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## Seeking Shelter: How North Carolina is Violating the State Constitution by Failing to Properly Educate Its Homeless Students

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# Seeking Shelter: How North Carolina is Violating the State Constitution by Failing to Properly Educate its Homeless Students

## ABSTRACT

*Under Leandro v. State, the North Carolina Constitution guarantees a sound basic education for all students in public schools. North Carolina is failing to meet that demand with respect to the state's homeless students. Testing data from at least the last decade shows that there is a long-standing achievement gap between homeless students and their peers. This demonstrates that homeless students are not obtaining a sound basic education. Moreover, this failure is the result of both the state's action and inaction. There are, however, a number of solutions the state can implement to remedy its constitutional violation. This Comment explores the extent of North Carolina's failures to provide the constitutionally promised education to homeless students and offers solutions the state can use to ensure homeless students receive their sound basic education.*

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## INTRODUCTION

North Carolina is violating its own state Constitution. Article I, Section 15 of the North Carolina Constitution states, “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”<sup>1</sup> Additionally, the North Carolina Constitution promises that “equal opportunities shall be provided for all students.”<sup>2</sup> In *Leandro v. State* (“*Leandro I*”), and in its follow-up *Hoke County Board of Education v. State* (“*Leandro II*”), the Supreme Court of North Carolina interpreted these provisions together to guarantee all children “an opportunity to receive a sound basic education.”<sup>3</sup> For the 2016–17 school year, only a little over twenty percent of North Carolina’s homeless students tested at a proficient level in reading and math.<sup>4</sup> North Carolina is violating its state Constitution by failing to properly educate the state’s homeless students.

Under the federal McKinney-Vento Homeless Assistance Act, legislation targeted at ensuring equal access to schools for homeless students, homeless children and youths in any state “means individuals who lack a fixed, regular, and adequate nighttime residence.”<sup>5</sup> In the 2006–07 school year, there were 12,654 registered homeless students in North Carolina.<sup>6</sup> As of the 2016–17 school year, that number had risen to 29,889.<sup>7</sup>

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1. N.C. CONST. art. I, § 15.

2. *Id.* art. IX, § 2, cl. 1.

3. *Leandro v. State* (*Leandro I*), 488 S.E.2d 249, 255 (N.C. 1997), *aff’d in part, rev’d in part sub nom.* *Hoke Cty. Bd. of Educ. v. State* (*Leandro II*), 599 S.E.2d 365 (N.C. 2004); *Leandro II*, 599 S.E.2d at 379.

4. See U.S. DEP’T OF EDUC., OMB No. 1810-0724, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II FOR STATE FORMULA GRANT PROGRAMS UNDER THE ELEMENTARY AND SECONDARY EDUCATION ACT AS AMENDED IN 2001 FOR REPORTING ON SCHOOL YEAR 2016–17: NORTH CAROLINA 55 (2017–2018), <https://perma.cc/BT75-8KKZ> [hereinafter PERFORMANCE REPORT: 2016–17]. The Author calculated this figure, and other figures throughout this Comment, by personally compiling and analyzing the data. This particular figure was calculated by accumulating all data within report and calculating an overall percentage.

5. McKinney-Vento Act, 42 U.S.C. § 11434a(2)(A) (2012).

6. See U.S. DEP’T OF EDUC., OMB No. 1810-0614, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II FOR STATE FORMULA GRANT PROGRAMS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT AS AMENDED BY NO CHILD LEFT BEHIND ACT OF 2001 FOR REPORTING ON SCHOOL YEAR 2006–07: NORTH CAROLINA 63 (2007–08), <https://perma.cc/WF36-GKYX> [hereinafter PERFORMANCE REPORT: 2006–07].

7. See PERFORMANCE REPORT: 2016–17, *supra* note 4, at 53.

This means, in 2016–17, almost two percent of this state’s public-school students were homeless.<sup>8</sup>

This Comment analyzes how North Carolina is failing to provide the guaranteed right to the opportunity to receive a sound basic education to homeless students. Part I explores exactly what the state’s obligation is with respect to all students by delving into the *Leandro I* decision and its counterpart, *Leandro II*. Part II analyzes ways in which North Carolina is failing its homeless students. This Part first discusses the requirements mandated through the federal McKinney-Vento Homeless Assistance Act. Next, this Part analyzes numerical data to show that North Carolina is not providing a sound basic education to its homeless students. Lastly, Part II examines how the failure of North Carolina to provide homeless students with a sound basic education is the result of both the state’s action and inaction. Finally, Part III offers ways North Carolina can provide a sound basic education to its homeless students such that it no longer violates the state Constitution.

## I. NORTH CAROLINA’S CONSTITUTIONAL OBLIGATION

As first established in *Leandro v. State*, the North Carolina Constitution requires the state to provide all students with “an opportunity to receive a sound basic education.”<sup>9</sup> Walking through the court’s analysis in both *Leandro* decisions sheds light on North Carolina’s current failures with respect to its homeless students, specifically in understanding what a court will look at to determine if students are receiving their constitutional education.

Unlike the United States Constitution,<sup>10</sup> the North Carolina Constitution explicitly recognizes a right to education for all citizens: “[t]he people have a right to the privilege of education, and it is the duty of the

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8. *North Carolina Statistics*, NAT’L CTR. FOR HOMELESS EDUC. (Dec. 9, 2019), <https://perma.cc/3RKZ-JEF5>.

9. *Leandro I*, 488 S.E.2d 249, 255 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004).

10. See U.S. CONST.; see also SOL BLOOM, HISTORY OF THE FORMATION OF THE UNION UNDER THE CONSTITUTION 128 (1941) (“Q: Where, in the Constitution, is there mention of education? A: There is none; education is a matter reserved for the states.”). There have been recent arguments and scholarship about why education should be a recognized fundamental right under the U.S. Constitution. Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1070 (2019) (arguing that education should be a fundamental right using substantive due process). Because it seems unlikely to happen anytime soon, or even anytime at all, this Comment works under the assumption that education should be left to the states.

