

North Carolina – *Hoke County Board of Educ. v. State (Leandro II)* (2004)

In *Hoke County Board of Educ. v. State (Leandro II)* (2004),⁷⁰ the North Carolina Supreme Court reversed a 2000 trial court decision requiring the state to provide preschool education to low-income students at risk of school failure. The Supreme Court agreed with the lower court’s finding that the state’s efforts towards providing assistance to “at-risk” pre-kindergarten children were constitutionally inadequate. However, it refused to order comprehensive preschool as a remedy, stating there was inadequate foundational support in the trial record for such an order. The Court found “the suggestion that pre-kindergarten is the sole vehicle or, for that matter, a proven effective vehicle...is, at best, premature.”⁷¹ Instead, the Court deferred to the expertise of the legislative and executive branches on public education and left it to them to design appropriate remedial steps for disadvantaged preschoolers.

In response to the trial court order in *Hoke County*, the legislature enacted a statewide preschool program before the Supreme Court’s 2004 decision. The program, More-at-Four, funds a high quality prekindergarten program for approximately 11,000 disadvantaged four-year-olds in the state. North Carolina’s governor has successfully pushed for expansion of the program each year since its enactment in 2001, citing the litigation in support.

Background to *Hoke County* Decision

Article I of the North Carolina Constitution provides that “the People have a right to the privilege of education.”⁷² Article IX states, “The General Assembly shall provide...for a general and uniform system of free public schools...wherein equal opportunities shall be provided for all students.”⁷³ The constitution does not contain an age limitation, and in fact requires the General Assembly to provide a public education to “every child of appropriate age.”⁷⁴

The *Hoke County* case builds on an earlier challenge to the state’s school finance system, *Leandro v. State* (1997).⁷⁵ In *Leandro*, low-income school districts sued the state, charging that children in their districts had been denied an adequate education because the state’s system of funding public education failed to provide adequate resources to the low-income districts. Contrary to the plain language of the Constitution, the North Carolina Supreme Court held that the Constitution “does not require that equal educational opportunities be afforded students in all of the school districts in the state.”⁷⁶ At the same time, the Court did find that the state was responsible for providing adequate

funding and services to ensure that all students receive a “sound basic education.”⁷⁷ The Court spelled out a ‘sound basic education’ as one that would provide the student with at least:

- (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
- (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;
- (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and
- (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.⁷⁸

The Supreme Court remanded the plaintiffs’ claim that the state’s educational funding system did not provide a sound basic education back to the lower court for trial. The remand proceeding is known as *Hoke County Board of Education v. State of North Carolina*.

Hoke County Trial Court Ruling on Preschool

The trial court examined the state’s education system in light of the *Leandro* mandate, which requires that every North Carolina child have access to a sound basic education. The trial court found, among other things, that:

- (1) the state’s curriculum guidelines exceeded the *Leandro* standards for an adequate education, when properly implemented;
- (2) the state’s standards for teacher certification were valid and sufficient to ensure qualified teaching;
- (3) the schools’ accountability program was appropriate for measuring and improving the academic performance of public school children; and
- (4) the state’s tests provided adequate evidence of whether students were receiving a sound basic education.⁷⁹

When it came to at-risk children, however, the trial court came to different conclusions. The court found that those students were not being provided with a sound basic education, because they did not have access to the same resources as their peers in more affluent districts. The trial court ordered the state to ensure that such students are given competent teachers “with high expectations,” sufficient funding, and early intervention.

In its original complaint, the plaintiffs limited their case to at-risk children of school age. The trial court raised -- on its own motion -- the issue of the rights of pre-kindergarten age children. Specifically, the court asked whether the constitutional rights enumerated in

Leandro extended to certain at-risk children before they reach the age of five. The plaintiffs then filed amended complaints alleging the need for pre-kindergarten programs in order to prepare “at-risk” children to be able to take advantage of the opportunity for a sound basic education. The trial court held:

Under the North Carolina Constitution as interpreted by *Leandro*, the right of each child to ...a sound basic education ... is not to be conditioned upon age, but rather upon the need of the particular child, including, if necessary, ...early childhood pre-kindergarten education prior to reaching the age of five and prior to entering five-year old kindergarten. . . .⁸⁰

