

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95 CVS 1158**

**HOKE COUNTY BOARD)
OF EDUCATION, et al.,)
Plaintiffs-Appellees,)
)
v.)
)
STATE OF NORTH CAROLINA;)
et al.,)
Defendants.)**

MEMORANDUM OF LAW AS *AMICI CURIAE* ADVOCATES FOR CHILDREN’S SERVICES OF LEGAL AID OF NORTH CAROLINA, CAROLINA LEGAL ASSISTANCE, EL PUEBLO, NORTH CAROLINA CONFERENCE OF NAACP BRANCHES, NORTH CAROLINA JUSTICE CENTER, THE RURAL SCHOOL & COMMUNITY TRUST, and the TRIANGLE URBAN LEAGUE

Advocates for Children’s Services of Legal Aid of North Carolina, Carolina Legal Assistance, El Pueblo, the North Carolina Conference of NAACP Branches, the North Carolina Justice Center, the Rural School & Community Trust and the Triangle Urban League, together *Amici Curiae* (“*Amici*”), submit this memorandum of law to respond to urgent matters of adequate education financing in North Carolina. Our organizations represent the interests of North Carolina’s schoolchildren, whose constitutional right to a sound basic education is now well established. These children have a direct interest in the outcome of the budget negotiations now underway in the legislature for Fiscal Year 2006-07.

Today, two years after the North Carolina Supreme Court’s 2004 *Leandro II* decision, the State remains derelict in its constitutional duty to provide an adequately-supported system of public education in North Carolina. In particular, African American, Hispanic, language minority, poor and disabled students continue to swell the ranks of North Carolina children who do not receive a sound basic education. In 2004-05, *more than one-quarter* of all End-of-Course

(EOC) tests taken by North Carolina students had scores *below* grade level, with *more than half* of African American and Hispanic students scoring below grade level on EOC Biology tests.¹ These biology scores forecast a crisis: new graduation requirements beginning next year require *a passing EOC score in biology to graduate from high school.*² If this requirement was in effect now, more than half of African American and Hispanic students could not graduate from high school.

Every single child behind a bad education statistic is entitled as an individual to the fundamental right to an equal opportunity for a sound basic education. These young North Carolinians have full standing to bring their own individual *Leandro* lawsuits for injunctive relief and, at a minimum, compensatory damages. Moreover, advocates for children are ethically charged to bring these lawsuits.

North Carolina has the opportunity *now* to expand its support for children, and at-risk children in particular. Reserves of \$2.4 billion in the State treasury are available to fund education in North Carolina. *Amici* trust this Court is watching and call on the Court to exercise its proper jurisdiction to enforce the unrealized mandates of *Leandro*. For the reasons discussed more fully in this memorandum, *Amici* urge the Court to *order and enforce* five immediate steps:

- Full and immediate funding for the Low Wealth Fund;
- Full and immediate funding for the Disadvantaged Student Supplemental Fund;
- Full and immediate elimination of the Discretionary Reductions imposed on school districts;

¹ From the North Carolina Department of Public Instruction, Reports of Supplemental Disaggregated State, School System (LEA) and School Performance Data, <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive> (last visited May 31, 2006).

² N.C. Dep't of Pub. Instruction, *Overview of the High School Exit Standards*, Revised March 21, 2006, <http://www.ncpublicschools.org/accountability/policies/highschoolsexit> (last visited June 7, 2006). These standards will apply to students in three courses of study: Career Preparation, College Technical Preparation, or College University.

- By October 15, 2006, the State Board of Education shall provide this Court with a comprehensive and detailed report on the use of Personal Education Plans (PEP) in North Carolina. At a minimum, this Report should include an analysis of where PEPs have not improved student outcomes, why they have not improved student outcomes, and the State Board of Education’s plan and timeline to ensure an *effective* PEP for every at-risk child attending a North Carolina public school; and
- By December 31, 2006, the State shall provide this Court with its “Plan to Fund North Carolina Education in the 21st Century,” which shall include how the State will determine the costs necessary to provide a sound basic education to *all* of North Carolina’s children in the near and far term.

I. EDUCATION SPENDING: THE FOUR PROPOSED BUDGETS MUST BE COMBINED TO BRING THE STATE INTO COMPLIANCE WITH THE CONSTITUTION

a. The Governor’s Budget

Nearly 53% of Governor’s Easley’s proposed 2006-07 budget is for public school education. The \$6.7 billion he has recommended for K-12 education includes an 8% pay increase for teachers (\$323 million), full funding (\$41.8 million) for the low wealth districts fund (“Low Wealth”), expanding the Disadvantaged Student Supplemental Fund (“DSSF”) (\$26.7 million) to all school districts, and several high school reform initiatives (\$14.2 million).³ Insofar as Governor Easley recommends full funding for Low Wealth, his budget is vastly more responsive to education than in years past. However, far more is needed than the budget proposed by the Governor before the State can claim compliance with its constitutional obligations to the school children of North Carolina.

b.

³ Office of State Budget & Mgmt., Office of the Governor, The North Carolina State Budget: Recommended Adjustments, 2006-2007, Governor’s Recommended Budget Adjustments, 2006-07 5-6 tbl.3, 37-39 (2006), http://www.osbm.state.nc.us/files/pdf_files/2006-2007_adjustments.pdf; *The Public School Forum’s Friday Report* (May 12, 2006) 3, http://www.ncforum.org/doclib/friday%Freport/collateral/2006/2006_0512.pdf.

Three Proposals from the Legislature

Three other budgets have been proposed: by the North Carolina Senate, the North Carolina House, and the Joint House/Senate Appropriations Subcommittee on Education (“Appropriations Subcommittee”). *Amici* summarize the major expenditures in these four budgets in Chart 1, below. *Amici* contend that no budget will bring the State into compliance with *Leandro* without full funding for Low Wealth, full funding for the DSSF, and the full elimination of the “Discretionary Reduction.”

Chart 1
Major Education Spending Proposed for Fiscal Year 2006-07

	Low Wealth (Full Funding = \$42 million)	Elimination of Discretionary Cuts	Disadvantaged Student Supplemental Fund (Full Funding = \$220 million) ⁴	Teacher Salary Increases	Funding for High School Reform
Governor	\$42 million	\$0	\$27 million	\$323 million	\$14 million
N.C. Senate	\$0	\$44 million	\$27 million	\$323 million	\$14 million
N.C. House	\$42 million	\$44 million	\$0	\$323 million	\$14 million
Appropriations Subcommittee	\$0	\$44 million	\$27 million	\$323 million	\$14 million

c. *Amici* Urge Full Funding of Low Wealth, Full Funding of the DSSF and the Elimination of Discretionary Cuts

Next year and in the years thereafter, the State must do better by its children – both in and out of school – for *Leandro* to reach all children. *Amici* have repeatedly implored the Court to order the State to commission one or more costing out studies so the Court and State policymakers have a complete picture of what it will cost the State, in the short and long term, to comply fully with the Constitution. Contemporary adequacy cost studies are a “vast

⁴ Letter from Howard N. Lee, Chairman, N.C. State Bd. of Educ., and Michael E. Ward, Superintendent of Pub. Instruction, to Howard Manning, Jr., Superior Court Judge (June 7, 2004), <http://www.ncpublicschools.org/newsroom/news/2003-04/060804/> (last visited June 13, 2006) (estimating that full funding of DSSF would cost \$220 million).

improvement” over “ad-hoc political deal-making.”⁵ Legislatures in many states now rely on cost studies to make sound education funding decisions and state courts repeatedly rely on the findings of costing out studies for evidence of constitutional violations.⁶ If the State were now the beneficiary of a comprehensive costing out study, all three branches of government would share a rational basis for fulfilling their respective constitutional obligations to the school children of this State.

i. *Amici* Call for Full Funding of Low Wealth

Governor Easley and the House recommend \$41.8 million for Low Wealth. If this recommendation is adopted, it will mark the first time Low Wealth has been fully funded in North Carolina since the fund was created in 1991.⁷ This is long past due. By many measures, North Carolina students in low wealth districts are not receiving an equal opportunity for a sound basic education. For example, students in low-wealth districts are less likely to have highly-trained and experienced teachers. In 2004-05, among districts which reported having fewer than 35% of teachers with graduate degrees, 87% were low-wealth districts.⁸ During the same year, among districts which reported having more than 5% of teachers with no prior experience, 75% were low-wealth districts.⁹

A particularly telling measure of *cumulative disadvantage* is how students in low wealth districts do on the Scholastic Aptitude Test (“SAT”). Last year, 73% of the high schools reporting mean SAT scores at least 100 points below the state average were from low-wealth

⁵ Michael A. Rebell, Executive Summary, *Adequacy Cost Studies: Perspectives on the State of the Art*, Teachers College Record (forthcoming 2006).

⁶ *Id.*

⁷ *The Public School Forum’s Friday Report* (May 19, 2006) 1, http://www.ncforum.org/doclib/friday%Freport/collateral/2006/2006_0519.pdf.

⁸ From data reported in N.C. Dep’t of Pub. Instruction, *North Carolina Public Schools Statistical Profile, 2005* 36-38 tbl.19, <http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf>. (Of 82 districts with fewer than 35% of teachers with graduate degrees, 71 were low-wealth districts.)