State to guard and maintain that right.”<sup>11</sup> Further, the North Carolina Constitution requires that the General Assembly provide “a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students.”<sup>12</sup> In *Leandro I*, the Supreme Court of North Carolina held that these two provisions combine to guarantee “every child of this state an opportunity to receive a sound basic education in our public schools.”<sup>13</sup>

### A. *The Constitutional Promise*

In *Leandro I*, the plaintiffs were students, parents, guardians, and school boards from relatively poor districts throughout the eastern part of North Carolina.<sup>14</sup> They brought the action seeking a declaratory judgment and an injunction, claiming that the North Carolina Constitution created a fundamental right to education, which the state had failed to provide to the students.<sup>15</sup> The North Carolina State Board of Education filed a motion to dismiss, which the trial court denied, claiming that the trial court lacked both subject matter and personal jurisdiction, and that the plaintiffs failed to state a claim upon which relief could be granted.<sup>16</sup>

The defendants appealed the denial of the motion to dismiss and the North Carolina Court of Appeals reversed.<sup>17</sup> The court “concluded that the right to education guaranteed by the North Carolina constitution is limited to one of equal access to the existing system of education and does not embrace a qualitative standard.”<sup>18</sup> On further appeal, the Supreme Court of North Carolina resolved whether the North Carolina Constitution had a qualitative standard and reversed the North Carolina Court of Appeals, holding that the educational rights in the state constitution do have a qualitative standard.<sup>19</sup> The Supreme Court described this qualitative standard by stating, “the right to education in the state constitution is a right

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11. N.C. CONST. art. I, § 15.

12. *Id.* art. IX, § 2, cl. 1.

13. *Leandro I*, 488 S.E.2d at 255.

14. *Id.* at 249. Named in the suit were Cumberland, Halifax, Hoke, Robeson, and Vance County Boards of Education. *Id.* They were later joined by other school boards throughout the state—Asheville City, Buncombe County, Charlotte-Mecklenburg, Durham County, Wake County, and Winston-Salem/Forsyth County. *Id.*

15. *Id.* at 252.

16. *Id.* at 253.

17. *Id.*

18. *Id.* (citing *Leandro v. North Carolina*, 468 S.E.2d 543, 550 (N.C. Ct. App. 1996), *aff'd in part* 488 S.E.2d 249 (N.C. 1997)).

19. *Id.* at 254.

to a sound basic education.”<sup>20</sup> The court went on to define a “sound basic education”:

[O]ne that will 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.<sup>21</sup>

The Supreme Court of North Carolina then went on to list a number of factors a court can consider in determining whether students have been denied their right to an opportunity to receive a sound basic education.<sup>22</sup> The court considered the state’s educational goals and standards, and the state’s educational expenditures, both generally and per-pupil.<sup>23</sup> These, the court called “inputs.”<sup>24</sup> The court also examined “outputs,” which were primarily performance levels on standardized tests.<sup>25</sup> The Supreme Court then recognized that no one factor was dispositive on the issue and that a court could consider other factors as well.<sup>26</sup> Additionally, the court stated that courts need to “grant every reasonable deference to the legislative and executive branches” to determine whether educational rights are infringed.<sup>27</sup> The Supreme Court remanded the case to allow the trial court to consider

20. *Id.* (“The principal question . . . [is] whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education.”).

21. *Id.* at 255. (citing *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989); *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979)).

22. *Id.* at 259–60.

23. *Id.*

24. *Id.* (citing Molly McUSIC, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307, 329 (1991)).

25. *Id.*

26. *Id.* at 260 (“Other factors may be relevant for consideration in appropriate circumstances when determining educational adequacy issues under the North Carolina Constitution. The fact that we have mentioned only a few factors here does not indicate our opinion that only those factors mentioned may properly be considered or even that those mentioned will be relevant in every case.”).

27. *Id.* at 261.

these factors to determine whether the plaintiffs had been denied the opportunity to receive a sound basic education, a fundamental right under the North Carolina Constitution.<sup>28</sup>

### *B. Evidence Presented in Leandro II*

On remand, the plaintiffs presented evidence in accordance with the factors announced by the Supreme Court of North Carolina in *Leandro I*.<sup>29</sup> This evidence included performance on standardized tests, student graduation and dropout rates, employment potential, and post-secondary education success, along with a lacking in educational offerings and administrative failings.<sup>30</sup>

The trial court considered scores from standardized End of Grade and End of Course tests<sup>31</sup> and determined that Level III was the minimum proficiency standard under *Leandro I* when measured on a scale from Level I to Level IV.<sup>32</sup> Applying that standard, “the trial court ultimately concluded that the test score statistics and their analysis qualified as *contributing evidence* that Hoke County students were being denied their constitutional right to the opportunity for a sound basic education.”<sup>33</sup> The Supreme Court of North Carolina acknowledged that “Hoke County students trailed the state average in each grade, with gaps ranging from 11.7% to 15.1%.”<sup>34</sup>

In addition to test score data, the plaintiffs presented evidence that graduation rates in Hoke County were substantially lower than the rest of the state: only 41% of freshmen in Hoke County went on to graduate compared to the 60% state average.<sup>35</sup> Moreover, many of these graduates who enrolled in a community college or in the University of North Carolina system were placed in remedial classes for core subjects.<sup>36</sup> The evidence

28. *Id.*

29. *Leandro II*, 599 S.E.2d 365, 380–90 (N.C. 2004), *aff’g in part, rev’g in part Leandro I*, 488 S.E.2d 249.

30. *Id.* at 381–90.

31. End of Grade tests, used for third to eighth grade students, and End of Course tests, used for high school students, are used to track students’ academic progress and determine whether each student is proficient in a given subject. *North Carolina EOG Test Prep*, TIME4LEARNING, <https://perma.cc/L4CW-LFHH>. At the time of *Leandro I*, test scores ranged from one to four, with one being the lowest and four being the highest. *Id.* Level III is considered proficient. *Id.*

32. *Leandro II*, 599 S.E.2d at 382.

33. *Id.* at 383.

34. *Id.*

35. *Id.* at 384.

36. *Id.* at 385 (“55 percent of Hoke County graduates attending community college in 1996 were placed in one or more remedial classes for core subjects” and “Hoke County

presented by the plaintiffs established that students were not prepared for post-secondary education.<sup>37</sup> Further, employers in the area showed that Hoke County graduates were not properly prepared for work at their businesses.<sup>38</sup>

Considering this evidence regarding standardized test performance, graduation rates, employment potential, and post-secondary education success, the trial court found that the education provided to students in Hoke County did not meet the standards articulated in *Leandro I*.<sup>39</sup> The Supreme Court of North Carolina upheld this finding, noting that “an inordinate number of Hoke County students have consistently failed to match the academic performance of their statewide public school counterparts and that such failure . . . constitute[s] a clear showing that they have failed to obtain a *Leandro*-comporting education.”<sup>40</sup>

The court emphasized, however, that it is not enough to show students are not obtaining a sound basic education: “It is one thing for plaintiffs to demonstrate that a large number of Hoke County students are failing to obtain a sound, basic public education. It is quite another for plaintiffs to show that such a failure is primarily the result of action and/or inaction of the State . . . .”<sup>41</sup> In other words, the educational deprivation must be caused by the state’s action or inaction.<sup>42</sup>

The State argued in *Leandro II* that it had recognized the problem and had taken steps to improve education in Hoke County.<sup>43</sup> The State argued “if a cognizable group of students within Hoke County [were] failing to obtain a sound basic education, it [was] due to factors other than the educational offerings provided by the State.”<sup>44</sup> The plaintiffs countered, arguing that the reason students had failed to match the academic success of their statewide peers was that the state failed to provide adequate teachers, administrators, and funding, and implement alternative educational offerings that had or would have addressed and corrected the problems that placed students at risk of academic failure.<sup>45</sup>

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graduates in the UNC system were required to take remedial core courses at nearly double the rate of the statewide counterparts.”).

