

## Early Childhood Education—The Leandro II Opinion and 2011 Legal Actions Concerning Pre-K and the 2011 Appropriations Act

### Leandro II (2004)

- In 2004, the NC Supreme Court considered Judge Manning's Order for the State to "expand pre-kindergarten educational programs so that they reach and serve all qualifying 'at-risk' students." Hoke County Board of Education v. State of North Carolina, 358 N.C. 605, 599 S.E.2d 365 (2004) (Leandro II).
- The Court agreed with the trial court's findings that "State efforts towards providing remedial aid to 'at-risk' prospective enrollees were inadequate." Id. at 642, 599 S.E.2d at 393.
- The Court held, however, that "there is a marked difference between the State's recognizing a need to assist 'at-risk' students prior to enrollment in the public schools and a court order compelling the legislative and executive branches to address that need in a singular fashion," and "while the trial court's findings and conclusions concerning the problem of 'at-risk' prospective enrollees are well supported by the evidence, a similar foundational support cannot be ascertained for the trial court's order requiring the State to provide pre-kindergarten classes for . . . all of the State's 'at-risk' prospective enrollees[.]" Id. At 642, 599 S.E.2d at 393.
- The Court held that the remedy ordered by the trial court was inappropriate at that juncture because the subject matter was one that the Constitution designated as the shared province of the legislative and executive branches, and that the evidence did not support the "imposition of a narrow remedy that would effectively undermine the authority and autonomy of the government's other branches." Id. at 643, 599 S.E. 2d at 393.
- The Court concluded that, at that juncture, "the suggestion that pre-kindergarten is the sole vehicle or, for that matter, a proven effective vehicle by which the State can address the myriad problems associated with such 'at-risk' prospective enrollees is, at best, premature." Id. at 644, 599 S.E.2d at 394.

### June 22, 2011 -- Leandro Hearing

- On June 22, 2011, Judge Manning held a hearing on the plaintiffs' claims that pre-kindergarten services for "at-risk" prospective enrollees were being "curtailed and not adequately met under the proposed budget for the next biennium."

### July 18, 2011 -- Judge Manning Order

- In his July 18, 2011 Order, Judge Manning acknowledged that in Leandro II, the NC Supreme Court reversed the trial court order issued by Judge Manning which had ordered the State to "expand pre-kindergarten educational programs so that they reach and serve all qualifying 'at-risk' students."
- Judge Manning then stated that it has been 7 years since Leandro II was issued and that the legislative and executive branches had determined that the State's ability to meet its obligations to "at-risk" prospective students was through Smart Start and More at Four since it has funded

those programs over the years and has used those programs to achieve "constitutional compliance" for at-risk prospective students under Leandro.

- Judge Manning noted that the State committed to the trial court in 2004 that its choice program to remedy the State's obligation to "at-risk" prospective enrollees was to ensure that "every at-risk four year old has access to a quality pre-kindergarten program." The State also represented to the trial court in 2004 that the State would expand the More at Four Prekindergarten Program to all at-risk four year olds across the State
- Judge Manning concluded that Sections 10.7(e), (f), and (g) of the 2011 Appropriations Act "combine to effectively limit access to prekindergarten services for many of those at-risk 4 year olds who need the program so they can start kindergarten ready to take advantage of their constitutional right to the opportunity to obtain a sound basic education." He noted that these sections had "taken the prekindergarten program (formerly MAF) established for at-risk 4 year olds and reduced the number of slots available to at-risk 4 year olds upwards of 80% without providing any alternative high quality prekindergarten option for at-risk 4 year olds at all."
- Judge Manning then ordered the following:
  - "The State of North Carolina shall not deny any eligible at-risk four year old admission to the North Carolina Pre-Kindergarten Program (NCPK) and shall provide the quality services of the NCPK to any eligible at-risk four year old that applies."
  - "The State of North Carolina shall not implement or enforce that portion of the 2011 Budget Bill, section 10.7.(f). that limits, restricts, bars or otherwise interferes, in any manner, with the admission of all eligible at-risk four year olds that apply to the prekindergarten program, including but not limited to the 20% cap restriction, or for that matter, any percentage cap, of the four year olds served within the prekindergarten program, NCPK."
  - "Further, the State of North Carolina shall not implement, apply or enforce any other artificial rule, barrier, or regulation to deny any eligible at-risk four year old admission to the prekindergarten program, NCPK."
  - "The Court is confident that the State of North Carolina will honor and discharge its constitutional duties in connection with this matter."

#### August 10, 2011 -- Governor's Executive Order

- The Executive Order directed the Department of Health and Human Services (DHHS) to consult with the Department of Public Instruction (DPI) to continue infrastructure and funding to ensure that current standards are not reduced and continue to base academic standards of NC Pre-K on the domains of child development that are needed for successful pre-K programs.
- The Executive Order required DHHS and DPI to develop a plan for all eligible at-risk pre-K children that included removal of barriers to participation in NC Pre-K, identification of at-risk children, and searching for unserved at-risk 4 year olds. While Manning's Order did not order searching for unserved at-risk 4 year olds, "child find" under More at Four provided for this type of search with the extent of the search by local administrators varying across the State. In addition, Section 10.7(f) of the 2011 Appropriations Act stated that the Pre-K program "may

continue to serve at-risk children identified through the existing 'child find' methods in which at-risk children are currently served within the Division of Child Development."