⁹ *Id.* (Of 79 districts with greater than 5% of teachers with no prior experience, 59 were low-wealth districts.)

districts.¹⁰ *Not one* high school from a low wealth district made the list of schools reporting mean SAT scores at least 100 points higher than the state average.¹¹

Both the Governor and the House have proposed fully funding Low Wealth. This proposal must be embraced by State leaders and passed without delay. The State cannot offer all of its students the equal opportunity to a sound basic education without fully funding Low Wealth. If the State fails to fully fund Low Wealth, *Amici* urge this Court to exercise its manifest powers to *order* full funding of Low Wealth.

ii. Partial Funding of the Disadvantaged Student Supplemental Fund is Constitutionally *Inadequate*

Full funding for the Disadvantaged Student Supplemental Fund (DSSF) is *constitutionally required under Leandro*. In 2004, the State Board of Education reported to the Court that full DSSF funding required \$220 million.¹² In Fall 2005, the State promised that by February 2006, it would provide to the Court an updated projection of the amount of DSSF funding now necessary to meet the needs of every at-risk child in the State.¹³ As the Court is aware, the State has *failed* to follow through on its DSSF determination. Instead the Governor, the Appropriations Subcommittee, and the Senate have proposed partial funding of the DSSF at \$26.7 million.

¹⁰ From mean SAT scores of North Carolina's public high schools (excluding public charter schools) as reported by State Bd. of Educ., Accountability Services Div., Dep't of Pub. Instruction, *The North Carolina 2005 SAT Report* 34-49 tbl. 6 (2005), <http://www.ncpublicschools.org/accountability/reporting/sat/> (last visited May 30, 2006).

¹¹ *Id.*

¹² Letter from Howard N. Lee, Chairman, N.C. State Bd. of Educ., and Michael E. Ward, Superintendent of Pub. Instruction, *supra* note 4.

¹³ Memorandum from Robert Logan, Superintendent, Asheville City Schools, Cliff Dodson, Superintendent, Buncombe County Pub. Schools, Ann Denlinger, Superintendent, Durham Pub. Schools, William McNeal, Superintendent, Wake County Schools, and Don Martin, Superintendent, Winston-Salem/Forsyth County Pub. Schools to Howard Manning, Jr., Superior Court Judge (May 4, 2006).

This Court has made plain the State’s constitutional obligation to disadvantaged students in our public schools. Its 2002 trial court decision, affirmed by our Supreme Court, requires the State to provide sufficient resources:

to support the effective instructional program within [every] school so that the educational needs of all children, *including at risk children*, to have the equal opportunity to obtain a sound basic education, can be met.¹⁴ (Emphasis added.)

Four years later, the State still is not guaranteeing the constitutional rights of “all children, *including at risk children*” to a sound basic education. In 2004-05 (the latest year for which student test scores are available), the achievement gap between low income students and their more affluent peers was pronounced across the State. In elementary and middle schools, students eligible for free and reduced price lunch (FRL) were *three times more likely* than their more affluent peers to score below grade level on End-of-Grade (EOG) tests in Reading and Math.¹⁵ In high schools, students eligible for FRL were *nearly two times more likely* than their more affluent peers to fail End-of-Course EOC tests.¹⁶

Schools must have additional resources to serve disadvantaged students.¹⁷ Fully funded, the DSSF would provide \$220 million to districts to ensure an effective instructional program for the actual numbers of disadvantaged students enrolled per district.¹⁸ Instead, in 2004-05, the

¹⁴ Final Judgment, Apr 4, 2002, aff’d, *Hoke County Bd. of Educ. v. State*, 358 N.C. at 636, 599 S.E. 2d at 389.

¹⁵ N.C. Dep’t. of Pub. Instruction, *supra* note 1.

¹⁶ *Id.*

¹⁷ W. Duncombe & J. Yinger, Financing Higher Student Performance Standards: The Case of New York State 19 *Econ. of Educ. Rev.* 363, 363-86 (2000) (citing findings that it costs approximately 170% more to teach low-income, inner-city students than to teach middle-class, suburban students).

¹⁸ *The Public School Forum’s Friday Report* (December 17, 2004), http://www.ncforum.org/doclib/friday%5Freport/collateral/2004/2004_1217.pdf. (citing the State’s 12/2/04 revised DSSF formula for identifying at-risk kids to include the “Percent of students living in a single parent family; percent of students living below the poverty line (measured by Title I eligibility), and percent of students with at least one parent with less than a high school diploma”).

State limited DSSF funding to \$22.5 million to 16 low wealth pilot districts so the State could study the effectiveness of DSSF spending in those districts.¹⁹

The State's glacial pace in funding the DSSF – while disadvantaged students statewide continue to drastically under-perform relative to their non-disadvantaged peers – is maddening not only to *Amici*, but has naturally frustrated districts with high numbers of disadvantaged students. On May 4, 2006, five of six urban school districts withdrew as plaintiffs from the *Leandro* litigation, expressly citing the State's failure to fund DSSF:

Though [*Leandro*] has been a driving force in improving educational opportunities in our state, our goal of obtaining additional State funding to address the identified needs of at-risk students in the urban districts has not yet been achieved.²⁰

Leandro rights belong to *students*, not districts. High percentages of disadvantaged students continue to fail basic proficiency tests in all subjects throughout the State. The State is constitutionally *obligated* to intervene and to do so *effectively*. The DSSF is the mechanism that State leaders have proposed to deliver necessary resources to disadvantaged students. It is time for the State to fund the DSSF at the level that its own experts have said is minimally necessary.²¹ *Amici* urge the Court to closely watch the DSSF. If the State fails to fund the DSSF fully *during this time of a budget surplus*, *Amici* ask the Court to *order* that the State fully fund the DSSF *now*.

¹⁹ The Fiscal Research Div. N.C. General Assembly, Overview: Fiscal and Budgetary Actions North Carolina General Assembly 2005 Session F-3, http://www.ncleg.net/LegislativePublications/fiscalresearchd_/overview2005/overview2005.pdf.

²⁰ Memorandum from Robert Logan, Superintendent, Asheville City Schools, et al., *supra* note 13.

²¹ Letter from Howard N. Lee and Michael E. Ward to Howard Manning, Jr., *supra* note 4.

iii. The Discretionary Reduction Must Be Eliminated

Since 2001, the State has imposed an annual “Discretionary Reduction” on all 115 school districts that requires each to return a portion of its budget to the State.²² The Appropriations Subcommittee, the Senate, and the House each propose eliminating the Discretionary Reduction to return a total of \$44 million to the 115 school districts. *Amici* support the elimination of the Discretionary Reduction. Its impact on districts is substantial, and for some districts, draconian. Charlotte-Mecklenburg and Wake, for example, each lose \$3.9 million to the Discretionary Reduction, Guilford loses \$2.2 million, and Cumberland, Durham, Gaston, and Union lose \$1 million or more.²³

Education observers such as The Public School Forum are frank about the overstated value of Governor Easley’s plan to fund Low Wealth when his budget fails to eliminate the Discretionary Reduction:

If, for instance, Governor Easley’s \$42 million proposal to fully fund low wealth prevails, the low wealth schools share of the discretionary reduction would be \$23.1 million. Instead of gaining \$42 million in new funds, they would have only gained \$18.8 million because of the Discretionary Reduction’s sleight of hand (*i.e.*, give with the right hand, take back with the left).²⁴

In other words, to fully fund Low Wealth it is necessary to end the Discretionary Reduction at the same time. *Amici* urge this Court, and all State leaders, to prioritize eliminating the Discretionary Reduction.

Similarly it will not help disadvantaged students to partially fund DSSF (\$27.6 million), while imposing the Discretionary Reduction (loss of \$44 million) as the Governor proposes. For example, Asheville City, Charlotte-Mecklenburg, Durham, Wake, and Winston Salem-Forsyth

²² *The Public School Forum’s Friday Report* (May 19, 2006), *supra* note 7, at 1.

²³ *Id.* at 3-6

²⁴ *Id.* at 2.

would share \$3.8 million in DSSF funding, but lose \$10.6 million to Discretionary Reductions, for a net *loss* of \$6.8 million in education funding.

iv. The Only Budget Responsive to the Needs of All North Carolina School Children Fully Funds Low Wealth and the DSSF, and Eliminates the Discretionary Reduction

Amici note that as of this writing, the House budget nets the most (\$86 million) for education by fully funding Low Wealth and ending the Discretionary Reductions.²⁵ But *Amici* contend this budget fails to protect the constitutional rights of disadvantaged students in North Carolina. Full funding of the DSSF is a necessary component of meeting the State's obligation.

d. Amici Support Salary Increases and High School Reform, But Not Over Fully Funding Low Wealth, Fully Funding the DSSF, And Ending the Discretionary Reduction

i. Salary Increases Are Insufficient To Address North Carolina's Severe Teacher Shortage

All four budgets propose using \$323 million from General Fund Reserves to increase teacher salaries by an average 8% and thus "surpass the national average by 2008-09."²⁶ *Amici* support this salary increase for teachers, who deserve fair compensation for their service to children as well as the public good. However, *Amici* recommend that such *salary increases should be part of a comprehensive plan* to ensure the constitutional guarantee of:

a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.²⁷

²⁵ *The Public School Forum's Friday Report* (May 19, 2006), *supra* note 7. Under the budgets of the Senate and the Appropriations Subcommittee, education stands to gain only \$44 million and under the Governor's budget, it gains only \$2 million!

²⁶ Elaine Mejia, N.C. Budget & Tax Center, *The Senate's Proposed 2006-07 Budget Tax Cuts, Spending Increases, and Future Shortfalls*, BTC Reports 6 (May 2006), http://www.ncjustice.org/media/library/722_btcrptsenbudmay302006pdf.pdf.

