

# Leandro's Limit: Do North Carolina's Homeschoolers Have a Right to a Sound Basic Education Protected by the State?

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Parents across the nation are increasingly dissatisfied with public education.<sup>2</sup> In growing numbers, they are turning to homeschooling as an alternative.<sup>3</sup> From 1999 to 2012, the number of homeschooled children in the United States increased by seventy-five percent.<sup>4</sup> Today, nearly 1.6 million children attend homeschools in the United States.<sup>5</sup> In North Carolina alone, an estimated 83,609 children attended homeschools in the 2012–2013 school year.<sup>6</sup> While the total number of

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2. See Julia Lawrence, *Number of Homeschoolers Growing Nationwide*, EDUC. NEWS (May 21, 2012), <http://www.educationnews.org/parenting/number-of-homeschoolers-growing-nationwide/>.

3. *Id.*

4. *Id.*

5. Ann Zeise, *Number of Homeschoolers in the USA*, A2Z HOME'S COOL (Jan. 20, 2014), [http://a2zhomeschooling.com/thoughts\\_opinions\\_home\\_school/numbers\\_homeschooled\\_students/](http://a2zhomeschooling.com/thoughts_opinions_home_school/numbers_homeschooled_students/). While the exact number of homeschooled students is not known, these numbers are educated estimates based on the number of school-aged children in each state and data on registered homeschoolers from states that require registration, including North Carolina homeschool enrollment data from the North Carolina Department of Education. See *State of North Carolina Home School Statistics*, N.C. DEP'T OF ADMIN., <http://www.ncdnpe.org/homeschool2.aspx> (last visited Feb. 2, 2014). The U.S. Census, relying on information from a 2007 Parent and Family Involvement in Education Survey, documented that the number of students who were homeschooled as of spring 2007 was 1,508,000, or 2.9% of the student population. Table 240. *Students Who Are Homeschooled by Selected Characteristics: 2007*, U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 157, available at <http://www.census.gov/compendia/statab/2012/tables/12s0240.pdf> (last visited Feb. 2, 2014).

6. Zeise, *supra* note 5. This number may continue to rapidly increase in the near future as a result of recent legislation that may incentivize parents of children with disabilities to choose homeschooling. Effective for the spring semester of the 2013–2014 school year, eligible students with disabilities may be awarded a scholarship grant “to



homeschooled children nationwide is currently only four percent of all K–12 students, “the number of primary school kids whose parents choose to forgo traditional education is growing seven times faster than the number of kids enrolling in K–12 every year.”<sup>7</sup> The number of homeschooled students in the United States is expected to continue to steadily increase in the near future.<sup>8</sup> Researchers “expect to observe a notable surge in the number of children being homeschooled in the next 5 to 10 years[,]” both in terms of raw numbers of children in homeschools and in terms of the overall percentage of homeschoolers in the total elementary and secondary student population.<sup>9</sup> This increase is expected because “(1) a large number of those individuals who were being home educated in the 1990s may begin to homeschool their own school-age children and (2) the continued successes of home-educated students” inspires newcomers to join this educational movement.<sup>10</sup>

The North Carolina State Constitution requires that the General Assembly ensure all students, including the growing number of homeschooled students, receive an opportunity to a sound basic education—as defined by the Supreme Court of North Carolina in *Leandro v. State*—to enable them to be productive members in society.<sup>11</sup> The General Assembly has opted to authorize homeschools and even funds particular homeschools with scholarship grants.<sup>12</sup> But, the

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attend any nonpublic school and to receive special education and related services in a nonpublic school setting.” Act of July 29, 2013, H.B. No. 269, 2013 N.C. Sess. Laws 364. The scholarship grant may be up to \$3,000 per eligible student per semester and is meant “only for the reimbursement of tuition and special education and related services, including those services provided to home schooled students.” *Id.* Furthermore, a proposed bill in the 2013 session of the North Carolina General Assembly would create an income tax credit for all children who are homeschooled. See H.B. 144, 2013–14 Gen. Assemb., Reg. Sess. (N.C. 2013), available at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H144v0.pdf>. Under this proposed bill, a taxpayer would be allowed a \$1,250 tax credit per semester for each child “who is a resident of this State and who, for one or two semesters during the taxable year, is enrolled in a home school that meets the requirements of G.S. 115C-564.” *Id.* If this legislation passes, it is plausible that more parents in North Carolina would choose to homeschool their child since part of the financial burden of doing so is transferred from the parent to the State, even though the child is not enrolled in a public school.