37. *Id.*

38. *Id.* at 384–85.

39. *Id.* at 372.

40. *Id.* at 386.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* The state was likely arguing that students’ failings were the result of their own effort and work, not because of its own actions.

45. *Id.* at 386–87.



The Supreme Court of North Carolina held that both state action and inaction contributed to the deprivation of students' constitutional right to an opportunity to a sound basic education.<sup>46</sup> Of particular note was the state's failure to meet the needs of "at-risk" students.<sup>47</sup> The court then defined the term "at-risk":

Although there are numerous accepted ways of defining and identifying an "at-risk" student, most educators seem in agreement that an "at-risk" student is generally described as one who holds or demonstrates one or more of the following characteristics: (1) member of low-income family; (2) participate in free or reduced-cost lunch programs; (3) have parents with a low-level education; (4) show limited proficiency in English; (5) are a member of a racial or ethnic minority group; (6) live in a home headed by a single parent or guardian.<sup>48</sup>

The court found the state failed to identify "at-risk" students and address their needs with educational resources such as tutoring, extra classes, counseling, and other programs.<sup>49</sup> More specifically, the court concluded that the state had failed to offer resources to help "at-risk" students compete with their "counterparts and thus avail themselves of their right to the opportunity to obtain a sound basic education."<sup>50</sup> Therefore, while *Leandro I* established that the state is required to provide an opportunity to receive a sound basic education to all students, *Leandro II* recognized a particular and distinct burden with regard to "at-risk" students.<sup>51</sup>

Nonetheless, the court affirmed the state's overall funding and resource provisions scheme as adequate on a statewide basis but emphasized that the problem was not with the amount of funding, but on its effective allocation.<sup>52</sup> The Supreme Court of North Carolina then affirmed most of the trial court's order, specifically for the state to "reassess both its financial allocations and its other resource provisions earmarked for Hoke County schools."<sup>53</sup> The court did, however, reverse the trial court's requirement that the state "provide pre-kindergarten classes for all 'at-risk' prospective enrollees."<sup>54</sup> Ultimately, the Supreme Court of North Carolina held that there was "a clear showing of a denial of the established right of

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46. *Id.* at 390.

47. *Id.* at 387–95.

48. *Id.* at 389–90 n.16.

49. *Id.* at 390.

50. *Id.*

51. *See id.*

52. *Id.*

53. *Id.*

54. *Id.* at 395.

Hoke County students to gain their opportunity for a sound basic education.”<sup>55</sup>

### C. Key Takeaways from the *Leandro* Decisions

There are five main highlights from *Leandro II*. First, the Supreme Court of North Carolina affirmed that the state had not provided a sound basic education for many students.<sup>56</sup> Second, the Supreme Court recognized the state has “an active obligation” to ensure students have the opportunity and experiences “to be good citizens and productive members of society.”<sup>57</sup> Third, local control of education was not being taken away.<sup>58</sup> Fourth, “additional resources must be provided by the state.”<sup>59</sup> Lastly, the Supreme Court believed that it was “premature”<sup>60</sup> to impose mandatory pre-kindergarten education.<sup>61</sup>

*Leandro I* recognized a constitutional right to the opportunity to a sound basic education, but the evidence presented in *Leandro II* provides a workable framework in the potential deprivation of that right. First, the court weighs educational outputs—such as standardized test scores, graduation rates, employment potential, and post-secondary success—against educational inputs—state education expenditures—to determine whether there has been an educational deprivation. Next, the court analyzes whether the state’s actions or inactions have contributed to that deprivation. As the court stated, no one factor is determinative, but a party must demonstrate that the state caused the deprivation.<sup>62</sup>

Like the students in *Leandro I* and *Leandro II*, North Carolina’s homeless students are being deprived of their constitutionally promised opportunity to a sound basic education. Applying similar evidentiary factors found in the *Leandro* cases demonstrates just how these students are not being provided their promised education.

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55. *Id.* at 391.

56. Jonathan P. Sher & John Charles Boger, *Deciding for N.C.’s Students*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 4, 2004, at A15.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* (internal quotation marks omitted).

61. *Id.*

62. *Leandro I*, 488 S.E.2d 249, 260 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004).

## II. NORTH CAROLINA'S HOMELESS STUDENTS

While North Carolina is complying with federal requirements set forth under the McKinney-Vento Homeless Educations Assistance Improvements Act of 2001 (“McKinney-Vento”),<sup>63</sup> North Carolina’s homeless students are not obtaining a sound basic education and their failure to do so is the result of the state’s action and inaction.<sup>64</sup>

### A. Federal Requirements for Educating Homeless Students

Under the McKinney-Vento Act, Congress’s policy is that “[e]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.”<sup>65</sup> In other words, the legislation “entitles children who are experiencing homeless [sic] to a free, appropriate public education and requires schools to remove barriers to their enrollment, attendance, and success in school.”<sup>66</sup> Under McKinney-Vento, homeless children “means individuals who lack a fixed, regular, and adequate nighttime residence”<sup>67</sup> Moreover, homeless children and youths includes the following:

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings . . . ;
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

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63. See McKinney-Vento Act, 42 U.S.C. § 11431 (2012); *Homeless Program Monitoring*, N.C. DEP’T PUB. INSTRUCTION, <https://perma.cc/YQ3E-8EE5> [hereinafter *Homeless Program Monitoring*]. The Every Student Succeeds Act of 2015 (“ESSA”), the legislation to which this website is referring, are amendments to the McKinney-Vento Act that took effect in 2016. *Every Student Succeeds Act of 2015*, NAT’L CTR. HOMELESS EDUC., <https://perma.cc/FGP2-2PC6>.