²⁷ *Hoke County et al v. State*, No. 95 CVS 1158, Final Judgment, April 4, 2002.

Last year, North Carolina colleges and universities produced only one-third of the teachers needed to fill 11,000 vacant teaching positions in our schools.²⁸ At the same time, the average teacher turnover rate per district exceeded 12% annually, and came close to 25% annually in some districts and 50% annually in some schools.²⁹ Currently, *over half* of North Carolina’s new teachers – including lateral entry teachers – *leave the teaching profession* within five years.³⁰

Higher pay is central to attracting and retaining good teachers. But as this Court recently noted, good teachers will not stay where their work is not adequately supported. According to results from North Carolina’s 2004 Teacher Working Conditions Study, “improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students.”³¹ Yet teacher supports urged by the State Board of Education are omitted from all four proposed budgets. For example, the State Board of Education unsuccessfully sought a recurring allotment of \$45,137,692 to provide more planning time for teachers; \$9 million in tuition support to encourage more college students to become teachers; and \$9 million to improve the State’s poor record of retaining lateral entry teachers.³²

²⁸ Ctr. for Teaching Quality, *Teacher Working Conditions are Student Learning Conditions: A Report to Governor Easley on the 2004 Teacher Working Conditions Survey* 1 (2004), http://www.teachingquality.org/pdfs/TWC_FullReport.pdf; *Community Colleges to Provide Programs of Study for Lateral Entry Teachers*, The Open Door (North Carolina Community College System, Raleigh, N.C.) Summer 2005 at 2; Inauguration Speech, University of North Carolina President Erskine Bowles, http://intranet.northcarolina.edu/docs/pres/news/041206_Bowles_Inaugural_Address.pdf.

²⁹ *Id.* at 1.

³⁰ *Id.*

³¹ N.C. Dep’t of Pub. Instruction, *State Education Plan*, Oct. 25, 2004, http://www.ncforum.org/resources/collateral/102504_StatePlan.pdf.

³² N.C. Dep’t of Pub. Instruction, *Comparison of FY 2006-07 Proposed Budgets*, May 23, 2006, http://www.ncforum.org/doclib/news/collateral/Graphs/200607_budget_comparisons.pdf

Amici are troubled that the Governor, the Legislature and the State Board of Education³³ seem to be at odds on the best policies for teacher recruitment and retention. Although commendable efforts are underway in several corners, including the community college and the UNC systems, the State lacks a comprehensive planning process to address its teacher crisis, including the critical issue of working conditions. In its 2004 analysis of North Carolina teacher working conditions, the Center for Teacher Quality warned that “without comprehensive and sustained efforts to improve teacher working conditions, much of the State’s notable reform efforts could go unfulfilled.”³⁴ *Amici* urge the Court and State leaders to complete and carry out a comprehensive plan to address the teacher crisis in North Carolina.

**ii. “Se Desespera Uno Mucho Por No Aprender”
 (“One Grows Desperate For Lack of Learning”)**³⁵

North Carolina’s shortage of certified teachers disproportionately harms the State’s most vulnerable students. Among the hardest hit are Limited English Proficient (LEP) students, whose rights are well-established both under *Leandro* and federal law:

Where inability to speak and understand the English language excludes national minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.³⁶

Between October 2003 and October 2005, LEP enrollment in North Carolina grew from 70,912 students to 83,627 students.³⁷ North Carolina was, and is, unprepared to educate the

³³ See, North Carolina State Board of Education, *About the State Board of Education*, http://www.ncpublicschools.org/state_board/AboutSBE.html (last visited June 12, 2006) (“The State Board of Education is charged with ‘supervising and administering the free public school system and the educational funds provided for its support.’”).

³⁴ Center for Teacher Quality, *supra* note 28, at 4.

³⁵ María Teresa Unger Palmer, *The Schooling Experience of Latina Immigrant High School Students* 122 (2003) (unpublished manuscript on file with the UNC School of Education).

³⁶ *Lau v. Nichols*, 414 U.S. 563 (1974).

³⁷ N.C. Dep’t of Pub. Instruction, Curriculum and School Reform, English as a Second Language, *N.C.’s LEP Numbers Since 2000-2001*, http://community.learnnc.org/dpi/esl/archives/2005/06/ncs_lep_numbers.php (last visited June 12, 2006).

growing numbers of LEP students enrolled in its schools. *Prior* to the State's surge in LEP enrollment, the ratio of certified ESL teachers to LEP students *averaged* one teacher for every ninety-eight students and certified ESL teachers in North Carolina reported spending less than two hours a week with each of their LEP students.³⁸ This shortage of ESL teachers, combined with the inadequacy of State ESL funding, has left districts scrambling to fill ESL positions. Buncombe County Schools, for example, has canceled its elementary Spanish classes and re-assigned Spanish teachers to teach ESL.³⁹

The success of LEP students is central to this Court's efforts to bring schools into constitutional compliance in the districts producing the State's 44 Priority High Schools and Low Performing High Schools. Many of these districts have high concentrations of LEP students: for example, Alamance-Burlington has 2,428 LEP students; Charlotte-Mecklenburg, 13,307 LEP students; Guilford, 4,085 LEP students; and Winston-Salem-Forsyth, 4,238 LEP students.⁴⁰ LEP students in these districts are outscored by their non-LEP peers at appalling rates. For example, in 2004-05, EOC composite scores for LEP students in Alamance-Burlington County revealed that only 40.3% of the tests taken by LEP students were at grade level, compared with 73.9% of EOC tests taken by non-LEP students, *resulting in an achievement gap of 33 percentage points between LEP and non-LEP students in the district.*⁴¹

³⁸ Lucy Hood, *NC Speaks Migrants' Language*, <http://www.mysanantonio.com/news/education/stories/1041405.html> (last visited June 12, 2006); Nat'l Pub. Radio, *Educating Latinos: An NPR Special Report*, http://www.npr.org/programs/atc/features/2002/nov/educating_latinos/ (last visited June 12, 2006).

³⁹ *We Need a Grass-roots Effort to Persuade N.C. Leaders to Step up Education Funding*, <http://www.citizenimes.com/apps/pbcs.dll/article?AID=/20050810/OPINION03/50809023&SearchID=73217553538043> (last visited June 12, 2006).

⁴⁰ N.C. Dep't of Pub. Instruction, *Headcount for Limited English Proficient Students in North Carolina Public Schools as of October 1, 2005* (last modified March 14, 2006) <http://community.learnnc.org/dpi/esl/>.

⁴¹ N.C. Dep't of Pub. Instruction, *supra* note 1.

This year, the State Board of Education requested \$5.2 million to target LEP instruction in North Carolina in 2006-07.⁴² *None* of the proposed budgets include this request. North Carolina cannot close the huge achievement gap between LEP and non-LEP students in these or other districts without an aggressive plan to train, deploy and support certified ESL teachers.⁴³ Symptomatic of the crisis in recruitment and retention, there seems to be no comprehensive planning to meet the State's great need for ESL teachers.

iii. The Constitution Requires Intervention in Failing High Schools

For a year and half, this Court has focused the State's attention on the problem of low performing high schools. Last year, the State had 44 "Low-Performing" and "Priority" high schools with composite EOC scores below 60%. In other words, four out of ten students at these schools ended the school year with test scores below grade level.⁴⁴ (Brief Appendix, Chart 2) In some schools, performance was even worse: in 16 of the 44 schools, 50% or more of the students tested below grade level, and in six of the 44 schools, 60% or more tested below grade level.

This Court expressed particular alarm about pervasively low performance in 19 (of the 44) high schools, where fewer than 55% of the students reached grade level on EOCs during each of the last four years. In fact, if the measure is changed to whether 60% of students are reaching grade level on EOCs, the picture worsens considerably. In 2004-05, 28 high schools failed to bring at least 60% of their students to grade level on EOCs for each of the last four

⁴² *The Public School Forum's Friday Report* (May 19, 2006), *supra* note 7.

⁴³ Jonathan Watts Hull, Southern Legislative Conference, *Language Diversity and Southern Schools: The Growing Challenge* (1999) <http://www.slcatlanta.org/Publications/Education/LanguageDiversity.pdf> ("the single greatest barrier to the improvement of instructional programs for LEP students" in Southern schools is the shortage of certified bilingual or ESL teachers").

⁴⁴ Performance composite scores reflect the percent of students in a school who have test scores at or above Achievement Level III (representing grade-level performance) in the subjects tested. N.C. Dep't of Pub. Instruction, *Determining Composite Scores in the ABCs Model*, Revised Apr. 10, 2005, <http://www.ncpublicschools.org/docs/accountability/reporting/abc/2004-05/composite.pdf> (last visited June 8, 2006).

years *and* 14 additional high schools failed to bring at least 60% of their students to grade level in three of the past four years.⁴⁵ (See Brief Appendix, Chart 3)

Low performing high schools share high concentrations of at-risk students. And while many are from low wealth districts, a second category of schools is over-represented: segregated, urban schools from some of the State's wealthiest districts, including Charlotte-Mecklenburg, Durham, Guilford and Winston Salem-Forsyth.⁴⁶ Student assignment policies in these districts have concentrated poor, minority students into high poverty schools, despite overwhelming evidence that high poverty schools are rarely high performing;⁴⁷ they have higher numbers of inexperienced, uncertified teachers;⁴⁸ they experience the worst teacher turnover;⁴⁹ they have low parental involvement, financial support and political clout;⁵⁰ they offer less rigorous curricula;⁵¹ and they place more focus on discipline than academics.⁵²

Without a concerted effort to guide and assist districts to adopt wiser student assignment policies, the State can now *expect* large numbers of urban students who are poor and nonwhite to suffer the added disadvantage of attending a high poverty school. Consider for example, the distribution of high school students in Charlotte-Mecklenburg Schools ("CMS"). Four CMS

⁴⁵ Data available on DPI's website, <http://abcs.ncpublicschools.org/abcs> (last visited June 8, 2006).