7. Lawrence, *supra* note 2.

8. *Id.*

9. *Id.* (quoting Brian D. Ray, 2.04 Million Homeschool Students in the United States in 2010, NAT’L HOME EDUC. RES. INST. 3 (Jan. 3, 2011), <http://www.nheri.org/HomeschoolPopulationReport2010.pdf>).

10. *Id.*

11. N.C. CONST. art. I, § 15; *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

12. Act of July 29, 2013, H.B. No. 269, 2013 N.C. Sess. Laws 364; see *supra* note 6.



General Assembly does little to ensure that the children in those homeschools receive the opportunity to a sound basic education. This Article will address the conflict between a student's state constitutional right to be educated<sup>13</sup> and a parent's constitutional right to "direct the upbringing and education" of her child,<sup>14</sup> while recognizing that the State has a duty to "guard and maintain" the child's right to an education under Article I, Section 15 of the North Carolina State Constitution.<sup>15</sup> Ultimately, this Article will suggest that North Carolina's homeschooling laws are not sufficient to ensure each homeschooled child's constitutional right to the opportunity to receive a sound basic education, and thus, the State is failing in its duty. Part I of this Article will identify states' interests, parents' interests, and children's rights in ensuring access to the opportunity to a sound basic education.<sup>16</sup> After laying this foundation, Part II will demonstrate that parents' "Pierce right" is not absolute when the State's interests and a child's rights are also at play.<sup>17</sup> It will then establish the balancing of interests that must take place to determine the constitutional rights of homeschooled students versus their parents.<sup>18</sup> In Part III, this Article will explore North Carolina's existing laws on homeschooling and the potential burden these laws place on students' constitutional rights.<sup>19</sup> Finally, in Part IV, this Article will propose revisions to North Carolina's homeschooling statutes that would ensure that all children in North Carolina, regardless of whether they are taught in a traditional school or at home, are afforded the opportunity to receive a sound basic education.<sup>20</sup>

#### I. CONSTITUTIONAL RIGHTS AND THE INTERESTS AT STAKE IN HOMESCHOOL DECISIONS

There are three major parties to educational decisions: the state, the child, and the parent. Each has constitutionally significant interests at

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13. N.C. CONST. art. I, § 15.

14. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).

15. N.C. CONST. art. I, § 15.

16. See *infra* notes 21–116 and accompanying text.

17. See *infra* notes 117–83 and accompanying text.

18. See *infra* notes 117–83 and accompanying text.

19. See *infra* notes 184–298 and accompanying text.

20. See *infra* notes 299–329 and accompanying text. For a discussion of the student's constitutional right to the "equal opportunity to receive a sound basic education," see *infra* notes 25–116 and accompanying text as well as *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).



play: the State of North Carolina has a constitutional obligation to "guard and maintain" its citizens "right to the privilege of education"<sup>21</sup> so that they can become "self-reliant and self-sufficient participants in society,"<sup>22</sup> the child has a state constitutional right to receive a sound basic education;<sup>23</sup> and the parent has a federal constitutional right to control his or her child's education.<sup>24</sup> This Section provides the essential background on the scope of each of these rights and interests in the context of homeschool decisions.

### A. *The State's Interest in Educating Its Children*

In *San Antonio Independent School District v. Rodriguez*, the Supreme Court of the United States noted that while education is an important service performed by the state, it is not afforded explicit or implicit protection under the U.S. Constitution.<sup>25</sup> Since education is not explicitly or implicitly protected under the Constitution, and because the Court determined there was no implied constitutional right to an education reserved in "the people,"<sup>26</sup> individual states, therefore, retain power to control education under the Tenth Amendment.<sup>27</sup> North Carolina has a recognized interest in educating its citizens to be productive members of society and has placed a constitutional duty on the State to "guard and maintain" the child's right to an education, as blessed by the Supreme Court.<sup>28</sup>

#### 1. *North Carolina's Federally Recognized Interest*

The Supreme Court has long recognized the importance of education to individual states so that their students may one day contribute to society, thus allowing the states to continue to prosper in

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21. N.C. CONST. art. I, § 15.