64. See *Leandro II*, 599 S.E.2d at 386; see also *infra* Part II.B and Part II.C.

65. McKinney-Vento Act § 11431(1).

66. *Homeless Program Monitoring*, *supra* note 63.

67. McKinney-Vento Act § 11434a(2)(A).

(iv) migratory children . . . who qualify as homeless . . . .<sup>68</sup>

Some of the key provisions of the federal legislation include: immediate enrollment of students experiencing homelessness, the right to stay at the same school and be transported to that school even if the student moves out of district, the right to services based on individual need such as free or reduced meals, the right to not be segregated from other students on account of homelessness, and the “opportunity to meet the same high academic achievement standards as all students.”<sup>69</sup>

North Carolina is adhering to McKinney-Vento.<sup>70</sup> The issue, however, is that McKinney-Vento is primarily about providing equal access to education, and not about the quality of that education.<sup>71</sup> The issue in North Carolina is not that homeless students are being denied access to education, but that the quality of that education is lacking.

### *B. North Carolina’s Homeless Students*

North Carolina is violating its constitutional obligation to provide its homeless students with the opportunity to receive a sound basic education.<sup>72</sup> A look at homeless students’ test scores and graduation rates from the last decade, particularly the last three years, reveals that much like the plaintiffs in *Leandro*, homeless students have been denied their constitutional right to a sound basic education.<sup>73</sup>

68. McKinney-Vento Act § 11434a(2)(B)(i)–(iv).

69. *Homeless Program Monitoring*, *supra* note 63.

70. See N.C. GEN. STAT. § 115C-366(a2) (2012) (“It is the policy of the State that every child of a homeless individual and every homeless child and youth has access to a free appropriate public education. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001.”).

71. Compare McKinney-Vento Act, § 11431(1), with N.C. GEN. STAT. § 115C-366(a2). Both statutes explicitly state that homeless students shall be provided equal access to public schools but say nothing about the quality of education they will actually receive.

72. *Leandro I*, 488 S.E.2d 249, 254 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004); see also N.C. CONST. art. I, § 15; N.C. CONST. art. IX, § 2, cl. 1.

73. See generally PERFORMANCE REPORT: 2016–17, *supra* note 4; U.S. DEP’T OF EDUC., OMB No. 1810-0724, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II FOR STATE FORMULA GRANT PROGRAMS UNDER THE ELEMENTARY AND SECONDARY EDUCATION ACT AS AMENDED IN 2001 FOR REPORTING ON SCHOOL YEAR 2015–16: NORTH CAROLINA (2016–17), <https://perma.cc/DK83-PNZV> [hereinafter PERFORMANCE REPORT: 2015–16]; U.S. DEP’T OF EDUC., OMB No. 1810-0724, CONSOLIDATED STATE PERFORMANCE REPORT: PARTS I AND II FOR STATE FORMULA GRANT PROGRAMS UNDER THE ELEMENTARY AND SECONDARY EDUCATION ACT AS AMENDED IN 2001 FOR REPORTING ON SCHOOL YEAR 2014–

The most recent North Carolina Consolidated State Performance Report shows that in grades three through eight, on average, only 20.51% of homeless students tested at a proficient level in reading and 21.07% tested at a proficient level in mathematics.<sup>74</sup> This is in comparison to the statewide proficiency levels for all students in grades three through eight which were 45.5% and 47.6% for reading and mathematics respectively.<sup>75</sup> At each level,<sup>76</sup> homeless students trailed the state average, with gaps ranging from 23.92% to 26.41% in reading and 25.61% to 28.86% in mathematics.<sup>77</sup> For comparison, Hoke County students in *Leandro II* trailed the state average “with gaps ranging from 11.7% to 15.1%.”<sup>78</sup> Homeless high school students performed similarly, with 25.77% achieving proficiency in reading and 19.58% proficient in mathematics.<sup>79</sup> Statewide, 50.81% of all students tested proficient in reading and 44.38% tested proficient in mathematics.<sup>80</sup> This results in a difference of 25.04% in reading and 24.8% in mathematics in high school.

This achievement gap between homeless students and the rest of their peers is not restricted only to the 2016–17 school year. Similar results are visible in both the 2015–16 and the 2014–15 school years.<sup>81</sup> In 2015–16, homeless students trailed the state average in all grades as well, with gaps ranging from 16.56% to 26.85% in reading and 24.91% to 27.38% in math.<sup>82</sup> In 2014–15, the gaps ranged between 19.89% and 25.92% in reading and 25.03% and 29.10% in math.<sup>83</sup>

The wide disparity in proficiency between homeless students and their counterparts is not a recent trend. The 2006–07 school year, the first year this data was tracked and maintained, shows somewhat similar disparities.<sup>84</sup>

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15: NORTH CAROLINA (2015–2016), <https://perma.cc/PLG2-H8DF> [hereinafter PERFORMANCE REPORT: 2014–15].

74. See PERFORMANCE REPORT: 2016–17, *supra* note 4.

75. See *id.* at 17–28.

76. Meaning grades three through eight on the Consolidated State Performance Report.

77. See generally PERFORMANCE REPORT: 2016–17, *supra* note 4.

78. *Leandro II*, 599 S.E.2d 365, 383 (N.C. 2004).

79. See PERFORMANCE REPORT: 2016–17, *supra* note 4, at 55.

80. See *id.* at 29.

81. See PERFORMANCE REPORT: 2015–16, *supra* note 73; PERFORMANCE REPORT: 2014–15, *supra* note 73.

82. See PERFORMANCE REPORT: 2015–16, *supra* note 73, at 17–29, 64 (calculating the percentages of proficient homeless students and comparing to the proficiency of all students throughout the entire state).

83. See PERFORMANCE REPORT: 2014–15, *supra* note 73, at 17–29, 64 (calculating the percentages of proficient homeless students and comparing to the proficiency of all students throughout the entire state).

84. See PERFORMANCE REPORT: 2006–07, *supra* note 6.

The gaps ranged from 12.25% to 25.6% in reading with the average disparity coming out at 16.5%.<sup>85</sup> In math, the gaps ranged from 24.46% to 30.64%, with the average disparity at 27.16%.<sup>86</sup> The wide disparity between the performance of homeless students and their counterparts throughout the last decade is “contributing evidence” that homeless students are not obtaining a sound basic education.<sup>87</sup>

In *Leandro II*, the Supreme Court of North Carolina looked next at graduation rates.<sup>88</sup> In its four-year cohort graduation rate reports, North Carolina does not recognize homeless students as a subgroup.<sup>89</sup> The closest subgroup to homeless is economically disadvantaged.<sup>90</sup> For the 2017–18 graduating class, 86.3% of all North Carolina students graduated from high school.<sup>91</sup> For economically disadvantaged students, that number fell to 80.3%.<sup>92</sup> Given that homeless students are generally the most severely economically disadvantaged students, and as such make up a subgroup of the economic disadvantaged grouping, that number is likely substantially lower for homeless students. Thus, there is likely a wide gap between the State’s graduation rate and homeless students’ graduation rate.