⁴⁶ N.C. Dep't of Pub. Instruction, *North Carolina Public Schools Statistical Profile 2005*, <http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf> (last visited March 21, 2006).

⁴⁷ Douglas N. Harris, *Ending the Blame Game on Educational Inequality: A Study of High Flying Schools and NCLB*, Arizona State University, March 2006 (finding 1.1% of the nation's high poverty schools are high performing on standardized tests, low poverty schools are 22 times more likely to be high performing than high poverty schools, and low poverty, low minority schools are 89 times more likely to be high performing than high poverty, minority schools).

⁴⁸ Washington Post, Sept. 10, 2002, p.A5; Richard M. Ingersoll, cited in *Parsing Out the Achievement Gap*, Educational Testing Service, 2003, p. 11; Linda Darling-Hammond, National Commission on Teaching and America's Future, *Doing What Matters Most: Investing in Quality Teaching*, 1997, at 25-27.

⁴⁹ Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *The Condition of Education* (Washington, DC: U.S. Government Printing Office, 2005) (teachers in high-poverty schools twice as likely as counterparts in low poverty schools to transfer to different school).

⁵⁰ Richard D. Kahlenburg, *All Together Now: Creating Middle Class Schools through Public School Choice* (Washington D.C.: Brookings Institution Press, 2001) at 62-64.

⁵¹ *Id.* at 72-74.

⁵² Paul E. Barton, Educ. Testing Serv., *Parsing the Achievement Gap: Baselines for Tracking Progress* 19 (2003).

high schools – Garinger, Waddell, West Charlotte, and West Mecklenburg – are on the Court’s list of 19 schools that must improve *this year* or close. The futures that will rise or fall inside these schools primarily belong to at-risk students: of CMS’s total number of low income students, 36% are assigned to CMS’s *four worst high schools*. Thirty-five percent of the district’s African American students are assigned to these *four worst high schools*, and 35% of its LEP students are assigned to these *four worst high schools*. On the other hand, only 11% of CMS’s non-economically disadvantaged students attend these schools, and *only 6% of white students attend them*.⁵³ (See Brief Appendix, Chart 4).

Local district policies that segregate disadvantaged students into racially and economically isolated schools *do not relieve the State of its obligation to ensure these students are receiving a sound basic education*. If anything, it is incumbent on the Court and the State to understand and be prepared to address the growing magnitude of this problem.

The CMS high school crisis has not been lost on the Court. Last year, it ordered the State and CMS to design and implement an urgent plan for school improvement *during* the 2005-06 school year. As a result, West Charlotte High School Principal John Modest received concerted assistance from turnaround teams deployed by the Department of Public Instruction to improve academic performance in CMS’s low performing high schools. In May 2006, Dr. Modest reflected on the challenges West Charlotte continues to face. In April 2006, the district offered \$10,000 as a signing bonus to attract certified teachers to West Charlotte. One month later, not even one qualified teacher had agreed to take the \$10,000 and come to West Charlotte.⁵⁴ On the other hand, Modest expected 15 to 20 teachers will not return next year to West Charlotte. The

⁵³ Data from Charlotte-Mecklenburg Schools School Profiles, (2006), <http://www.cms.k12.nc.us/departments/instrAccountability/schlProfile05/profiles.asp>.

⁵⁴ Ann Doss Helms, *West Charlotte High Works to Raise Scores*, The Charlotte Observer, May 30, 2006, <http://www.charlotte.com/mld/charlotte/living/education/14696378.htm>.

condition of ninth graders, of particular interest to this Court, is not promising for West Charlotte. In Fall 2005, 730 ninth graders enrolled at the school. By Spring 2005, 164 had been suspended, over 200 had excessive absences, and 50 had left the school altogether.⁵⁵

Amici have welcomed the Court's unforgiving view of distressingly low performance in so many of North Carolina's high schools. However, while *Amici* agree that the effective school leadership demanded by the Court is critical, even schools with the best leaders need sufficient resources to address the myriad of disadvantages present in literally every one of these high schools. *Amici* repeat their contention that full funding of both Low Wealth and the DSSF is necessary to sustain an effective educational program in North Carolina's priority high schools. This is especially true in light of the State's latest plans to monitor, assist and, if necessary, restructure low performing high schools throughout North Carolina.⁵⁶ The \$14.2 million the Governor, the Senate and the Appropriations Subcommittee propose for expansion of "Learn and Earn" high schools and theme-based, smaller "New Schools" is far too little to sustain the State's plans for high school reform.

e. State Funding for Students with Disabilities is Unconstitutionally Inadequate

Children with special learning needs require more and different resources in order to have the opportunity to obtain a constitutionally adequate education.⁵⁷ These children *can* learn, but not without trained teachers, assistive technology and other special resources.⁵⁸ It was established in 1994, and reaffirmed by the Governor's Education Taskforce in 2002, that it takes

⁵⁵ *Id.*

⁵⁶ Michael F. Easley, Governor, Press Release, *Gov. Easley Unveils Agenda to Improve Low Performing High Schools*, June 13, 2006.

⁵⁷ *See, Hoke County Bd. of Educ. v. State*, 358 N.C. at 636-37, 599 S.E. 2d at 389-90; *See also* N.C. CONST. art. 1, § 15; N.C. CONST. art. 9, § 2.

⁵⁸ Mary N. Watson, Exceptional Children Director, N.C. Dep't of Pub. Instruction, (Sept. 2005), <http://www.ncsdp.org/about/index.html> ("We have demonstrated that with appropriate instructional strategies and quality trained and supported teachers, students with disabilities can make significant yearly progress in academic performance.").

2.3 times the cost of educating a non-disabled child to provide a sound basic education to children with disabilities.⁵⁹ This number translates into a real educational opportunity for a productive life. North Carolina fails to adequately fund education for students with disabilities in two ways; it fails to fund the special needs of *all* the children with disabilities, and it fails to provide a constitutionally adequate amount of money for the children it does fund. First, North Carolina “caps” its funding of children with disabilities at 12.5 percent of an LEA’s average daily membership, leaving 92 of our 115 LEAs who have a greater percentage with an “unfunded headcount” of special needs children. Moreover, North Carolina will only serve a statewide maximum of 168,602 students when our school districts have identified, and try to serve, 189,405.⁶⁰ Second, North Carolina only allocates \$2,838.39 additional dollars for children identified with special needs when the agreed cost of providing a constitutionally adequate education is nearly twice that amount.

The inadequate funding has real consequences to children throughout North Carolina. Hoke County, for example, identified 1,035 of their pupils who needed accommodations in order to learn in the 2003-04 school year.⁶¹ This number exceeds the 12.5% cap by 190 children for which Hoke County does not receive any additional funds. The 2003-04 state per-pupil allocation to Hoke County for regular education students, excluding nutrition, was \$4,559.86.⁶² Using this figure as a baseline, the cost of educating a student with a disability in Hoke County is \$10,487.86, but the state only allocates \$7,398.25, and that allocation is only for the 844 students

⁵⁹ See, Legislative Research Comm’n, Comm. on Students at Risk, *Students at Risk: Report to the 1993 General Assembly of North Carolina*, LC 4092 .N8 S78 (1993); *Let’s Finish the Job: Building a System of Superior Schools, A Report from the Governor’s Education Task Force* 32 (2002).

⁶⁰ *Current Operations and Capital Improvements Appropriations Act of 2005*, N.C. General Assembly Session Law 2005-276, Senate Bill 622 (2005). Section 7.12 of Session Law states that \$2,838.39 per child shall be allocated for a maximum of 168,602 children for the 2005-2006 school year. “Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of the 2005-2006 allocated average daily membership in the local school administrative unit.”

⁶¹ N.C. Dep’t of Pub. Instruction, *supra* note 8, at 19 tbl. 9.

⁶² *Id.*, at tbl. 25.

(12.5%) the State funds. Hoke County has a deficit of \$3,612.03 per special needs student, and a total annual deficit to serve the 1,035 children of more than \$3.5 million. Wake County also exceeds the 12.5% cap, with 17,278 (15%) children identified with special needs. In Wake County the deficit is more than \$61 million.⁶³

The statistics confirm that North Carolina's special needs children are not receiving a constitutionally adequate education. Increased funding is critical to the provision of an educational opportunity that will *improve* EOC test scores of students with disabilities.⁶⁴

Children with disabilities have been and continue to be disproportionately represented among students who are at risk for academic failure. In the 2004-2005 school year, only 46.6 percent of students with disabilities passed the ABCs End-of-Grade Tests, compared to the 85.1 percent of non-disabled students.⁶⁵ In the ABCs End-of-Course Tests, 47.0 percent of students with disabilities passed, compared to 74.8 percent of all students.⁶⁶ The state's failure of adequate funding also shows up in the graduation rate – in 2003-2004, only 9 percent of high school graduates were students with disabilities, despite making up over 14 percent of the student body.⁶⁷

The current budget proposals ignore these children, as if their needs do not exist. The Department of Public Instruction's extremely modest request for the Exceptional Children

⁶³ *Id.*, at tbl. 9.