22. *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972). See *infra* note 29 and accompanying text.

23. *Leandro*, 488 S.E.2d at 254-55.

24. See *infra* note 85 and accompanying text.

25. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

26. *Id.*; see also Lisa M. Lukasik, Comment, *The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools*, 74 N.C. L. REV. 1913, 1942 (1996).

27. The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X; see also Lukasik, *supra* note 26, at 1942.

28. N.C. CONST. art. I, § 15; *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972).



our democratic society.<sup>29</sup> For example, in *Wisconsin v. Yoder*, the Supreme Court recognized that a state has a “high responsibility for [the] education of its citizens,” as “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”<sup>30</sup> In *Brown v. Board of Education*, the Supreme Court acknowledged:

Education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>31</sup>

Because of the importance of education to the states, the states have authority to intervene in matters of education, such as to establish compulsory attendance laws.<sup>32</sup>

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29. See *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (“[E]ducation provides the basic tools by which individuals might lead economically productive lives . . . [and it] has a fundamental role in maintaining the fabric of our society.”); *Yoder*, 406 U.S. at 221 (“[E]ducation prepares individuals to be self-reliant and self-sufficient participants in society.”); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 602–03 (1967) (“There can be no doubt of the legitimacy of [the State’s] interest in protecting its education system from subversion. . . . Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.”); *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) (recognizing “public schools as a most vital civic institution for the preservation of a democratic system of government”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“Today, education is perhaps the most important function of state and local governments.”); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925) (“No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils . . . [and] that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.”); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”).

30. *Yoder*, 406 U.S. at 213, 221.

31. *Brown*, 347 U.S. at 493.

32. See *Yoder*, 406 U.S. at 213–14; Lukasik, *supra* note 26, at 1942. For example, in North Carolina, the state constitution provides: “The General Assembly shall provide



The increase in the number of parents who are choosing to homeschool their children has led to increased focus on how this conflicts with states' interest in educating their citizens.<sup>33</sup> "Historically, the key legal issue most often cited in home school conflict[s] with public education has been compulsory attendance. In fact, the homeschooling movement has had its greatest difficulty with compulsory attendance laws."<sup>34</sup> Many states have maintained that homeschooling violates state laws on compulsory school attendance, while parents argue that the First and Fourteenth Amendments allow them to have control over their child's education.<sup>35</sup>

In *Wisconsin v. Yoder*, the Supreme Court considered the issue of compulsory school attendance laws as applied to Amish parents who refused to send their children to public schools after each child completed the eighth grade.<sup>36</sup> The parents argued that their children's high school attendance contradicted their religious beliefs.<sup>37</sup> The Court accepted the State's argument that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system" and that "education prepares individuals to be self-reliant and self-sufficient participants in society[.]" and thus, it recognized that the State had an interest in compulsory education.<sup>38</sup> Furthermore, the Court emphasized that the State had a "high responsibility for [the] education of its citizens" and, therefore, could "impose reasonable regulations for the control and duration of basic

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that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means." N.C. CONST. art. IX, § 3. North Carolina's compulsory attendance statute requires that:

[e]very parent, guardian or custodian in this State having charge or control of a child between the ages of seven and 16 years shall cause the child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session.

N.C. GEN. STAT. § 115C-378(a) (2013).

33. STACEY L. EDMONSON, *Homeschooling*, in *ENCYCLOPEDIA OF EDUCATION LAW* 437, 439 (Charles J. Russo ed., 2008).

34. *Id.*

35. *Id.* However, today, all fifty states allow homeschooling. *State Laws, HOME SCH. LEGAL DEF. ASS'N*, <http://www.hslda.org/laws/default.asp> (last visited Feb. 2, 2014). States vary in the level of regulation of homeschooling—from states requiring no notice from the parent in order to initiate homeschooling, to states with signification regulations for homeschools. *See id.*

36. *Yoder*, 406 U.S. at 207.

37. *Id.* at 207–09.

