Forsyth Cty. Bd. of Educ.*, 207 N.C. App. 618, 701 S.E.2d 284 (2010). Most importantly for the review of the present appeal, North Carolina courts have consistently recognized that allegations of constitutional violations by counties state a claim for relief under North Carolina law. *See, e.g., Wake County ex rel. Carrington v. Townes*, 53 N.C. App. 649, 281 S.E.2d 765 (1982); *Treants Enterprises, Inc. v. Onslow*

County, 83 N.C. App. 345, 350 S.E.2d 365 (1986); *City-Wide Asphalt Paving, Inc. v. Alamance Cty.*, 132 N.C. App. 533, 513 S.E.2d 335 (1999).

Contrary to the BOCC's narrow interpretation of its legal duties and responsibilities, the jurisprudence of the state establishes that the county commissioners (like all other government actors) are bound to protect, respect, and not impede the rights guaranteed to individuals by the state constitution. The trial court's order erroneously embraced the BOCC's denial of its constitutional obligation to guarantee the opportunity for Halifax County children to secure a sound basic education. While acknowledging that the BOCC has "some responsibility for the financial support" of schools, that court also held that there is "no provision of the Constitution of the State of North Carolina" or "any compelling authority supportive of the proposition that it is the constitutional responsibility of the Defendant to implement or maintain a public education system for Halifax County." (R p 94). In so concluding, the trial court has read the constitutional and statutory educational duties of local governments as though the Leandro holdings never existed. And taken to its logical conclusion, the trial court's holding would allow the BOCC to refuse to provide any resources for facilities, infrastructure, or educational supplies to the schools in Halifax (which would obviously deny the students the opportunity to receive a sound basic education) without raising any constitutional issues. This is clear error. The

allegations of the complaint, viewed under the correct 12(b)(6) standard, clearly state a constitutional claim against the BOCC, and therefore the trial court should be reversed and the case permitted to proceed.

C. In Addition to Its Constitutional Obligations, the BOCC Has Duties, Powers, and Responsibilities Under a Carefully Crafted Statutory Scheme that Must Effectuate Those Obligations

The BOCC's contention that it has no constitutional duty to protect its schoolchildren's right to a sound basic education contradicts basic principles of constitutional law and demonstrates a fundamental misunderstanding of the BOCC's statutory educational responsibilities, which incorporate the constitutional guarantee. "The General Assembly also seems to have recognized the constitutional right to a sound basic education and to have embraced that right in Chapter 115C of the General Statutes." *Leandro I*, at 347, 488 S.E.2d at 254. N.C.G.S. §115C- 426(c) requires the BOCC to provide for local public schools "in conformity with the educational goals and policies of the state," which as a matter of law and as recognized in *Leandro I* and *II*, include the opportunity for a sound basic education. The comprehensive statutory scheme contained in Chapter 115C includes a number of specific duties and powers of county government, many specifically related to resource allocation which, under *Leandro*, implicates students' constitutional rights. *See, e.g.*, §115C-431 (BOCC is liable to school boards for failing to provide adequate funding to school districts); §115C-431(c)

(BOCC is required to provide for local public schools “in order to maintain a system of free public schools as defined by State law and State Board of Education policy”); §115C-408 (“facilities requirements” for public schools “will be met by county governments”); §115C-521 (BOCC is responsible for providing school facilities, furniture, and apparatus); §115C-249 (BOCC is responsible for providing buildings for bus and vehicle storage); §115C-522(c) (BOCC is responsible for providing water supplies and sanitation facilities, as well as library, science, and classroom equipment, including instructional supplies and books); §115C-524(b) (BOCC is responsible for necessary maintenance of school buildings); §115C-518 (right of first refusal to BOCC when boards of education dispose of real property); §115C-530 (operational leases for terms of three years or longer are subject to approval of BOCC); §115C-218.35 (BOCC “shall have the final decision-making authority on the leasing of the available building or land” when a charter school and local board of education cannot agree to lease terms).

Chapter 115C comprehensively recognizes the fundamental educational principle of local control, and expressly establishes the BOCC as a full partner in the county’s educational system, with unique responsibilities for resource allocation. Article 7, which details the local obligations for the organization of schools and school administrative units, recognizes the particularly fundamental resource allocation role that the BOCC has in a county with multiple school

districts. Although the BOCC has consistently denied it has any power or duty regarding how schools or school districts operate, §115C-68.1 gives the BOCC the unilateral power to consolidate districts within the county. This power is integral to ensuring that local governments are able to meet their constitutional resource allocation obligations, because the provision of school facilities and educational capital needs are the exclusive responsibility of the BOCC.