This data—test scores and graduation rates—is contributing evidence that there is a substantial gap in achievement between North Carolina’s homeless students and their peers.<sup>93</sup> This is especially poignant given that the Supreme Court recognized a particular and distinct burden with regard to “at-risk” students, which homeless students likely are.<sup>94</sup> The data

85. *See id.* at 17–23, 66 (calculating the percentages of proficient homeless students and comparing to the proficiency of all students throughout the entire state).

86. *See id.*

87. *Leandro II*, 599 S.E.2d 365, 383 (N.C. 2004) (emphasis omitted).

88. *Id.* at 384.

89. *See* N.C. DEP’T OF PUB. INSTRUCTION, 4 YEAR COHORT GRADUATION RATE REPORT: 2014–15 ENTERING 9TH GRADERS GRADUATING IN 2017–18 OR EARLIER, <http://accrpt.ncpublicschools.org/app/2018/cgr/> (select “State Wide” for School System; then click “View Report”) (last visited Aug. 16, 2019) [hereinafter GRADUATION RATE REPORT: 2014–15].

90. *See id.*

91. *Id.*

92. *Id.*

93. *Compare id.*, and PERFORMANCE REPORT: 2016–17, *supra* note 4, with PERFORMANCE REPORT: 2006–07, *supra* note 6 (noting that the academic achievement between homeless students and their counterparts has existed for at least ten years).

94. *See Leandro II*, 599 S.E.2d 365, 389–90 (N.C. 2004). While individual homeless students may satisfy multiple characteristics, most homeless students will generally satisfy at least two characteristics of the definition the Supreme Court used for “at-risk”: they are members of low-income families and participate in free or reduced-cost lunch programs. *See id.* at 389–90 n.16.

suggests that just like the Hoke County students, North Carolina's homeless students have been denied their constitutional right to a sound basic education.<sup>95</sup>

### *C. The Result of North Carolina's Inaction*

A step further in the analysis is necessary to show that North Carolina has violated *Leandro's* constitutional requirements of a sound basic education with regard to homeless students.<sup>96</sup> As the Supreme Court of North Carolina stated, “[i]t is one thing for plaintiffs to demonstrate that a large number of Hoke County students are failing to obtain a sound, basic public education. It is quite another for plaintiffs to show that such a failure is primarily the result of action and/or inaction of the State . . . .”<sup>97</sup> This means that not only is a plaintiff required to show that they are not obtaining a sound, basic public education, but that their failure to do so is the result of state action and/or inaction.<sup>98</sup>

First, as evidenced by the longevity in the disparity in academic achievement between homeless students and statewide peers, North Carolina has failed to remedy the failure to provide a sound basic education to homeless students.<sup>99</sup> In recent years, the achievement gap between homeless students and statewide peers has consistently been around twenty to twenty-five percent.<sup>100</sup> In the 2006–07 school year, the average disparity between homeless students in reading was 16.5%.<sup>101</sup> This is compared to an average disparity in reading of twenty-three percent for 2016–17.<sup>102</sup> Not only has the state not acted to curb this disparity in academic achievement between homeless students and their peers, but it has actually gotten worse over the last decade.<sup>103</sup> The disparity widening throughout the last decade, despite McKinney-Vento targeted at having the opposite effect,<sup>104</sup> is

95. See, e.g., *id.* at 365; PERFORMANCE REPORT: 2016–17, *supra* note 4.

96. *Leandro II*, 599 S.E.2d at 386; see also *supra* Part I.

97. *Leandro II*, 599 S.E.2d at 386.

98. See *id.*

99. Compare PERFORMANCE REPORT: 2016–17, *supra* note 4, with PERFORMANCE REPORT: 2006–07, *supra* note 6 (noting that the academic achievement between homeless students and their counterparts has existed for at least ten years).

100. See generally PERFORMANCE REPORT: 2016–17, *supra* note 4; PERFORMANCE REPORT: 2015–16, *supra* note 73; PERFORMANCE REPORT: 2014–15, *supra* note 73.

101. See PERFORMANCE REPORT: 2006–07, *supra* note 6, at 17–23, 66.

102. PERFORMANCE REPORT: 2016–17, *supra* note 4, at 17–29, 55.

103. Compare *id.*, with PERFORMANCE REPORT: 2006–07, *supra* note 6 (noting that the academic achievement between homeless students and their counterparts has existed for at least ten years).

104. McKinney-Vento Act, 42 U.S.C. § 11431 (2012).

evidence that North Carolina has not acted to provide an opportunity to a sound basic education for homeless students.

A response to the position that the state has failed to remedy its failure to provide a sound basic education might be that the state should not be forced to take responsibility for the individual failings of its students.<sup>105</sup> Under *Leandro*, this argument fails. The Supreme Court stated in *Leandro I* that there was a qualitative standard to education under the North Carolina Constitution.<sup>106</sup> In other words, the state is responsible for ensuring that each student is receiving a sound, basic education and is not failing. *Leandro II* recognized a distinct burden for the state in this regard with respect to “at-risk” students.<sup>107</sup> As such, the state is responsible for each individual student that fails to achieve a sound, basic education, particularly when that student qualifies as “at-risk.”

Second, while the Supreme Court thought it premature in *Leandro II* to mandate North Carolina’s Pre-Kindergarten program, the time has come for the state to do so. North Carolina’s current Pre-Kindergarten (“Pre-K”) program has negatively affected the achievement of at-risk students, specifically homeless students.<sup>108</sup> North Carolina’s Pre-K Program is purposely designed to provide a “high-quality educational experience” to “at-risk 4-year-olds primarily from low-income families.”<sup>109</sup> But in 2018, only 47% of North Carolina’s eligible children were actually enrolled in Pre-K.<sup>110</sup> For those enrolled in North Carolina’s Pre-K Program, studies have shown that there is an increase in literacy and math skills, and that the positive outcomes at least held steady or increased significantly “through at least fifth grade, with no ‘fade-out.’”<sup>111</sup> This means the positive effect of North Carolina’s Pre-K system extends far into a child’s educational

105. E.g., Sarah Mindlin, *Students Should Be Responsible for Their Performance, Not Just Teachers*, FEDERALIST (Aug. 15, 2018), <https://perma.cc/L5YU-STRJ> (arguing that students should also bear the burden of their poor performance on exams, not just teachers on their professional evaluations).