38. *Id.* at 221; see Jack Macmullan, Comment, *The Constitutionality of State Home Schooling Statutes*, 39 VILL. L. REV. 1309, 1316 (1994).



education.”<sup>39</sup> Since the State had an interest in ensuring that its children were educated, it could constitutionally establish minimum standards for this education.<sup>40</sup> However, as this case illustrates, and as Part II explores in greater detail, the State’s interest was not absolute. The Court employed a balancing test between the State’s interest in compulsory education and the parents’ religious interests in raising and educating their children.<sup>41</sup> Even though the *Yoder* Court concluded that the Amish community’s sincerely held religious beliefs ultimately outweighed the State’s interest in requiring an additional two years of school after the eighth grade, the Court did accept that the State has an important interest in educating its citizens.<sup>42</sup>

While the Supreme Court ruled in favor of the Amish parents in *Yoder*, the Court essentially limited the case to its facts, holding that “the First and Fourteenth Amendments prevent the State from compelling the respondents to cause their children to attend formal high school to age 16.”<sup>43</sup> The Amish parents, because of their sincerely held religious beliefs, “had the right to offer an alternative education to protect their beliefs.”<sup>44</sup> Most courts have rejected homeschooling parents’ efforts to rely on *Yoder*, “noting that the Amish have employed the practice of educating their children at home, or in the community after eighth grade, for hundreds of years, while wide-scale homeschooling is a relatively new phenomenon.”<sup>45</sup> When homeschooling parents rely on *Yoder* to attempt to justify their right to “an exemption from compulsory education laws, lower courts have been quick to distinguish their cases from *Yoder* by noting that its holding applies only to the Amish.”<sup>46</sup> However, even though courts have been unwilling to extend *Yoder* to the homeschooling context, “all states currently allow for homeschooling by requiring children ranging from 5 to 16 attend either public or approved nonpublic schools, including home schools.”<sup>47</sup>

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39. *Yoder*, 406 U.S. at 213.

40. *Delconte v. State*, 329 S.E.2d 636, 647 (N.C. 1985) (citing *Yoder*, 406 U.S. at 239 (White, J., concurring)); see Lukasik, *supra* note 26, at 1942.

41. *Yoder*, 406 U.S. at 213–18, 230–36.

42. *Id.* at 221, 234.

43. *Id.* at 234.

44. EDMONSON, *supra* note 33, at 439.

45. *Id.*

46. Gage Raley, Note, *Yoder Revisited: Why the Landmark Amish Schooling Case Could—and Should—Be Overturned*, 97 VA. L. REV. 681, 703 n.126 (2011); see, e.g., *State v. Riddle*, 285 S.E.2d 359, 361–62 (W. Va. 1981); *In re Lippitt*, No. 38421, 1978 Ohio App. LEXIS 9867 at \*18–23 (Ohio Ct. App. Mar. 9, 1978).

47. EDMONSON, *supra* note 33, at 439; see, e.g., N.C. CONST. art. IX, § 3.



## 2. North Carolina's State-Recognized Interest

At the same time, the North Carolina State Constitution establishes the State's obligation to educate its citizens in order to establish a flourishing state and content citizenry.<sup>48</sup> Article I, Section 15 boldly and directly declares: "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>49</sup> Article IX, Section 1 expresses the State's interest in education: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged."<sup>50</sup> Reading these sections together, the State not only has an interest in ensuring that its children are educated in order to provide for an effective government to run the State and a "happy" citizenry, but it also has a constitutional *obligation* to "guard and maintain" the "people's" right to an education.<sup>51</sup> The state constitution further assigns this obligation to the General Assembly: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students."<sup>52</sup>

In *Delconte v. State*, the Supreme Court of North Carolina recognized "that the state has a compelling interest in seeing that children are educated, and may, constitutionally, establish minimum educational requirements and standards for this education."<sup>53</sup> The court cited both *Yoder* and *Pierce v. Society of Sisters* in recognizing the State's interest in education and its power to create educational guidelines.<sup>54</sup> However, the court determined that these cases "may not control the question of whether home instruction can be constitutionally prohibited[.]" stating instead that the "principles enunciated in *Yoder* and *Pierce* raise serious questions as to the constitutionality of statutes which prohibit altogether home instruction as a means of education."<sup>55</sup> The court determined that North Carolina's education statutes did not

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48. N.C. CONST. art. IX, § 1 ("Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.").

49. *Id.* art. I, § 15 (emphasis added).