⁶⁴ Mary N. Watson, *supra* note 58.

⁶⁵ 2004-05 *School Year State Report Card*, <http://www.ncschoolreportcard.org/src/stateDetails.jsp?Page=1&pYear=2004-2005> (last visited June 8, 2006).

⁶⁶ *Id.* These numbers do not include the 16.2 percent of students with disabilities who took Alternate Assessments. *See, 2004-04 Statewide Number of Students Tested, Taking Alternate Assessment Academic Inventory (AAAI), and Alternte [sic] Assessment Portfolio (AAP), Grades 3-8, The North Carolina State Testing Results, 2004-05* 41-2 tbls. 23, 24.

⁶⁷ *North Carolina Part B Annual Performance Report, July 2003 – June 2004* 37, <http://www.ncpublicschools.org/docs/ec/data/performance/2005annualreport.pdf> (last visited June 8, 2006).

Program is \$18 million.⁶⁸ Neither the Governor nor the Senate budget proposals include any increased funding for Exceptional Children, and the House budget only includes \$1 million, which according to the House's calculations "increases funding per student by \$5.87. . ."⁶⁹ The "funded headcount" at present is 168,602, while the real headcount of children with special needs served in 2004-05 was 189,405. The House budget would result in zero additional resources for over 21,000 children with special needs. In 2002, we reported to this Court that approximately 50% of all school districts in North Carolina were over the 12.5% cap. Today 92 of the 115 LEAs – 80% - have special needs populations exceeding 12.5%. These school districts struggle to educate special needs children without a penny more than the base dollars they receive for a normally learning child. This is real money that is needed for smaller class size, speech therapy, behavioral assessments, interpreters for students who are deaf, specialized reading instruction for students who are dyslexic, and certified teachers, among many other things. These children are not receiving a sound basic education, and they cannot wait years more for adequate funding of the education they need now.

II. SEVERE AND PERVASIVE OPPORTUNITY GAPS: TENS OF THOUSANDS OF CHILDREN AND ADOLESCENTS REMAIN DEPRIVED OF THEIR CONSTITUTIONALLY-PROTECTED RIGHT TO A SOUND BASIC EDUCATION.

The constitutional right of every child in North Carolina to have the equal opportunity to receive a sound basic education is now well-established.⁷⁰ Under our laws, a sound basic education provides:

⁶⁸ Even if the House, Senate, and Governor were to accept DPI's recommendations in whole, it would only edge up the ratio .02%. At the suggested rate, it would take another 30 years, assuming all other things equal, to reach the 2.3 ratio.

⁶⁹ *House Appropriations Comm. Report on The Continuation, Expansion, and Capital Budgets F-2*, <http://www.ncleg.net/sessions/2005/budget/2006/budgetreport6-13-2.pdf>.

⁷⁰ *Leandro v. State of North Carolina*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997).

- (1) sufficient knowledge of fundamental mathematics and physical sciences 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 formal education or gainful employment in contemporary society. (Emphasis added.)⁷¹

Despite this clear mandate, the State continues to fail thousands of students at-risk of academic failure as demonstrated by the persistent and pervasive achievement gaps that separate poor, minority, limited English proficient, and disabled students from their peers.

a. Achievement Gaps in Elementary and Middle Schools

The Court has properly focused attention on the high school problem. But student performance measures at the elementary and middle school levels illustrate that opportunity gaps begin long before students enroll in high school. Composite scores for End of Grade (EOG) Reading and Math examinations for grades three through eight are one measure of student achievement at the earlier grades.⁷² Statewide, during 2004-05, *more than one in five* (20.3%) of reported composite scores for Reading and Math in these grades was *below* grade level.⁷³ (See Brief Appendix, Chart 5)

Disparities between racial and ethnic subgroups, by poverty status, by English proficiency, and by disability status were striking. Nearly twelve percent of EOG reading and

⁷¹ *Id.*

⁷² Students in grades 3-8 must complete End-of-Grade tests in reading and mathematics at the conclusion of each school year.

⁷³ Students are considered to be performing below grade level if they do not receive a score of Achievement Level III or IV on the state's End-of-Grade tests.

math tests taken by white students in grades three through eight had scores below grade level compared with 33.9%, 31.5%, and 28.1% of tests taken by Black, Hispanic, and American Indian students, respectively, and the evidence is clear that these disparities have persisted for many years.⁷⁴ (See Brief Appendix, Chart 6) Tests taken by students eligible for free and reduced price lunch were *three times more likely* to be below grade level than those taken by their non-FRL peers, tests taken by students with limited English proficiency (LEP) were *two and one-half times more likely* to be below grade level compared with their non-LEP peers, and tests taken by students with disabilities were *three and one-half times more likely* to be below grade level than tests taken by non-disabled students.⁷⁵

b. Achievement Gaps in High Schools

North Carolina law requires high school students enrolled in the following courses to complete End-of-Course tests at the end of the year: English I, Algebra I, Algebra II, Geometry, Biology, Chemistry, Physical Science, Physics, Civics and Economics, and U.S. History. Composite scores for *all* of these End-of-Course tests provide one important measure of student achievement. In 2004-05, *more than one-in-four* EOC Composite scores (25.2% of tests taken) reflected student performance *below* grade level. (See Brief Appendix, Chart 7) Disparities between racial and ethnic subgroups, by poverty status, by English proficiency, and by disability status were striking. Sixteen percent of EOC tests taken by White students had scores below grade level compared with 44.2%, 36.3%, and 32.8% of tests taken by Black, Hispanic, and American Indian students, respectively, and these students were *more than twice as likely* as White students to score below grade level for *each year* between 2002-03 and 2004-05.⁷⁶ (See Brief Appendix, Chart 8) *Nearly four in ten* (39.1%) of EOC tests taken by students eligible for

⁷⁴ N.C. Dep't of Pub. Instruction, *supra* note 1.

⁷⁵ *Id.*

⁷⁶ *Id.*

free and reduced price lunch were below grade level and *more than half* of EOC tests taken by students with limited English proficiency and students with disabilities were below grade level, 53.5% and 53.0%, respectively.⁷⁷

Students entering the ninth grade in 2006-07 academic year will be the first class to encounter the State's new regime of "exit standards."⁷⁸ These standards require grade level performance on EOCs in Algebra I; Biology; English I; Civics and Economics; and U.S. History.⁷⁹ For purposes of this brief, *Amici* analyzed EOC trend and subgroup data for Algebra I, Biology, and English I. In those three subjects alone, without immediate attention and dramatic improvements in the coming years, tens of thousands of North Carolina students will literally fail to meet state graduation requirements. For example, in 2004-05, North Carolina high school students were below grade level on more than *one in three* (36.4%) EOC tests in Biology and nearly *one on five* (19.7%) EOC tests in Algebra I.⁸⁰ (See Brief Appendix, Chart 9)

Biology EOC scores illustrate North Carolina's opportunity gap. *More than six of ten* tests (60.3%) taken by Black students, *more than one-half* (51.6%) of tests taken by Hispanic students, and 46.4% of tests taken by American Indian students had scores below grade level in 2004-05. Biology scores were also significantly lower among students eligible for free and reduced price (55.3% below grade level), students with limited English proficiency (74.5% below grade level) and students with disabilities (66.4% below grade level).⁸¹ Algebra I and English I outcomes, with similar disparities, are provided in Charts 10 and 11 in the Appendix.

⁷⁷ *Id.*

⁷⁸ N.C. Dep't of Pub. Instruction, *supra* note 2.

⁷⁹ N.C. Dep't of Pub. Instruction, *supra* note 1.

⁸⁰ *Id.*

⁸¹ *Id.*

III. AMICI URGE THE COURT TO ACT

Opportunity gaps define the educational experience of tens of thousands of North Carolina children. *Leandro* requires more. *Amici* respectfully request the Court to convene a Status Hearing immediately after the legislature adjourns to assess the executive and legislative responses to *Leandro* and to determine how the State plans to address the unmet educational *rights of every* public school student in North Carolina. In addition, *Amici* respectfully request the Court to *order and enforce* five immediate steps:

- a. Full and immediate funding for the Low Wealth Fund;
- b. Full and immediate funding for the Disadvantaged Student Supplemental Fund;
- c. Full and immediate elimination of the Discretionary Reductions imposed on school districts;
- d. By October 15, 2006, the State Board of Education shall provide this Court with a comprehensive and detailed report on the use of Personal Education Plans (PEP) in North Carolina. At a minimum, this Report should include an analysis of where PEPs have not improved student outcomes, why they have not improved student outcomes, and the State Board of Education's plan and timeline to ensure *effective* PEPs are for every at-risk child attending a North Carolina public school; and,
- e. By December 31, 2006, the State shall provide this Court with its "Plan to Fund North Carolina Education in the 21st Century," which shall include how the State will determine the costs necessary to educate *all* of North Carolina's children in the near and far term.

Respectfully submitted, this the ____ day of June, 2006.

The Rural School & Community Trust

By: Gregory Malhoit/SHP
Gregory Malhoit
N.C. State Bar No. 6275
NCCU School of Law
1512 S. Alston Avenue
Durham, NC 27707
(919) 530-7463
Email address: gmalhoit@ncu.edu

Advocates For Children's Services Of Legal Aid Of North Carolina

By: Lewis Pitts/SHP
Lewis Pitts
N.C. State Bar No. 20592
201 W. Main Street, Ste. 400
Durham, NC 27702
(919) 226-0051 ext. 422
Email address: LEWISP@legalaidnc.org

Carolina Legal Assistance, Inc.