106. *Leandro I*, 488 S.E.2d 249, 254 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004).

107. *Leandro II*, 599 S.E.2d at 390.

108. See generally W. STEVEN BARNETT WITH ASSISTANCE FROM RICHARD KASMIN, NAT’L INST. FOR EARLY EDUC. RES., BARRIERS TO EXPANSION OF NC PRE-K: PROBLEMS AND POTENTIAL SOLUTIONS (2018), <https://perma.cc/HR3A-QFW8>.

109. *Id.* at 2.

110. *Id.*

111. *Id.* at 4 (citing numerous studies conducted by the University of North Carolina at Chapel Hill, and Kenneth A. Dodge et al., *Impact of North Carolina’s Early Childhood Programs and Policies on Educational Outcomes in Elementary School*, 88 CHILD DEV. 996 (2017)).



future.<sup>112</sup> Yet, the primary issue with North Carolina's Pre-K Program, despite being "one of the highest-quality programs in the United States with proven results for at-risk students," is that it "is reaching less than half the children it was designed to serve."<sup>113</sup>

Not reaching at-risk, low income children, primarily homeless ones, at the Pre-K level results in a trickle-down effect through elementary, middle, and high school.<sup>114</sup> Not being adequately prepared puts many homeless students at a severe disadvantage, especially as compared to their peers around the state.<sup>115</sup> Before homeless students even step foot inside a K-12 classroom, they are disadvantaged because they have not gone through any substantial preparation for success in a classroom.<sup>116</sup> North Carolina has not acted enough to curb the issue.

On average, North Carolina provides only 61% of the cost for a child to be in Pre-K.<sup>117</sup> The North Carolina General Assembly attempted to remedy this funding issue in 2018 when it passed House Bill 90.<sup>118</sup> This bill aimed at eliminating the waiting lists for the Pre-K programs around the state.<sup>119</sup> While well-intentioned, this did little to fix the issue. Waiting lists merely refer to counties' capacities to enroll more students, and not an actual waiting list of students.<sup>120</sup> And while state funding was increased to cover waiting lists, other barriers still exist, thus prohibiting counties from

112. *See id.*

113. *Id.*

114. Kenneth A. Dodge et al., *Impact of North Carolina's Early Childhood Programs and Policies on Educational Outcomes in Elementary School*, 88 *CHILD DEV.* 996, 1010–11 (2017) ("The findings of this study indicate that state investments early in life in North Carolina's [Pre-K programs] are associated with higher math and reading standardized test scores, reductions in special education placement rates, and reductions in being grade retained in Grades 3, 4, and 5. The relation between financial investments and children's educational outcomes was linear, such that every hundred dollars of investment improved children's outcomes, at least throughout the range of funding in these programs. . . . This pattern suggests that the impacts of early investments are not necessarily doomed to fadeout as cynics might believe but could actually lead to a trajectory of growing impacts across development, if implemented in the right context.")

115. *See id.*

116. *See id.*

117. BARNETT WITH KASMIN, *supra* note 108, at 13.

118. 2018 N.C. Sess. Laws 2 (appropriating funds for the N.C. Pre-K program in future years) (Repealed 2018).

119. *Quick Facts: Benefits of Pre-K*, PUB. SCHOOLS FIRST N.C. (Apr. 10, 2018), <https://perma.cc/2MA7-TKND>.

120. BARNETT WITH KASMIN, *supra* note 108, at 2.

expanding.<sup>121</sup> This means counties are left to choose between two options—cover the remaining cost per child and operate at a deficit or not expand and cover more children.<sup>122</sup> More often than not, counties have elected not to expand their Pre-K Programs, leaving homeless students left behind and suffering from lack of access to the Pre-K Program.<sup>123</sup> The election not to expand their Pre-K programs places homeless students at a severe disadvantage before they even step foot in a classroom.

Homeless students are not obtaining a sound basic education, and that failure is the result of the state's inaction. North Carolina has not acted to remedy the disparity in academic achievement between homeless students and their peers and has failed to remedy issues with its Pre-K program.

### III. HOW NORTH CAROLINA CAN UPHOLD ITS CONSTITUTIONAL OBLIGATION

There are a number of things that North Carolina must do to bridge the gap between homeless students and their peers to ensure that homeless students are receiving a sound basic education. This Comment offers a non-exhaustive list of changes North Carolina can make.

#### *A. School Funding*

First, the North Carolina General Assembly must make a concerted effort to prioritize education by increasing funding. In 2017, North Carolina ranked thirty-ninth nationally in expenditure per student in fall enrollment, spending \$9,329 per student, a little over \$2,300 lower than the national average.<sup>124</sup> Increasing expenditures per student to at least the national average would put North Carolina on a better path in education.<sup>125</sup>

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121. *See id.* at 11–16 (explaining that Pre-K expansion without more state funding results in an increase in the cost per child due to an increase in expenses like facilities, teachers, and transportation and local funding is largely already exhausted at the current level of enrollment).

122. *See id.*

123. *Id.* at 7–8.

124. NAT'L EDUC. ASS'N, RANKINGS OF THE STATES 2017 AND ESTIMATES OF SCHOOL STATISTICS 2018 37 (2018), <https://perma.cc/9435-ZDJ6>.

125. *Compare id.*, with *Pre-K – 12 Rankings*, U.S. NEWS, <https://perma.cc/6LQA-ZVAW>. Each of the top-five ranked states in K-12 education—Massachusetts, New Jersey, New Hampshire, Vermont, and Connecticut—ranked in the top ten for expenditures per student.

Increasing funds only fixes part of the problem. The other issue is how that money is spent.<sup>126</sup> North Carolina needs to spend money to expand Pre-K services to a much larger percentage of at-risk children, which includes homeless children. Steering at-risk children into Pre-K has proven to have a positive effect on the students entering elementary education.<sup>127</sup> Increasing the number of students in Pre-K would increase the number of students who are successful in early elementary grades.<sup>128</sup> This positive effect would likely build as students progress through school, receiving positive feedback from their teachers and good test scores to increase self-confidence which will propel them through the rest of their education.<sup>129</sup>

It is likely that spending the money on education now could save the state money later on. First, if North Carolina does not do anything to remedy its constitutional violation, it is opening itself up to potential litigation in the future.<sup>130</sup> The costs of litigation in the future can be diminished if the state spends the money now in the present. Second, individuals experiencing poverty are more likely to experience and engage in criminal behavior than those not in poverty.<sup>131</sup> Studies show that “[s]tates with higher levels of educational attainment also have crime rates lower than the national average.”<sup>132</sup> In North Carolina, this is especially relevant to homeless students because not only are they living in poverty and more likely to engage in criminal behavior as a result, but they are also attaining low levels of education.<sup>133</sup>

126. Eric A. Hanushek, *When School Finance “Reform” May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423, 425 (1991) (arguing that blanket increases in student expenditures has no positive effect on education, but that efficient school operation and money allocation can have an effect on individual performance).