50. *Id.* art. IX, § 1.

51. *Id.*; see also *id.* art. I, § 15.

52. *Id.* art. IX, § 2.

53. *Delconte v. State*, 329 S.E.2d 636, 647 (N.C. 1985).

54. *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925)).

55. *Id.*



"preclude home instruction" and therefore, the court was unwilling to speak for the General Assembly and determine that home instruction was prohibited "as a means of complying with the compulsory school attendance law."<sup>56</sup> So even though the State has an interest in ensuring its citizens are educated, a parent can choose to homeschool her child as a means of complying with the requirement that her child attend school.<sup>57</sup> *Delconte* clarifies that the State's interest in education is compelling and that the State has the constitutional authority and obligation to establish minimum educational requirements to ensure that a child's right to an education is guarded and maintained.<sup>58</sup>

### B. *Children's Right to a Sound Basic Education*

Just as the State has a compelling interest in the education of its citizens and the constitutional duty to ensure the right to an education is maintained for all citizens, a child also has an interest in her own education. The North Carolina State Constitution "empowers the General Assembly to require that our children *be educated*."<sup>59</sup> It also explicitly guarantees to children the right to a public education: "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>60</sup> In a landmark decision, the Supreme Court of North Carolina held in *Leandro v. State* that "the right to education provided in the state constitution is a right to a sound basic education. An 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>61</sup> For the first time, "every child of this state" has a recognized right to an

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56. *Id.* at 648.

57. *Id.* at 647-48. See N.C. GEN. STAT. § 115C-378 (detailing North Carolina's compulsory attendance requirements).

58. *Delconte*, 329 S.E.2d at 647-48; N.C. CONST. art. I, § 15.

59. *Delconte*, 329 S.E.2d at 647 (emphasis in original). In *Delconte*, a parent sought a declaratory judgment that would enable him to educate his child at home in lieu of attending a public or private school. *Id.* at 638. The Supreme Court of North Carolina, in approving home education, held that the parent's home instruction met the statutory requirements and that the compulsory attendance statutes in North Carolina do not prohibit homeschooling as a means of complying. *Id.* at 647-48.

60. N.C. CONST. art. I, § 15; see also *Leandro v. State*, 488 S.E.2d 249, 254, 256 (N.C. 1997) (holding that while the North Carolina State Constitution does not guarantee to each child a right to equal educational opportunities in each school district, it does require that the State afford each child the opportunity to receive a sound basic education).

61. *Leandro*, 488 S.E.2d at 254.



opportunity to receive a sound education that will enable her to become a productive citizen in society.<sup>62</sup> North Carolina joins other states that have held that all children within the state "are entitled to the same minimum qualitative level of education, regardless of which schools the children attend."<sup>63</sup>

The Supreme Court of North Carolina made clear that there is a qualitative standard inherent in this right to education guaranteed by the state constitution.<sup>64</sup> The *Leandro* court examined Article I, Section 15<sup>65</sup> and Article IX, Section 2<sup>66</sup> and concluded that "the intent of the framers was that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime."<sup>67</sup> After determining that every child in the state was guaranteed "an opportunity to receive a sound basic education," the court then turned to defining what exactly this entails.<sup>68</sup> At a minimum, a "sound basic education" provides students with:

(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>69</sup>

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62. *Id.* at 255; William Kent Packard, Note, *A Sound, Basic Education: North Carolina Adopts an Adequacy Standard in Leandro v. State*, 76 N.C. L. REV. 1481, 1483 (1998).

63. Packard, *supra* note 62, at 1482; see *Leandro*, 488 S.E.2d at 255.

64. *Leandro*, 488 S.E.2d at 254.

65. Article I, Section 15 of the North Carolina State 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." N.C. CONST. art. I, § 15.

66. Article IX, Section 2 of the North Carolina State Constitution states: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students." *Id.* art. IX, § 2, cl. 1.

67. *Leandro*, 488 S.E.2d at 255 (citing *City of Greensboro v. Hogdin*, 11 S.E. 586, 589 (N.C. 1890); *Lane v. Stanly*, 65 N.C. 153, 158 (1871)).

