

**To:** The North Carolina General Assembly, The Governor, The Attorney General, and Superintendent of Public Instruction

**Subject:** Leandro case and the present media-driven controversy

**From:** Judge Howard Manning, Jr. Retired but still functioning and focused on children in North Carolina especially those at risk of academic failure.

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As the original trial judge appointed by Chief Justice Mitchell in 1997 to handle Leandro, until 2016 when, for medical reasons, I had to withdraw, I have every right to continue to observe the case and read data about our schools that is public record, and furthermore to comment on the law and this case.

At the present time there is a media-induced frenzy about the Leandro judge proposing to enter an order requiring the General Assembly to appropriate over \$1 billion for the educational establishment. As the press is licking its lips for 15 minutes on the 6:00 news, I will refer all to the following decisions from our Supreme Court and other decisions relating specifically to the power of the Judicial Branch.

You might enjoy reading *Able Outdoor, Inc. v. Harrelson* 341 N.C. 167 (1995) by Justice Webb (a Democrat) as follows:

*We hold, however, that the Court of Appeals erred in affirming Judge Cashwell's orders allowing execution against the State. In Smith v. State, 289 NC 303 (1976), we held that...if a plaintiff is successful in establishing his claim, he cannot obtain execution to enforce the judgment. We said, '[t]he judiciary will have performed its function to the limit of its constitutional powers. Satisfaction will depend upon the manner in which the General Assembly discharges its constitutional duties.' Pursuant to Smith, we do **not believe** the Judicial Branch of our State government has the power to enforce an execution against the Executive Branch.*

You should also read the following decisions attached to this memorandum, which also declare the limits of the Court's power to execute or require the Legislative and Executive branches of government to appropriate money.

Finally, Leandro requires that the children, not the educational establishment, have the Constitutional right to the equal opportunity to obtain a sound, basic education. This has not and is not happening now as the little children are not being taught to read and write because of a failure in classroom instruction as required by Leandro. 358 NC 624, 625, 626 ("First, that every classroom be staffed with 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.").

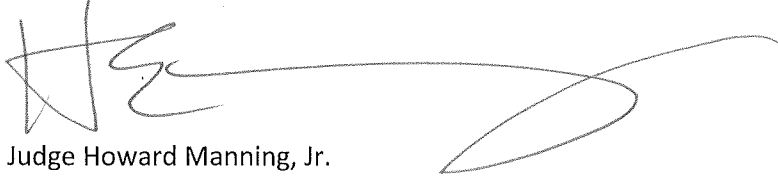
This is not happening now.

Our children that cannot read by the third grade are by and large doomed not to succeed by the time they get to high school. As shown by the record in this case, that is a failure of classroom instruction. This conclusion is supported further by the Report from the Court: The Reading Problem (2014) as well as annual statewide academic performance data, including ACT statewide results for 2020-21 and several years before.

Reduced to essentials, in my opinion the children are not being provided the opportunity because after all the millions spent, 90% of school costs are for adult salaries and benefits, and the data shows as it did years ago and up to now the educational establishment has not produced results.

I will produce the details with an updated Report on the Reading Problem in the next three weeks.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'HJM', followed by a long, sweeping horizontal line that loops back under the signature.

Judge Howard Manning, Jr.  
November 9, 2021

Cc: Judge David Lee