127. ELLEN S. PEISNER-FEINBERG, FPG CHILD DEV. INST., NORTH CAROLINA PRE-KINDERGARTEN PROGRAM EVALUATION: KEY FINDINGS (2002–2016) 1–2 (2017), <https://perma.cc/UDV4-APNK>.

128. See BARNETT WITH KASMIN, *supra* note 108, at 4.

129. See Eva Frederick, *Believe and Achieve: Confidence Linked to Academic Success*, CATALYST (Feb. 15, 2016), <https://perma.cc/6FVF-JZKS>.

130. In January of 2020, North Carolina Superior Court Judge David Lee declared that North Carolina was not giving a sound basic education to its students and ordered state legislators to work immediately to remedy this violation. T. Keung Hui, *Judge Says NC is Leaving ‘Too Many’ Students Behind, Orders State Leaders to Act*, NEWS & OBSERVER (Jan. 21, 2020), <https://perma.cc/EBW9-PE3Y>. This order is a prime example of how litigation will continue to plague the state’s court systems if it does not remedy its constitutional violations.

131. See ERIKA HARRELL ET AL., U.S. DEP’T OF JUSTICE, NCJ 248384, HOUSEHOLD POVERTY AND NONFATAL VIOLENT VICTIMIZATION, 2008–2012 (Nov. 2014), <https://perma.cc/S4ER-92XA>.

132. *Education and Crime*, CRIM. JUST., <https://perma.cc/SP84-JFCN>.

133. See *id.*; ERIKA HARRELL ET AL., *supra* note 131.

Last fiscal year, North Carolina spent an average of \$37,712 per inmate in its correctional system.<sup>134</sup> As there are almost 35,000 prisoners,<sup>135</sup> North Carolina spent more than 1.3 billion dollars just to maintain prisoners in the correctional system.<sup>136</sup> By increasing funding on the front end to properly educate its homeless students, North Carolina can lessen the amount spent on the back end for corrections.<sup>137</sup> Legislators must ask themselves if they would rather spend money on students or prisoners.

### *B. Identification*

North Carolina also needs to better identify homeless students. Despite the seemingly continual increase over the last decade in registered homeless students, the number is most likely an undercount.<sup>138</sup> For example, the number of homeless students enrolled in schools does not capture students that schools failed to identify as homeless, students that experienced homelessness only during the summer, and students that dropped out of school.<sup>139</sup> Better identification of homeless students is a critical step to providing them with a sound basic education.

One way the state can better identify homeless students is to train teachers in how to notice some of the signs that a student may be homeless. Teachers are on the front-line with students every day. They are in the best position to notice irregularities in a child's behavior. For example, teachers are required by state law to report any signs of abuse they see in their students.<sup>140</sup> Teachers are in a similar position to see irregularities that may be caused by homelessness.<sup>141</sup>

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134. *Cost of Corrections*, N.C. DEP'T OF PUB. SAFETY, <https://perma.cc/WES3-GC7E>.

135. *Department of Public Safety Statistics*, N.C. DEP'T OF PUB. SAFETY, <https://perma.cc/PXU4-HNX2>.

136. *See id.*; *Cost of Corrections*, *supra* note 134.

137. *Compare* ERIKA HARRELL ET AL., *supra* note 131, *with Cost of Corrections*, *supra* note 134, and *Department of Public Safety Statistics*, *supra* note 135.

138. *See Federal Data Summary School Years 2014–15 to 2016–17: Education for Homeless Children and Youth*, NAT'L CTR. FOR HOMELESS EDUC. (2019), <https://perma.cc/K95V-KPNA>.

139. *See id.*

140. N.C. GEN. STAT. § 7B-301(a) (2012); *see also Over 121,000 Investigated Cases of Child Abuse and Neglect in North Carolina*, CHILDREN'S HOME SOC'Y OF N.C., <https://perma.cc/2QG8-7UYD> (noting that nearly seventy percent of the reported cases of child abuse between July 2016 and June 2017 were submitted by educators, medical personnel, law courts, and human services).

141. Possible signs could include poor health and nutrition, transportation and attendance problems, poor hygiene, and an unwillingness to form meaningful relationships. *Potential Warning Signs of Homelessness*, MADISON METROPOLITAN SCH. DISTRICT,

And while some schools notify teachers about some warning signs of homelessness, they fail to provide any training on how to help those students more than just referring them to the guidance counselors. Providing warning signs to look for in homeless children and training teachers in how best to accommodate homeless students' needs is another step on the road to providing homeless children with a sound basic education.

A similar approach was taken in Seattle,<sup>142</sup> a city with “a large and visible homeless population.”<sup>143</sup> There, Seattle public schools not only utilized the homeless liaisons that McKinney-Vento mandated, but also adopted “building-level contacts” in schools with at least ten recognized homeless students.<sup>144</sup> After being trained by the District Homeless Liaison, the building-level contact’s primary responsibility “is to identify homeless students and unaccompanied youth and connect them to services provided under the guidance of the District Homeless Liaison.”<sup>145</sup> If North Carolina adopted a similar program, identification of homeless students would increase and the state would be in a better position to help these students.

### C. Tutoring Programs

Additionally, North Carolina should adopt supplementary tutoring sessions for at-risk students to increase their academic achievement. A school-specific tutoring program would help bridge the gap between homeless students’ achievement and the achievement of their peers.<sup>146</sup> Tutoring would also prepare students to “function in a complex and rapidly changing society,”<sup>147</sup> one of the components of a sound basic education as defined by the Supreme Court of North Carolina.

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<https://perma.cc/2JZV-M9M5>. Of course, these are just a few examples, as the list is much, much longer. *Id.*

142. SEATTLE PUB. SCH., 3115SP, HOMELESS STUDENTS: ENROLLMENT RIGHTS AND SERVICES (May 20, 2015), <https://perma.cc/Q88X-SR57>.

143. Scott Greenstone, *While Homelessness Rises in the U.S., It’s Actually Going Down in Washington State, Feds Say*, SEATTLE TIMES (Jan. 17, 2020), <https://perma.cc/MS6M-8W4Y>.