By: Susan H. Pollitt
Susan H. Pollitt
N.C. State Bar No. 12648
P.O. Box 2446
Raleigh, NC 27602
(919) 856-2195
Email address: spcla@mindspring.com

North Carolina Justice Center

By: Sheria Reid/SHP
Sheria Reid
N.C. State Bar No. 24477
P.O. Box 28068
Raleigh, NC 27611
(919) 856-3192
Email address: sheria@ncjustice.org

El Pueblo, Inc.

By: Joseph DiPierro/SHP
Joseph DiPierro
N.C. State Bar No. # 17393
5 W. Hargett Street, Suite 1004
Raleigh, NC 27601
(919) 821-4640
Email address: dipierro@mindspring.com

Triangle Urban League AND

North Carolina Conference of NAACP Chapters

By: Alan McSurely/SHP
Alan McSurely
N.C. State Bar No. 15540
114 West Parrish Street Second Floor
Durham, NC 27701
(919) 682-4700
Email: lawyers@mcsurely.com

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum of Law was this day placed in the United States mail, postage prepaid and addressed to:

Grayson G. Kelley, Esquire
Thomas J. Ziko, Esquire
Laura Crumpler, Esquire
Office of the Attorney General
N.C. Department of Justice
114 W. Edenton Street
Raleigh, NC 27601
Counsel for Defendants

Robert W. Spearman, Esquire
Melanie Black Dubis, Esquire
Parker Poe Adams & Bernstein, L.L.P.
P.O. Box 389
Raleigh, NC 27602
Counsel for Plaintiffs

H. Lawrence Armstrong, Jr., Esquire
Armstrong Law, PLLC
119 Whitfield Street
P.O. Box 187
Enfield, North Carolina 27823
Counsel for Plaintiffs

Ann L. Majestic, Esquire
Tharrington, Smith L.L.P.
209 Fayetteville Street Mall
P.O. Box 1151
Raleigh, NC 27602
Counsel for Charlotte-Mecklenburg Schools as Plaintiff-Intervenor and Re-aligned Defendant

Audrey Anderson, Esquire
Hogan & Hartson, L.L.P.
555 13th Street NW
Washington, DC 20004
Counsel for Charlotte-Mecklenburg Schools as Plaintiff-Intervenor and Re-aligned Defendant

Julius Chambers, Esquire
S. Luke Largess, Esquire
Ferguson, Stein, Chambers,
Wallas, Adkins, Gresham & Sumter, P.A.
P.O. Box 36486
Charlotte, NC 28636
Counsel for Penn Plaintiff Intervenors

Jack Boger
Ashley Osment
UNC Center for Civil Rights
Van Hecke-Wettach Hall
Campus Box 3380
Chapel Hill NC 27599-3380
Counsel for Penn Plaintiff Intervenors

This, the ____ day of June, 2006

BRIEF APPENDIX

Brief Appendix Index

1. Chart 1: Major Education Spending Proposed for Fiscal Year 2006-07	2
2. Chart 2: Forty-four Priority and Low Performing High Schools, 2004-05	3
3. Chart 3: North Carolina High Schools with Less than Sixty Percent of Students Performing At or Above Grade Level for At Least Three of the Previous Four Years, 2001-02 Through 2004-05	4
4. Chart 4: Percent of Charlotte-Mecklenburg Schools (CMS) Students Assigned to Four CMS Schools Facing Closure by Court Order	6
5. Chart 5: Composite Scores for End-of-Grade Reading and Math Examinations, Grades Three Through Eight, 2004-05	7
6. Chart 6: Composite Scores for End-Of-Grade Reading and Math Examinations for Grades Three Through Eight: Percent of Tests with Scores Below Grade Level by Race and Ethnicity, 2001-02 Through 2004-05.....	8
7. Chart 7: Composite Scores for End-of-Course (EOC) Examinations (All Subjects), 2004-05	9
8. Chart 8: Composite Score Tests for All EOC Subjects: Percent of Tests with Scores Below Grade Level by Race and Ethnicity, 2001-02 Through 2004-05.....	10
9. Chart 9: End-of-Course Scores for Biology, 2004-05	11
10. Chart 10: End-of-Course Scores for Algebra I, 2004-05	12
11. Chart 11: End-of-Course Scores for English I, 204-05.....	13

Chart 1
Major Education Spending Proposed for Fiscal Year 2006-07

Budget	Low Wealth (Full Funding = \$42 million)	Elimination of Discretionary Cuts	Disadvantaged Student Supplemental Fund (Full Funding = \$220 million) ⁸²	Teacher Salary Increases	Funding for High School Reform
Governor	\$42 million	\$0	\$27 million	\$323 million	\$14 million
N.C. Senate	\$0	\$44 million	\$27 million	\$323 million	\$14 million
N.C. House	\$42 million	\$44 million	\$0	\$323 million	\$14 million
Appropriations Subcommittee	\$0	\$44 million	\$27 million	\$323 million	\$14 million

⁸² Letter from Howard N. Lee, Chairman, N.C. State Bd. of Educ., and Michael E. Ward, Superintendent of Public Instruction, to Howard Manning, Jr., Superior Court Judge (June 7, 2004), <http://www.ncpublicschools.org/newsroom/news/2003-04/060804/> (last visited June 13, 2006) (estimating that full funding of DSSF would cost \$220 million).

Chart 2
Forty-four Priority and Low Performing High Schools, 2004-05

	School Name	Performance Composite Score
Alamance-Burlington	Hugh M Cummings High	50.7
Anson County	Anson High	53.7
Bertie County	Bertie High	53.2
Columbus County	West Columbus High	59.9
Cumberland County	E E Smith High	51.2
	Westover High	49.8
Lexington City	Lexington Senior High	54.6
Duplin County	James Kenan High	56.8
Durham Public	Hillside High	47.3
	Southern High	54.1
Forsyth County	Carver High	45.6
	Parkland High	59.9
Gaston County	Bessemer City High	58.9
Guilford County	Middle College High at Bennett	20.6
	Dudley High	50.9
	Eastern Guilford High	57.5
	GC Middle College High	55.8
	High Point Central	52.4
	Ben L Smith High	45.5
	Southern Guilford High	58.3
	T Wingate Andrews High	35.2
	Middle College High at NC A&T	24.6
Halifax County	Northwest High	39.1
	Southeast Halifax High	37.2
Weldon City	Weldon High	57.6
Harnett County	Overhills High School	54.7
Hertford County	Hertford County High	48.3
Hoke County	Hoke County High	53.2
Charlotte-Mecklenburg	E E Waddell High	48.4
	East Mecklenburg High	59.2
	Garinger High	42.7
	Harding University High	58.8
	Independence High	56.7
	Olympic High	54.4
	Phillip O Berry Academy of Tec	49.1
	West Charlotte High	37.1
	West Mecklenburg High	47.9
	Zebulon B Vance High	53.4
Northampton County	Northampton High-West	46.4
Pasquotank County	Northeastern High	57.7
Rockingham County	Reidsville High	52.4
Warren County	Warren County High	54.8
Washington County	Plymouth High	50.6
Wayne County Public	Goldsboro High	53.5

From N.C. Dep't Pub. Instruction, <http://abcs.ncpublicschools.org/abcs> (last visited June 8, 2006) (Exclusive of

Performance Composite Scores for public charter schools.) Grade span for GC Middle College High was 10-12.
For all other schools, it was 9-12.

Chart 3

North Carolina High Schools with Less than Sixty Percent of Students Performing At or Above Grade Level for At Least Three of the Previous Four Years, 2001-02 Through 2004-05 ^(a,b)

	School Name	Performance Composite Score			
		2004-05	2003-04	2002-03	2001-02
Alamance-Burlington	Hugh M Cummings High	50.7	56.9	48.0	46.1
Anson County	Anson High	53.7	56.0	50.5	49.3
Bertie County	Bertie High	53.2	52.5	50.7	44.1
Caswell County	Bartlett Yancey High	x	59.3	46.6	53.9
Columbus County	West Columbus High	59.9	57.0	54.7	49.8
Cumberland County	E E Smith High	51.2	54.7	54.2	50.2
	Westover High	49.8	47.3	58.1	48.0
	Pine Forest High	x	55.2	52.5	53.4
	Seventy-First High	x	58.1	56.3	55.6
Lexington City	Lexington Senior High	54.6	x	57.1	54.1
Durham Public	Hillside High	47.3	49.8	49.0	46.5
	Southern High	54.1	53.1	54.9	52.8
Forsyth County	Carver High	45.6	46.5	42.0	45.1
	Parkland High	59.9	58.9	57.5	51.5
Gaston County	Hunter Huss High	x	59.5	58.8	58.2
Guilford County	Dudley High	50.9	45.6 ^(c)	48.5 ^(c)	37.2
	Eastern Guilford High	57.5	49.3 ^(c)	59.2 ^(c)	57.5
	Ben L Smith High	45.5	44.1 ^(c)	41.4 ^(c)	43.8
	T Wingate Andrews High	35.2	x	51.7 ^(c)	56.4
Halifax County	Northwest High	39.1	43.7	44.4	40.9
	Southeast Halifax High	37.2	43.7	35.7	29.7
Weldon City	Weldon High	57.6	49.2	37.6	27.1
Hertford County	Hertford County High	48.3	39.9	46.8	36.2
Hoke County	Hoke County High	53.2	54.9	57.6	54.3
Charlotte-Mecklenburg	E E Waddell High	48.4	40.7	42.4	40.2
	Garinger High	42.7	44.9	39.0	36.7
	Independence High	56.7	51.4	57.5	x
	Olympic High	54.4	54.8	57.0	49.8
	Phillip O Berry Academy of Tec	49.1	44.5	50.3	x
	West Charlotte High	37.1	31.0	25.5	31.2
	West Mecklenburg High	47.9	48.0	44.0	48.1
	Zebulon B Vance High	53.4	49.4	50.4	57.8
Northampton County	Northampton High-West	46.4	49.8	47.8	39.9
	Northampton High-East	x	56.5	39.6	49.8
Pasquotank County	Northeastern High	57.7	x	53.0	54.6
Robeson County	Red Springs High	x	58.5	46.4	41.4
Rockingham County	Reidsville High	52.4	57.4	49.3	54.5
Vance County	Southern Vance High	x	56.8	52.3	51.8
	Northern Vance High	x	59.6	49.6	46.7
Warren County	Warren County High	54.8	x	56.8	48.9