- The Executive Order directed DHHS to develop a plan to ensure that staffing in NC Pre-K is aligned with academic standards of NC Pre-K and is coordinated and aligned with kindergarten through grade 3. DHHS was to consider whether the staffing positions should be physically located at DPI.
- The Executive Order directed DHHS to "cost-out" a detailed plan for providing financial support to local classrooms including leveraging other financing sources in order to have a high-quality Pre-K program.
- DHHS is directed to collaborate with DPI to keep the high standards for NC Pre-K.
- The Executive Order directed DHHS to "remove all barriers so as to encourage participation by public schools in NC Pre-K." It also ordered DHHS to waive any requirement to blend private pay families with Pre-K subsidized children for public school classrooms—Section 10.7(e) of the 2011 Appropriations Act stated that DHHS "may" authorize such a waiver.

#### August 15, 2011 -- Motion to Intervene and for Clarification or Relief from Order

- On August 15, 2011, the President Pro Tempore of the Senate and the Speaker of the House of Representatives filed a Motion to Intervene and for Clarification or Relief from the Order entered by Judge Manning on July 18, 2011. The Movants asked the Court for the following:
  - To allow the Movants to intervene in the matter.
  - To clarify "that the 20% cap in Section 10.7 of the 2011 Appropriations Act does not apply to financially at-risk four year olds."
  - To clarify "that the Constitution does not require the State to implement a new program to provide Pre-K programs sufficient to provide Pre-K services to all at-risk children in the State."
- Motion to Intervene
  - The Movants stated that as the legislative leaders of the State, they have an interest in the validity and constitutionality of all laws enacted by the General Assembly and have a specific interest in clarifying the scope of the Manning Order to ensure that the 2011 Appropriations Act provisions are interpreted "in a manner consistent with the intent of the General Assembly to promote maximum access to Pre-K services for financially at-risk four year olds."
  - The Movants have a "specific interest in clarifying the scope of the Order to confirm that the Court did not (1) require the State to authorize, fund, and administer free, universal Pre-K services for all at risk four year olds without regard to cost, or (2) impact, impinge, or otherwise interfere with the legislature's exclusive authority to appropriate funds for public education. The Movants also "have an interest in protecting the exclusive province of the legislature to make decisions relating to the budget and appropriations matters."

- The Movants stated that if they are not permitted to intervene in the litigation as surrogates for the State, there "would be no vehicle for the interests of the legislative branch to clarify the scope of the Order".
- Motion for Relief Or Clarification Under Rule 60(b)
  - Clarification of the Manning Order regarding the 20% cap in the Appropriations Act:
    - The Movants stated that the General Assembly intended the 20% cap to limit services provided to children who are at-risk for reasons other than financial hardship and asked the Court to clarify its Order to allow the State to apply the 20% cap in that manner.
    - The Movants asked the Court to clarify that its Order did not require the State to fund and administer Pre-K services available above and beyond those services provided by the current levels of funds appropriated by the General Assembly.
  - Clarification of the Manning Order regarding providing Pre-K Services to all at-risk children:
    - The Movants asked that the Court clarify that its Order did not require the General Assembly to appropriate funds to establish a new universal Pre-K program that was free since the Order did not determine the funding levels to be unconstitutional but only the allocation of the funds.
    - The Movants asked that the Court clarify that its Order did not require the State to make Pre-K services available to the approximately 65,000 at-risk children in NC regardless of the funds available for that purpose.
  - Request for Relief from the Manning Order:
    - In the event the Court did intend to create a new constitutional obligation for the State to provide free, universal Pre-K services for all at-risk four year olds, the Movants requested relief from the Order because such a remedy is barred by the separation of powers doctrine in Article I, Section 6 of the North Carolina Constitution; it infringed upon the appropriations power of the General Assembly in violation of the NC Constitution; and it violated Leandro II where the Supreme Court stated that the Court has "limitations in providing specific remedies for violations committed by other government branches" in areas such as public school education.

August 17, 2011 -- State of North Carolina filed Notice of Appeal of Judge Manning's Order entered on July 18, 2011

September 2, 2011 -- Judge Manning Order Re: Motion to Intervene and for Clarification or Relief from Order

- Judge Manning stated that the State of North Carolina is the defendant in the case, not the legislative or executive branches.
- He further stated that the "Court is not authorized to enter an Order essentially revising an act of the General Assembly" and that "the Court may not consider as evidence, statements made

by members of the General Assembly, under oath or otherwise, about what the General Assembly intended a statute to mean."

- Judge Manning stated that the State's obligations to "at-risk" prospective enrollees under the State Constitution are set forth in Leandro II where the Supreme Court "indicated that Pre-K is a proper way to address the State's obligation to 'at-risk' prospective enrollees so that they can be prepared to enter kindergarten with the opportunity to obtain a sound basic education as is their right under the North Carolina Constitution."
- Finally, Judge Manning held that the 2011 Appropriations Act provisions addressed by the July 18, 2011 Order "constituted an impermissible barrier to the ability of 'at-risk' four year olds to take advantage of the opportunity to attend the Pre-K program and thereby have the opportunity to be prepared to obtain a sound basic education."
- Judge Manning ordered the following:
  - "The Motion to Intervene is denied."
  - "The Motion to Clarify or Relief from Order is denied."