STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR DIVISION 95 CVS 1158

HOKE COUNTY BOARD OF EDUCATION, et al., Plaintiffs-Appellees, and ASHEVILLE CITY BOARD OF EDUCATION, et al., Plaintiffs-Intervenors v. STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION Defendants.	)))))))))))))

POSTHEARING BRIEF OF *AMICI CURIAE* REGARDING THE IMPORTANCE OF PERSONAL EDUCATION PLANS AS A MEANS OF IMPLEMENTING AND EVALUATING THE STATE'S PROPOSED "FRAMEWORK FOR ACTION"

Amici curiae the American Civil Liberties Union of North Carolina Legal Foundation, Advocates for Children's Services of Legal Aid of North Carolina, Carolina Legal Assistance, the North Carolina State Conference of the NAACP, the North Carolina Black Leadership Caucus, the North Carolina Justice Center, the Rural School & Community Trust, and the Triangle Urban League (hereinafter, "*Amici*"), submit this brief in response to the evidence presented by the State at this Court's August 18, 2006 hearing.

The State has submitted seventeen "Frameworks For Action," one from each of the high schools identified by this Court as having failed to provide a sound basic education to its students for at least five years. These plans are a first step down the long path toward meeting what *Leandro* requires. However, in light of the critical nature of what is at stake—the ability of the children enrolled in these high schools to receive an adequate education in this school year—

submission of the plans can be only that: the first of many steps down this path, with the next steps to follow in rapid succession.

In creating their Frameworks For Action, the seventeen failing schools identify specific programs that each school will implement in the 2006-2007 school year as a move toward constitutional adequacy. The school year has begun and, *Amici* must assume, these programs are now in place. The next step, therefore, must be to see if they are working. This task is urgent. To allow these programs to operate unscrutinized for any significant period of time, much less until year-end tests are given, would be to risk allowing another class of students to pass through these schools with *Leandro*'s promise unfulfilled. Another year of unsuccessful efforts would be devastating; as this Court well knows, "[w]e cannot . . . imperil even one more class unnecessarily." *Hoke County Bd. Of Educ.*, 358 N.C. 605, 616 (N.C. 2004). The process of evaluation and reporting must begin at once so that the Court may ensure that progress is being made this year. The task need not be daunting; nor is there any barrier to beginning it right away. Indeed, *Amici* submit that the Court has an ideal tool through which to conduct such evaluation without the need for further judicially created structure or plans.

A. **Personal Education Plans**

The evaluation tool that is already available to the Court is the Personal Education Plan (PEP) statute, N.C.G.S. § 115C-105.41 (2001). Through the PEP statute, the legislature has required that all of the State's schools engage in an individualized "diagnostic evaluation" of every student at risk of academic failure and that, for each imperiled student, the schools implement a "focused intervention" to identify what will help that student succeed. 16 N.C.A.C. 6D.0505(c) (2005). The statute further requires that the school stand by the student, using

"monitoring strategies" to ensure that, when progress is begun, it will continue until the student can succeed without further intervention. *See id*.

There is no better model for the Court's own task of ensuring that our schools are constitutionally adequate than the PEP statute's three-tiered model of diagnosis, intervention, and monitoring. Nor is there a better means of evaluating the immediate impact of the seventeen Frameworks For Action than the individualized opportunities for student-by-student assessment provided by the PEP statute. Without exception, however, the seventeen high schools have failed to mention the use of PEPs in their Frameworks For Action,[1] ignoring both the opportunity that PEPs provide for evaluation of their reform efforts and, more surprisingly, the PEP statute's clear mandate, in place since 2001, that all schools employ PEPs as a means of promoting academic success in each individual child.

Amici believe that, to date, the PEP statute has not been fully implemented in any North Carolina high school. The repeated failures of the seventeen high schools in question show that PEPs are certainly not in place in those schools or, if they are, it is in name only and without the substantive evaluation process that the statute contemplates. This is a failure of the schools and the State to provide what the law requires and a missed opportunity to help ensure a sound basic education for at-risk students. The children now enrolled in these high schools deserve the benefit of the statute's implementation. *Amici* therefore urge the Court to enforce the PEP statute

[1] Although no high school made specific reference to the PEP statute in its Framework For Action, three schools discuss the need for individualized identification of at-risk students and the implementation of some programs similar to those identified by the statute and regulation as intervention strategies that might be construed as steps in the PEP process. *See* "Framework For Action For Ben L. Smith High School," August 18, 2006 Hearing Exhibit 9; "Framework For Action [Southeast Halifax High School]," August 18, 2006 Hearing Exhibit 2; "Framework for Action [Goldsboro High School]," August 18, 2006 Hearing Exhibit 4.

in the schools in question and to require regular, detailed reporting to the Court of the schools' progress in implementing PEPs among their students, for the reasons discussed below.

B. The PEP Statute Allows Immediate Evaluation On An Individual Student Level Of Whether The Frameworks For Action Are Working.