144. SEATTLE PUB. SCH., SCHOOL BOARD ACTION REPORT: AMENDING POLICY NO. 3115 (June 7, 2017), <https://perma.cc/GX6N-GCP2>.

145. *Id.*

146. See Terri Rothman & Mary Henderson, *Do School-Based Tutoring Programs Significantly Improve Student Performance on Standardized Tests?* 34 RES. MED. LEVEL EDUC. 7 (2011) (finding that “borderline students who received school-based tutoring from district teachers performed higher on standardized test scores in the areas of mathematics and language arts than borderline students who did not participate in tutoring”).

147. *Leandro I*, 488 S.E.2d 249, 255 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004).

Students who live in poverty are more likely to suffer from chronic stress and repeated traumatization, while at the same time having less access to support and resources.<sup>148</sup> Therefore, it is imperative that school systems adopt programs specifically to assist these students. If every staff member is trained in how to create and maintain trauma-informed instructional strategies daily and students are taught accordingly, schools can provide safe, professional, compassionate environments for students that would greatly facilitate learning.<sup>149</sup> These tutoring sessions should be aimed at providing specific needs of homeless students.<sup>150</sup> This could include providing food to make sure students stay nourished and scheduling nap time to ensure that homeless students get adequate sleep.<sup>151</sup> These tutoring programs would be more than just an effort to educate homeless students and raise their academic level, as they would be a wholistic approach to make sure homeless students have all the support and resources they need.

#### *D. Digital Learning*

Lastly, North Carolina should reexamine its recent push toward digital learning.<sup>152</sup> According to the North Carolina Digital Learning Plan, digital age learning is “[a]nywhere and anytime learning, inside and outside of schools, 24/7, with most learning blending face-to-face and online activities.”<sup>153</sup> Moreover, digital learning utilizes “[d]igital content providing interactive, flexible and easily updated educational resources.”<sup>154</sup> Digital learning is a necessary element of an ever-growing society, yet

148. VICTORIA E. ROMERO ET AL., *BUILDING RESILIENCE IN STUDENTS IMPACTED BY ADVERSE CHILDHOOD EXPERIENCES: A WHOLE-STAFF APPROACH* 8 (2018).

149. *Id.*; see also Tori DeAngelis, *Helping At-risk Students Succeed*, AM. PSYCHOL. ASS’N, (Feb. 2012), <https://perma.cc/P3Z3-KUCK> (discussing a poor, low-performing school district’s success in raising test scores by consolidating student support personnel—counseling, intervention programs, and other community resources—and addressing the social and psychological barriers to student learning).

150. See DeAngelis, *supra* note 149.

151. Lack of sleep can have a direct negative impact on a child’s education. See Interview by The Scope with Dr. Cindy Gellner, Md, (June 4, 2018), <https://perma.cc/MPG7-SN9F>. See also *Nutrition & Students’ Academic Performance*, WILDER RES. (Jan. 2014), <https://perma.cc/4QAJ-2N9K> (“Recent studies have demonstrated that nutrition affects students’ thinking skills, behavior, and health, all factors that impact academic performance.”).

152. FRIDAY INST. FOR EDUC. INNOVATION PREPARED FOR N.C. STATE BD. OF EDUC., *NORTH CAROLINA DIGITAL LEARNING PLAN: SUMMARY* (Sept. 2015), <https://perma.cc/T5B2-T73F>.

153. *Id.* at 2.

154. *Id.*

produces a potentially negative impact on students lacking access to internet and other resources necessary for digital learning.

The Digital Learning Plan itself recognizes that an overwhelming majority of teachers throughout the entire state reported that they lacked adequate access to technology.<sup>155</sup> If schools and teachers lack adequate access to technology, the likelihood of homeless students lacking that same access is extremely high. As such, a shift toward complete digital learning may leave behind those that lack the resources to support that change, like homeless students.<sup>156</sup> This Comment does not advocate against the Digital Learning Plan. While the Digital Learning Plan itself is not a problem, and it is beneficial to grow and adapt to an ever-changing technological society, it is critical that schools maintain flexibility in order to accommodate students, like homeless ones, that do not have access to internet and other necessary resources.

North Carolina can—and must—do more to provide a sound basic education for its homeless students.

#### CONCLUSION

The North Carolina Constitution promises the opportunity to receive a sound basic education to all students.<sup>157</sup> As the Supreme Court of North Carolina stated, “[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.”<sup>158</sup> Standardized test scores over the last decade, along with graduation rates, show that the education of homeless students in North Carolina fails to meet that constitutional requirement.<sup>159</sup> Homeless students face challenges unlike those with stable homes. In addition to lacking resources, homeless

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155. *Id.* at 5 (“As in other data relevant to digital learning, these show a wide range of responses across districts, with only a few coming close to meeting the technology needs of their students and teachers.”).

156. Some school districts have gone “1:1,” meaning every student is given a personal electronic device on which to learn. See *1:1 Personal Technology Device – Per Student*, ROWAN-SALISBURY SCH. SYS., <https://perma.cc/BS8J-4T5Y>. According to Rowan-Salisbury Schools, the 1:1 plan “allows students to access instruction with the flexibility to learn anytime and anywhere.” *Id.* But consider the following hypothetical: A homeless student in this district is given a homework assignment to turn in online, but she has no outlet to charge her laptop or no internet to submit the assignment. Should she receive a failing grade for not turning in the assignment?

157. *Leandro I*, 488 S.E.2d 249, 255 (N.C. 1997), *aff’d in part, rev’d in part sub nom. Leandro II*, 599 S.E.2d 365 (N.C. 2004).

158. *Id.* at 254.

159. See *supra* Part II.

students often suffer from sleep deprivation, malnutrition, poor hygiene, and frequent absenteeism or tardiness.<sup>160</sup> These challenges make learning extremely difficult for homeless students and are a large reason behind their suffering academic achievement.

To remedy the *Leandro* violation, the North Carolina General Assembly must prioritize the education of its citizens. The suggested remedies to assist the education of homeless students are just a handful of options to bridge the achievement gap between homeless students and their peers. North Carolina must act to ensure that *all* students have the opportunity to receive a sound basic education, a constitutional guarantee that is going unfulfilled for the state's homeless students.

*Wesley A. Stewart\**

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160. Winnie O'Leary, *Understanding the Challenges Faced by Homeless Students: What Educators Can Do to Help*, EDMENTUM BLOG (Jan. 10, 2019), <https://perma.cc/6HAW-8L73>.

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