Washington County	Plymouth High	50.6	54.0	42.0	39.7
Wayne County Public	Goldsboro High	53.5	50.4	52.8	45.1

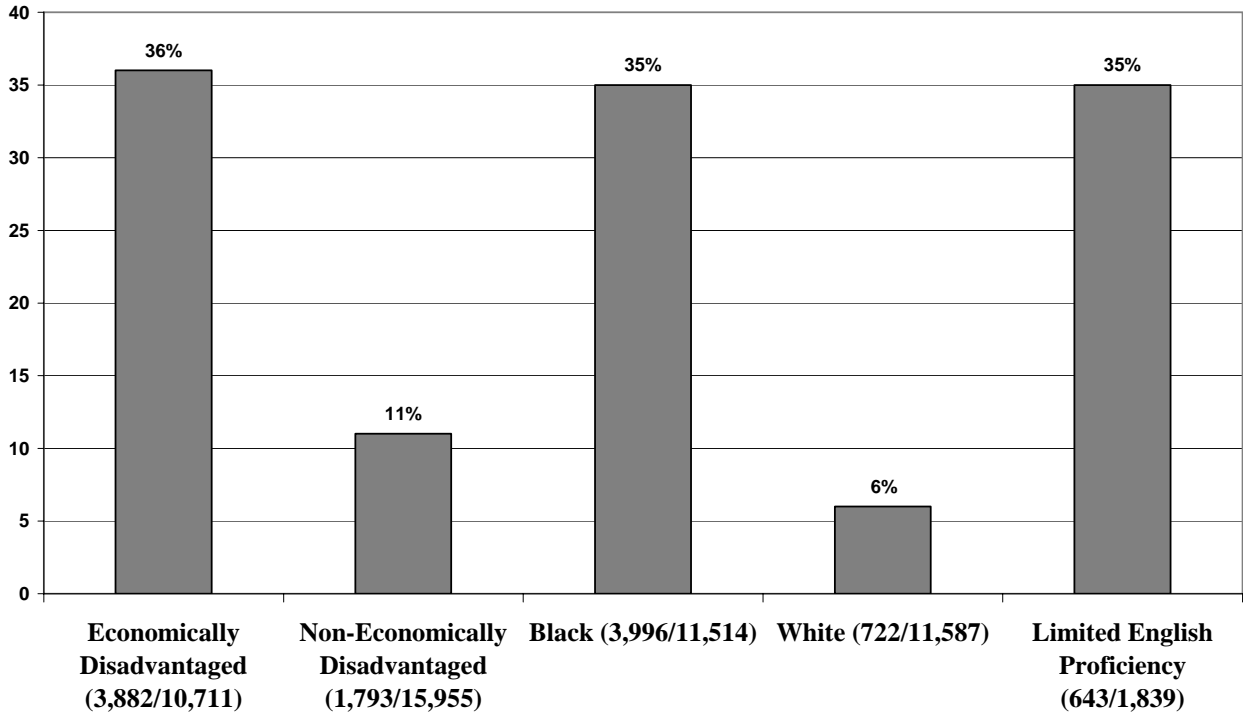
Notes regarding Chart 3

From ABC Results, Growth and Performance of North Carolina Public Schools for 2001-02 through 2004-05, as reported by the North Carolina Department of Public Instruction, <http://abcs.ncpublicschools.org/abcs> (last visited June 8, 2006). This table does not include Performance Composite Scores for public charter schools.

- (a) Except as otherwise noted, enrollment in these schools included students in grades 9-12.
- (b) "X" indicates that the school was not identified as a "priority school" or a "Low-Performing School" during this academic year.
- (c) Grades 8-12.

Chart 4

Percent CMS High School Students Assigned to 4 CMS Schools Facing Closure by Court Order* (2004-05 Assignment Numbers)



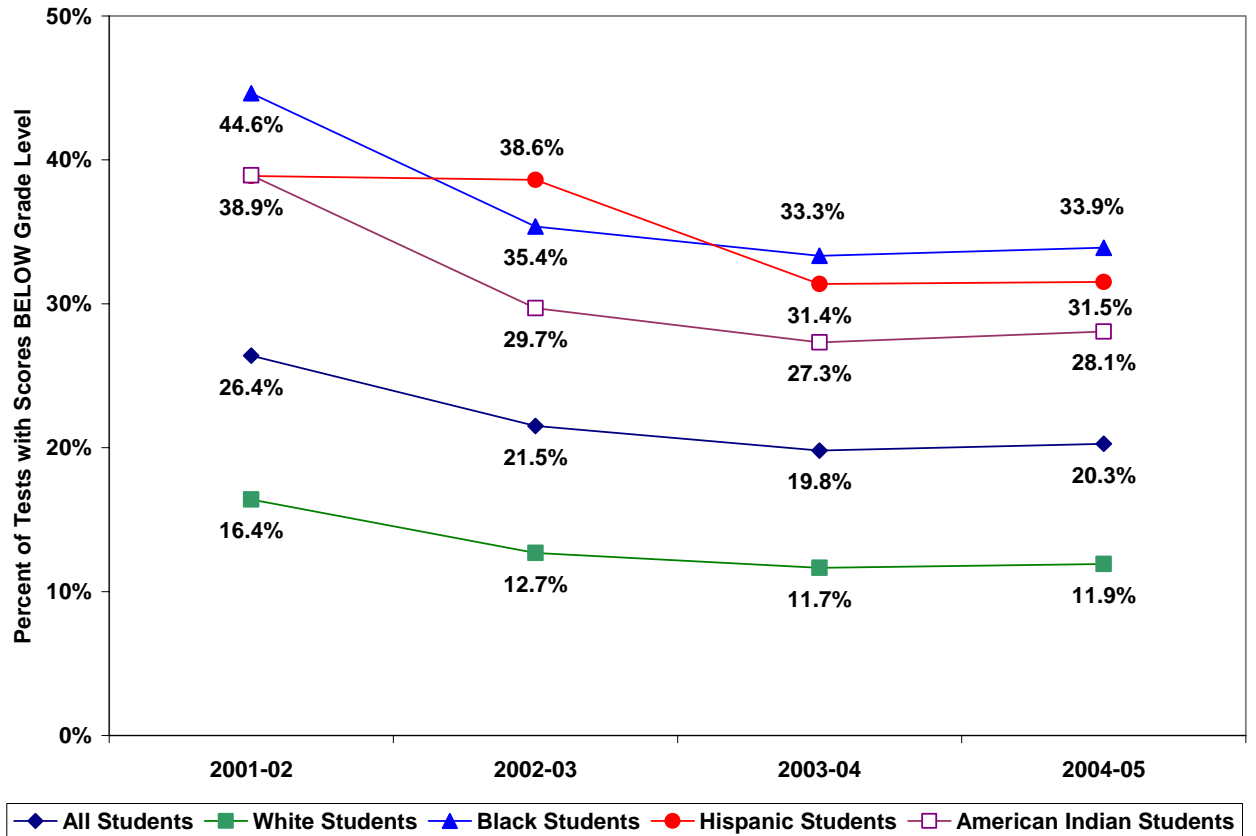
Data from Charlotte-Mecklenburg Schools School Profiles, (2006), <http://www.cms.k12.nc.us/departments/instrAccountability/schlProfile05/profiles.asp>. Excludes two non-traditional high schools in CMS system.

Chart 5
Composite Scores for End-of-Grade Reading and Math Examinations,
Grades Three Through Eight, 2004-05

Student Population	Number of Tests with Scores At or Above Level III	Number of Valid Tests	Percent of Tests with Scores At or Above Level III	Percent of Tests with Scores Below Level III
All North Carolina Students	511,003	640,885	79.7	20.3
Racial and Ethnic Groups				
White	321,913	365,464	88.1	11.9
Black	125,765	190,277	66.1	33.9
Hispanic	31,962	46,669	68.5	31.5
American Indian	6,850	9,523	71.9	28.1
Asian	11,070	12,656	87.5	12.5
Multi-Racial	13,443	16,296	82.5	17.5
Economic Status				
Eligible for Free and Reduced Price Lunch	205,490	300,897	68.3	31.7
Not Eligible for Free and Reduced Price Lunch	305,513	339,988	89.9	10.1
English Proficiency				
Limited English Proficiency	12,271	24,706	49.7	50.3
Not Identified as Limited English Proficiency	498,732	616,179	80.9	19.1
Disability Status				
Students with Disabilities	41,554	89,241	46.6	53.4
Non-Disabled Students	469,449	551,644	85.1	14.9

Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2003 – 2005, <http://disag.ncpublicschools.org/disag2005/disag-public.jsp> (last visited May 30, 2006).