First and foremost, holding these schools to the PEP statute's mandate of individualized evaluation of at-risk students and requiring regular reporting of its results will give the Court an ideal means of evaluating the success of the Frameworks For Action as they are put into effect.[2] Through the schools' regular assessment of individual students' needs and progress, which the PEP statute requires, the Court will be able to see, almost on a real-time basis, which plans are working and which are not. Many of the programs contemplated by the submitted Frameworks For Action are broad and generalized steps toward reform. Evaluation of the Frameworks' effectiveness, however, cannot be similarly diffuse. The Court needs to know at once if energies and resources are being expended on a program that is not improving educational achievement at its school. PEPs will allow the Court to learn from the students themselves what programs are working, by way of their progress or failure as monitored and reported by their schools.

Requiring compliance with the PEP statute would provide the Court with an invaluable tool to use in working toward *Leandro*-complaint schools. The PEP statute is thoughtful, requiring precisely the kinds of "research based best practices" (including "coaching, mentoring, tutoring, summer school, Saturday school, and extended days") the Frameworks for Action now contemplate. Through the diagnostic evaluations required by the PEP statute, the Court can

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[2] While regulations interpreting the PEP statute instruct that "LEAs and schools shall report annually" their progress in using the PEP process to increase the number of students who meet the standard for grade-level promotion, *see* 16 N.C.A.C. 6D.0505(d), the urgent nature of the Court's task in ensuring a constitutionally sound education for the students in these schools compels the reporting to the Court of progress under the PEPs on a much more regular basis. At a minimum, quarterly reports during the school year would be appropriate.

obtain a detailed and individualized baseline to mark where the students in each school now stand, and the "focused intervention" and "monitoring strategies" required by the statute will provide the Court with specific data as to the effectiveness of the newly implemented programs. For example, if the specialized reading classes planned by Ben L. Smith High School for students who have not passed eighth-grade reading competency are effective, the Court will know it at once because PEP monitoring will show that the reading skills of the students enrolled in those classes have improved. Conversely, if the revised school tutoring plan contemplated by Hertford County High School does not meet its students' academic needs, the Court will know that at once, too, as it will be able to see that the students are failing to improve their performance.

Quite simply, regular reporting under the PEP statute would allow the Court to know what effort is actually occurring, to identify worthless programs, and to halt and redirect wasted energies "without having to await the results of end-of-grade or end-of-course tests," as the statute itself directs. *See* N.C.G.S. § 115C-105.41. Properly implemented and enforced, the PEP statute can be an invaluable tool to bring the Court one step closer to uncovering the cause of what it has termed "incomprehensible" and "unfathomable" practices in these schools, by taking a hard look at the progress—or lack thereof—of the students themselves, the intended beneficiaries of the Frameworks for Action.

C. The PEP Statute Also Allows Schools A Student-Based Means Of Identifying What Necessary Services They Are Unable To Provide.

In addition to being a powerful resource with which the schools themselves can evaluate the needs of their students on an intensive and individual level, the PEP statute allows schools a critical opportunity for institutional self-evaluation and administrative reform. When a school cannot engage in a meaningful PEP process with its students—i.e., when it cannot provide the

kinds of intervention strategies that it has identified as necessary or when it is providing strategies that fail—regular reporting under the PEP statute will provide the schools (and the Court) with a point from which to ask why. Which resources are lacking? What barriers prevent success? What will fix the problem? With specific information taken from their own PEP evaluations, schools gain the opportunity to answer these questions with precision. This kind of information, garnered from the PEP process, will be invaluable as the schools enter into the financial audit process launched by Governor Easley on September 19, 2006, *see* "Gov. Easley Orders Financial Performance Audits of High Schools," September 19, 2006, *available at* http://www.governor.state.nc.us/News_FullStory.asp, (visited September 20, 2006). PEPs will help the schools achieve the "smart, targeted use of resources" that the Governor's plan envisions. *See id*. This is an opportune moment for the Court to ensure that PEPs are in place as the audit process begins.

D. The PEP Statute Provides A Means To Collect Elementary and Middle School Data.

Finally, as the Court again noted at the August 18 hearing, we know that the problems now manifested in the seventeen failing high schools did not begin when the students entered ninth grade. Their roots are deep and, as yet, unanalyzed. The PEP statute, however, can provide to the Court another avenue toward discovering where these educational shortcomings begin. Directing implementation of the PEP statute and regular reporting requirements in middle schools and elementary schools would allow the Court to collect the same kinds of individualized data and allow the schools to engage in the same rigorous self-evaluation *before* the students reach high school and the final years of their education when, as the Court well knows, it is often too late. Certainly, any information the Court can gather at the lower grade levels that might inform its inquiry into why our high schools are in crisis would be welcomed.

Moreover, ensuring that PEPs are implemented at all grade levels is simply what the statute requires.[3]

CONCLUSION

For these reasons, *Amici* urge the Court to enforce the mandate of the PEP statute, N.C.G.C. § 115C-105.41, in the seventeen high schools identified by the Court as failing and to require those schools to report to the Court the results of the PEP evaluation process on a quarterly basis during the 2006-2007 school year. *Amici* also respectfully submit that the Court's task in identifying the root cause of the "high school problem" now under its scrutiny would be aided immeasurably by ensuring that PEPs be implemented fully in the middle and elementary schools from which the seventeen failing schools draw their students, and *Amici* therefore urge the Court to implement PEP evaluations in those schools as well.

Respectfully submitted this 22nd day of September, 2006,

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[3] The PEP statute is not limited by grade level and applies to all "local school administrative units." *See* N.C.G.S. § 115C-105.41.

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