The trial court limited its preschool ruling to at-risk children as necessary to “permit them to take advantage of, and have an equal opportunity to receive, the sound basic education to which they are entitled in North Carolina under its Constitution.”⁸¹

Accordingly, the trial court ordered the state to expand pre-kindergarten education for all children who did not arrive in kindergarten ready to learn, and were therefore at risk for school failure. In two subsequent decisions, the trial court again found that the state had failed to provide a sound basic education to at-risk children.⁸²

North Carolina Supreme Court Decision in *Hoke County*

In July 2004, the North Carolina Supreme Court issued a decision in *Hoke County* that affirmed the trial court’s finding that the state had violated the fundamental rights of children in the plaintiff school districts by not providing an opportunity to receive a sound basic education.⁸³ On the issue of preschool, however, the Court reversed the trial court ruling.

The Court found that the North Carolina Constitution granted the General Assembly sole authority to establish an appropriate school age, and any trial court ruling infringing on the legislative prerogative was in error. Notwithstanding the legislature’s exclusive authority, however, the Court ruled that the state has a constitutional obligation to address the needs of at-risk children prior to the time they enter school: “[w]e conclude that because the evidence presented showed that “at-risk” students in Hoke County were being denied their right to an opportunity to obtain a sound basic education, the trial court properly admitted additional evidence intended to show that preemptive action on the part of the state should target those children about to enroll, recognizing that preemptive action affecting such children prior to their entering the public schools might well be far more cost effective than waiting until they are actually in the educational system.”⁸⁴

The Court acknowledged the state’s constitutional duty to address the needs of disadvantaged preschool children, stating “even the State concedes that “at-risk” prospective enrollees in Hoke County are in need of assistance in order to avail themselves of their right to the opportunity for a sound basic education.”⁸⁵ However, the Court refused to impose a specific remedy for the constitutional violation at this time, citing the fact that public education is the shared province of the legislative and executive

branches. The Court found that the trial court order requiring pre-kindergarten for all at-risk children was “premature, and its strict enforcement could undermine the state’s ability to meet its educational obligations for “at-risk” prospective enrollees by alternative means.”⁸⁶ The Court stated that while the judiciary has the power to order remedies when another branch fails to meet its duties, it should do so only when the state has been consistently unable or unwilling to act. Here, the Court noted that the state has begun to take action to address the needs of disadvantaged preschoolers. Therefore, it refused to enforce a specific remedy, instead deferring to the expertise of the other branches to design appropriate corrective action.

In addition to principles of separation of powers, the Court cited "inadequate foundational support"⁸⁷ for the preschool remedy. The fact that the record before the Court did not include expert testimony on the research-based evidence of the effectiveness of preschool education clearly played a part in the Court’s decision not to order implementation of a pre-kindergarten program.

The Court found a clear obligation on the part of the state to take meaningful action to prepare “at-risk” children to receive a sound basic education. Accordingly, this decision leaves the door open for plaintiffs to seek preschool as a remedy in future proceedings should the state fail to adequately address the needs of at-risk preschoolers. Significantly, the litigation has already resulted in the implementation of North Carolina’s More at Four pre-kindergarten program, which serves a large segment of the at-risk preschool population.

⁷⁰ *Hoke County Board of Education v. State*, 599 S.E. 2d 365 (2004).

⁷¹ *Id.* at 394.

⁷² N.C. Const. art. I, § 15.

⁷³ N.C. Const. art. IX, § 2.

⁷⁴ N.C. Const. art. IX, § 3.

⁷⁵ *Leandro v. State*, 488 S.E.2d 249 (1997).

⁷⁶ *Id.* at 259.

⁷⁷ *Id.*

⁷⁸ *Id.* at 255.

⁷⁹ *Hoke County Board of Education v. State of North Carolina*, 2000 WL 1639686 (N.C. Super. Oct 12, 2000).

⁸⁰ *Id.* at 6.

⁸¹ *Id.*

⁸² See *Hoke County Bd. of Educ. v. State*, 95 CVS 1158, Orders of March 2001 and April 2002.

⁸³ *Hoke County Board of Educ. v. State of North Carolina*, 599 S.E.2d 365 (2004).

⁸⁴ *Id.* at 392.

⁸⁵ *Id.* at 393.

⁸⁶ *Id.* at 395.

⁸⁷ *Id.* at 394.