Additionally, §115C-68.1 recognizes that the interests of individual school districts or school administrators may conflict with the BOCC's obligations to effectively allocate resources, and so expressly prohibits those actors from playing a role in any BOCC initiated consolidation plan. "The county and city boards of education *shall not* participate by preparing, entering into, submitting or agreeing to a plan." §115C-68.1 (emphasis added). The unilateral power of the BOCC to consolidate districts is a critical part of a statutory scheme that recognizes the primary duty of the BOCC to effectively allocate the resources necessary to ensure that all children in the county have the opportunity to secure a sound basic education. The power is also critical to the BOCC's ability to meet its constitutional obligations. Otherwise, commissioners in counties with multiple school districts would have no control over their ability to manage allocation of limited resources—most significantly with regard to school facilities, the single most significant expense that must be provided with local funds.

In granting the County the unilateral power to consolidate districts, the legislature recognized that the organization of schools and school administrative units is fundamentally and inextricably tied to the local government's responsibility and duties regarding the effective and efficient allocation of funding and resources, which are essential to provide the constitutional guarantee of a sound basic education. The allegations in the complaint state a cognizable claim that the BOCC's organization and maintenance of the current tripartite educational system impedes students' ability to access a constitutionally-adequate education.

D. Plaintiffs Have No Other Avenue to Challenge the BOCC's Unconstitutional Resource Allocation or Vindicate Their Constitutional Right to a Sound Basic Education

The BOCC asserts that it has no liability or responsibility under the *Leandro* holdings or the state constitution's education clauses. (R pp 47-54). If the Court accepts that argument, county governments can never be liable to students for any county action that might block, undermine, or impede a child's ability to secure a sound basic education, including the failure to adequately construct or maintain a school; to provide science lab equipment, library or textbooks; to invest in technology; or to maintain and provide safe and adequate transportation. Under §115C-431, a school board currently has the statutory power to bring a legal claim against the BOCC to challenge inadequate and potentially unconstitutional levels of funding or resource allocation. However, students, community advocates, and

parents have no similar statutory remedy if the county's method of resource allocation—or education delivery mechanism—deprives the students of their opportunity to secure a sound basic education. They also have no recourse if the school board chooses not to exercise its authority under §115C-431. The only avenue to address the potential deprivation of this fundamental right is a claim under the state constitution and the *Leandro* cases, as Plaintiffs have made here. If the trial court order is affirmed, the constitutional right of every child becomes a hollow and unenforceable promise when violated by the actions or inactions of local governments.

CONCLUSION

The trial court failed to apply the correct standard of review in its analysis of the BOCC's motion to dismiss. Assuming all of the allegations in the complaint are true and viewing them in the light most favorable to the Plaintiffs, as the Court must, it is clear that the complaint is substantially supported by law and sufficiently states a claim upon which relief can be granted. As established above, the *Leandro* cases recognized a constitutional right to (and legal claim for the deprivation of) the opportunity to secure a sound basic education; that constitutional right and the obligation to protect that right binds all state actors; the BOCC has unique responsibilities under the state's carefully crafted statutory scheme for education that must effectuate and comport with that constitutional

obligation; and the BOCC, by its actions and inactions, has failed to meet its constitutional duties and obstructed Plaintiffs' access to the opportunity for a sound basic education. The trial court's order should be reversed and the case remanded for the development of a full evidentiary record on this vital constitutional matter.

Respectfully submitted, this the 4th day of May, 2016.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PLAINTIFF-APPELLANTS BRIEF was served upon the Defendant-Appellee in the matter by placing a copy of same in the U.S. Mail, first-class postage paid, addressed to:

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This the 4th day of May, 2016.



CERTIFICATION OF COMPLIANCE

Pursuant to Appellate Rule 28(j)(2)(B), the undersigned certifies that PLAINTIFF-APPELLANTS' BRIEF uses proportional type and contains no more than 8,750 words.

UNC CENTER FOR CIVIL RIGHTS

A handwritten signature in black ink, appearing to read "Mark Dorosin". The signature is fluid and cursive, with a long horizontal stroke at the end.

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