68. *Id.*

69. *Id.*



The General Assembly may fulfill its duty through whatever educational programs and resources it deems necessary to ensure that this requirement is met.<sup>70</sup> The *Leandro* court determined that “[e]ducational goals and standards adopted by the legislature,” as well as student performance on standard achievement tests, may be considered by trial courts as factors to determine “whether any of the state’s children are being denied their right to a sound basic education.”<sup>71</sup> However, the court emphasized that the legislative and executive branches of the state government, not the courts, are in the best position to administer to each child the opportunity to receive a sound basic education.<sup>72</sup>

Furthermore, the Supreme Court of North Carolina has held that “equal access to participation in our public school system is a fundamental right, guaranteed by our state constitution and protected by considerations of procedural due process.”<sup>73</sup> In *King ex rel. Harvey-Barrow v. Beaufort County Board of Education*, the supreme court relied on a statement from *Sneed v. Greensboro City Board of Education* and the holding in *Leandro* to conclude that “[b]ecause exclusion from alternative education potentially infringes on a student’s state constitutional right to equal educational access, school administrators must articulate a reason when they exclude a long-term suspended student from alternative education.”<sup>74</sup> Long-term suspended students maintain their right to receive an education through “alternative

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70. *Id.* at 259. The *Leandro* court reasoned:

The legislature, unlike the courts, is not limited to addressing only cases and controversies brought before it by litigants. The legislature can properly conduct public hearings and committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view as to what curricula will best ensure that every child of the state has the opportunity to receive a sound basic education.

*Id.*

71. *Id.*

72. *Id.* at 261. It is worth noting, however, that in the August 2012 decision in *Hoke County Board of Education v. State*, the Court of Appeals of North Carolina, in discussing the “More at Four” program, determined that “the State should be allowed to modify or eliminate [More at Four]” but that this modification “should be done by means of a motion filed with the trial court setting forth the basis for and manner of any proposed modification.” *Hoke Cnty. Bd. of Educ. v. State*, 731 S.E.2d 691, 698 (N.C. Ct. App. 2012), *vacated*, 749 S.E.2d 451 (N.C. 2013). This suggests that while educational concerns are “the shared province of the legislative and executive branches,” trial courts may ultimately have a significant amount of control. *Id.* at 391.

73. *Sneed v. Greensboro City Bd. of Educ.*, 264 S.E.2d 106, 113 (N.C. 1980).

74. *King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.*, 704 S.E.2d 259, 262 (N.C. 2010).



education when feasible and appropriate.”<sup>75</sup> The court determined that because the North Carolina State Constitution guarantees to each child equal educational access to the opportunity to receive a sound basic education,<sup>76</sup> an intermediate level of scrutiny applies to the State’s actions: “school administrators must articulate an important or significant reason for denying students access to alternative education; however, the reasons supporting their decisions do not need to be compelling.”<sup>77</sup>

In *Leandro v. State*, the court was explicitly referring to public education when it declared that “Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools.”<sup>78</sup> However, in examining these sections of the state constitution, it is evident that the same reasoning that the *Leandro* court used to express a constitutional right for students in public schools must also apply to students in homeschools.

Article IX, Section 2 specifically refers to the General Assembly’s duties regarding the “general and uniform system of free public schools.”<sup>79</sup> It mandates that “equal opportunities shall be provided for all students,” but it specifically refers to the opportunities provided within the “public schools.”<sup>80</sup> While this section expressly references the General Assembly’s duty to maintain this “uniform system of free public schools,”<sup>81</sup> it also does not serve to limit the right to be educated or the right to equal education opportunities to only those students within the public school system.

Article IX, Section 2 itself does not apply to students outside the public school system, and therefore, does not concern the majority of homeschooled students because it only mandates that equal opportunities be provided for all public school students.<sup>82</sup> However, the

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75. *Id.* at 261.

76. *Id.* at 265 (stating “this Court’s previous recognition of state constitutional rights to equal educational access and a sound basic education compels more exacting review” than rational basis review) (citing *Leandro*, 488 S.E.2d at 255).

77. *Id.* at 265. In *King*, however, the county board and the superintendent failed to articulate any reason for excluding the student from alternative education, so the case was remanded for further proceedings on the issue. *Id.* at 265–66.

78. *Leandro*, 488 S.E.2d at 255.