Chart 6
Composite Scores for End-of-Grade Reading and Math Examinations,
Grades Three Through Eight: Percent of Tests with Scores Below
Grade Level by Race and Ethnicity, 2001-02 Through 2004-05



Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data, <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive> (last visited May 31, 2006).

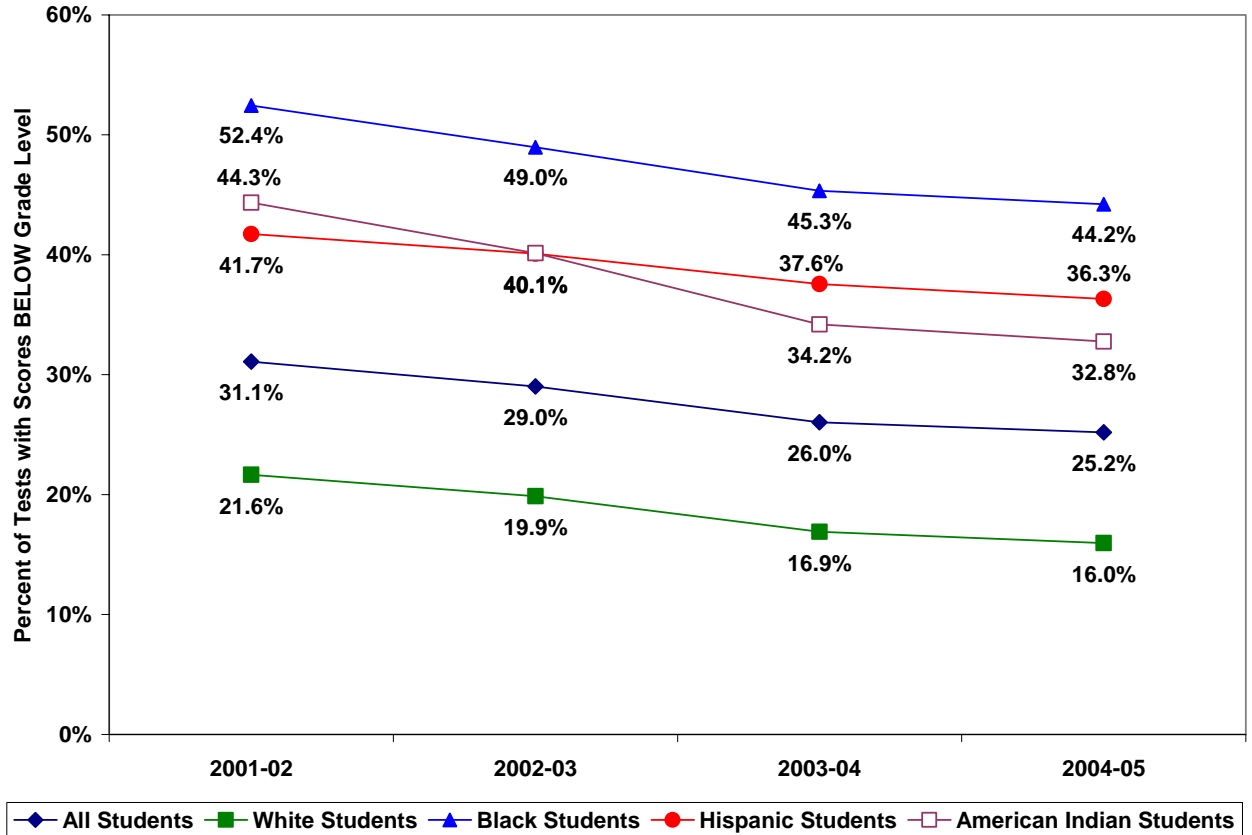
Chart 7
Composite Scores for End-of-Course Examinations (All Subjects), 2004-

05

Student Population	Number of Tests with Scores At or Above Level III	Number of Valid Tests	Percent of Tests with Scores At or Above Level III	Percent of Tests with Scores Below Level III
All North Carolina Students	428,645	572,940	74.8	25.2
Racial and Ethnic Groups				
White	298,606	355,311	84.0	16.0
Black	89,805	160,973	55.8	44.2
Hispanic	17,213	27,025	63.7	36.3
American Indian	4,317	6,420	67.2	32.8
Asian	11,203	13,544	82.7	17.3
Multi-Racial	7,501	9,667	77.6	22.4
Economic Status				
Eligible for Free and Reduced Price Lunch	100,303	164,656	60.9	39.1
Not Eligible for Free and Reduced Price Lunch	328,342	408,284	80.4	19.6
English Proficiency				
Limited English Proficiency	2,453	5,270	46.5	53.5
Not Identified as Limited English Proficiency	426,192	567,670	75.1	24.9
Disability Status				
Students with Disabilities	19,047	40,533	47.0	53.0
Non-Disabled Students	409,598	532,407	76.9	23.1

Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2003 – 2005, <http://disag.ncpublicschools.org/disag2005/disag-public.jsp> (last visited May 30, 2006).

Chart 8
Composite Scores for All EOC Subjects: Percent of Tests with Scores Below Grade Level by Race and Ethnicity, 2001-02 Through 2004-05



Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data, <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive> (last visited May 31, 2006).

Chart 9
End-of-Course Scores for Biology, 2004-05

Student Population	Number of Tests with Scores At or Above Level III	Number of Valid Tests	Percent of Tests with Scores At or Above Level III	Percent of Tests with Scores Below Level III
All North Carolina Students	60,007	94,356	63.6	36.4
Racial and Ethnic Groups				
White	43,817	57,718	75.9	24.1
Black	10,946	27,592	39.7	60.3
Hispanic	2,122	4,386	48.4	51.6
American Indian	550	1,026	53.6	46.4
Asian	1,494	2,064	72.4	27.6
Multi-Racial	1,078	1,570	68.7	31.3
Economic Status				
Eligible for Free and Reduced Price Lunch	12,681	28,377	44.7	55.3
Not Eligible for Free and Reduced Price Lunch	47,326	65,979	71.7	28.3
English Proficiency				
Limited English Proficiency	297	1,166	25.5	74.5
Not Identified as Limited English Proficiency	59,710	93,190	64.1	35.9
Disability Status				
Students with Disabilities	2,652	7,899	33.6	66.4
Non-Disabled Students	57,355	86,457	66.3	33.7

Source: N.C. Dep't. of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2003 – 2005, <http://disag.ncpublicschools.org/disag2005/disag-public.jsp> (last visited May 30, 2006).

Chart 10
End-of-Course Scores for Algebra I, 2004-05

Student Population	Number of Tests with Scores At or Above Level III	Number of Valid Tests	Percent of Tests with Scores At or Above Level III	Percent of Tests with Scores Below Level III
All North Carolina Students	89,039	110,936	80.3	19.7
Racial and Ethnic Groups				
White	58,234	65,961	88.3	11.7
Black	21,577	33,061	65.3	34.7
Hispanic	4,442	6,133	72.4	27.6
American Indian	1,036	1,405	73.7	26.3
Asian	2,113	2,363	89.4	10.6
Multi-Racial	1,637	2,013	81.3	18.7
Economic Status				
Eligible for Free and Reduced Price Lunch	25,744	36,964	69.6	30.4
Not Eligible for Free and Reduced Price Lunch	63,295	73,972	85.6	55.3
English Proficiency				
Limited English Proficiency	854	1,363	62.7	37.3
Not Identified as Limited English Proficiency	88,185	109,573	80.5	19.5
Disability Status				
Students with Disabilities	5,157	9,564	53.9	46.1
Non-Disabled Students	83,882	101,372	82.7	17.3

Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2003 – 2005, <http://disag.ncpublicschools.org/disag2005/disag-public.jsp> (last visited May 30, 2006).

Chart 11
End-of-Course Scores for English I, 2004-05

Student Population	Number of Tests with Scores At or Above Level III	Number of Valid Tests	Percent of Tests with Scores At or Above Level III	Percent of Tests with Scores Below Level III
All North Carolina Students	88,152	107,609	81.9	18.1
Racial and Ethnic Groups				
White	57,196	63,988	89.4	10.6
Black	22,475	32,063	70.1	29.9
Hispanic	3,879	5,994	64.7	35.3
American Indian	1,049	1,447	72.5	27.5
Asian	1,858	2,181	85.2	14.8
Multi-Racial	1,695	1,936	87.6	12.4
Economic Status				
Eligible for Free and Reduced Price Lunch	25,642	36,730	69.8	30.2
Not Eligible for Free and Reduced Price Lunch	62,510	70,879	88.2	11.8
English Proficiency				
Limited English Proficiency	186	621	30.0	70.0
Not Identified as Limited English Proficiency	87,966	106,988	82.2	17.8
Disability Status				
Students with Disabilities	4,826	10,585	45.6	54.4
Non-Disabled Students	83,326	97,024	85.9	14.1

Source: N.C. Dep't of Public Instruction, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2003 – 2005, <http://disag.ncpublicschools.org/disag2005/disag-public.jsp> (last visited May 30, 2006).