79. N.C. CONST. art IX, § 2, cl. 1.

80. *Id.*

81. *Id.*

82. See *id.* (providing for the establishment of “free public schools . . . wherein equal opportunity shall be provided”).



North Carolina General Assembly recently passed a law that allows scholarship grants for children who receive “special education or related services on a daily basis” and who were enrolled in a public school or received special education services through a public school during the previous semester.<sup>83</sup> This law allows parents of children with disabilities who are enrolled in non-public schools, including homeschools, to receive reimbursement up to \$3,000 per semester for “tuition and special education and related services.”<sup>84</sup> Those students may then be receiving a “free” education—whether at a homeschool or at a private school—through the scholarship grant. This “free” education, provided for by the General Assembly through taxation, is meant to be a substitute for an education from a public school. As such, a homeschool education, paid for by tax dollars, may be considered part of the “uniform system,” and therefore, the General Assembly must provide “equal opportunities” for such students under Article IX, Section 2 of the North Carolina State Constitution.<sup>85</sup>

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83. Act of July 29, 2013, H.B. No. 269, 2013 N.C. Sess. Laws 364.

84. *Id.*

85. N.C. CONST. art. IX, § 2, cl. 1. In a brief filed in September 2010 in *Sugar Creek Charter School, Inc. v. State*, the plaintiff examined what it means to be part of the “uniform system of free public schools.” Brief for Plaintiff-Appellant at 9–15, *Sugar Creek Charter Sch., Inc. v. State*, 712 S.E.2d 730 (2011) (No. COA10-965). In the brief, the plaintiff addressed several reasons why “[p]ublic charter schools are part of the general and uniform system of free public schools on the same basis as other public schools” including the fact that “they are functionally indistinguishable from other public schools” and “they have the same defining constitutional characteristics as other public schools.” *Id.* at 5. In its argument detailing why charter schools are part of this uniform system, the plaintiff articulated that the North Carolina “Constitution establishes that ‘all moneys, stocks, bonds, and other property belonging to the State for purposes of public education . . . shall be faithfully appropriated and used *exclusively* for establishing and maintaining a uniform system of free public schools.’” *Id.* at 12 (emphasis in original) (quoting N.C. CONST. art. IX, § 6). The plaintiff maintained that since “public charter schools receive State funds set aside for purposes of public education” and these “funds are to be used ‘exclusively’ for the uniform system of free public schools[,]” then charter schools “are part of the class that must ‘exclusively’ receive State public school funds”—i.e., “members of the general and uniform system of free public schools.” *Id.* at 12–13. However, the Court of Appeals of North Carolina reserved resolution of the issue of whether charter schools are part of the general and uniform system of free public schools. See *Sugar Creek*, 712 S.E.2d at 742. The Supreme Court of North Carolina denied review of the case. See *Sugar Creek Charter Sch., Inc. v. State*, 726 S.E.2d 849 (N.C. 2012). A parallel argument can be made for homeschooling once tax dollars are being spent to compensate parents who remove their child with disabilities from the public school system and educate that child at home. The state constitution requires that “all moneys . . . belonging to the State for purposes of public education” must be “used exclusively for establishing and maintaining a uniform system of free public



On the other hand, Article I, Section 15 does not make any distinction between students who are educated in public schools versus students who are educated outside of public schools when it provides, in its entirety, "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>86</sup> All people have the right to the privilege of education—not just people whose parents elect to send them to public schools—and it is the State's duty to ensure that the citizens of North Carolina have this right, regardless of whether they fall within the "uniform system" requirement of Article IX, Section 2.<sup>87</sup> Therefore, Article I, Section 15 applies to people educated outside of the traditional public school setting, including homeschooled students, because they are still people within the state.<sup>88</sup>

The right expressed in *Leandro* is the right to an "opportunity to receive a sound basic education."<sup>89</sup> Because Article I, Section 15 applies to all citizens of the state, the same right found in *Leandro* applies to all students within the state—i.e., all students have the opportunity to receive a sound basic education.<sup>90</sup> But when a parent opts out of the public school system and then fails to provide an adequate curriculum that allows the child to receive a sound basic education, as defined in *Leandro*, the parent essentially opts the child out of the child's *Leandro* right. Because a child's constitutional right to be educated, found in Article I, Section 15 and expressed in *Leandro*, should apply to

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schools." N.C. CONST. art. IX, § 6. Like the charter schools, certain homeschools are now receiving "State funds set aside for the purposes of public education." Brief for Plaintiff-Appellant at 13, *Sugar Creek Charter Sch.*, 712 S.E.2d 730 (No. COA10-965). In receiving this money, homeschools have become "part of the class that must 'exclusively' receive State public school funds" as required by the state constitution. *Id.* Reimbursement for tuition or special education expenses to homeschooling parents would thus put certain homeschooling situations into the general and uniform system of free public schools.

86. N.C. CONST. art. I, § 15.

87. *Id.* art. IX, § 2.

88. *Id.* art. I, § 15.

89. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997) (emphasis added).

90. *Id.* The court concluded that "Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools." *Id.* The court pointed out that in 1868, the time Article IX, Section 2 was written, the provision provided "for a 'general and uniform' system, but without the equal opportunities clause." *Id.* The court nevertheless determined that "the intent of the framers was that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime." *Id.* Furthermore, "[t]he 1970 amendment adding the equal opportunities clause ensured that all the children of this state would enjoy this right." *Id.* at 255-56.



homeschooled students, the liberty interests of parents who wish to homeschool their children must also be closely examined to ensure parents maintain their constitutionally granted right to direct the education of their children.

*C. Parents' Fundamental Liberty Interest in Directing the Upbringing of Their Children*

Just as the State and children have articulated interests at stake in homeschooling decisions, a homeschooling parent also has a significant and highly recognized fundamental interest that must be considered. Parents who wish to homeschool their children often turn to the Fourteenth Amendment's Due Process Clause for constitutional authority.<sup>91</sup> The Supreme Court has consistently held that parents do in fact have a fundamental right in raising and educating their children under the Fourteenth Amendment.<sup>92</sup> It considers "the right of parents to guide both the religious future and the education generally of their children to be fundamental so as not be interfered with in the absence of a compelling state interest."<sup>93</sup> During the 1920s, the Supreme Court issued three landmark decisions that recognized parents' fundamental interest in directing the manner and means of their child's education under the Due Process Clause of the Fourteenth Amendment.<sup>94</sup>

First, in *Meyer v. Nebraska*, the Supreme Court recognized that parents have a fundamental liberty interest in controlling the education of their children.<sup>95</sup> The Court struck down a Nebraska statute prohibiting teachers from teaching any language other than English to children who had not yet completed the eighth grade.<sup>96</sup> The Court noted that Nebraska's claimed interest of wanting "to foster a homogenous people with American ideals" was "easy to appreciate," but the means that the State adopted "exceed[ed] the limitations upon the

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91. Lukasik, *supra* note 26, at 1921. The Fourteenth Amendment reads, in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

92. E.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

93. *Delconte v. State*, 329 S.E.2d 636, 647 (N.C. 1985) (citing *Yoder*, 406 U.S. 205; *Roe v. Wade*, 410 U.S. 113 (1973)).

94. Lukasik, *supra* note 26, at 1922 (citing *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927); *Pierce*, 268 U.S. at 534–35; *Meyer*, 262 U.S. at 401).

95. *Meyer*, 262 U.S. at 399–400.

96. *Id.* at 396–97, 403.



power of the state and conflict[ed] with rights assured to [the] plaintiff."<sup>97</sup> The Court determined that a parent's right to control the education of his or her child was a fundamental interest contained within the "liberty" protected by the Due Process Clause of the Fourteenth Amendment.<sup>98</sup> The Court noted that liberty "denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children."<sup>99</sup> A parent's "natural duty" is "to give his children education suitable to their station in life."<sup>100</sup> Ultimately, the Court held that the Nebraska statute interfered with the parents' fundamental rights and that it was "arbitrary and without reasonable relation to any end within the competency of the state."<sup>101</sup>

Two years after establishing parents' constitutional right to control the education of their children, the Supreme Court applied this doctrine in *Pierce* to strike down an Oregon statute that required all children between ages eight and sixteen to attend a public school, without providing an exception for children attending a private school.<sup>102</sup> The Court determined that the compulsory school attendance statute was unconstitutional because it "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>103</sup> The statute could not preclude parents from sending their children to private schools.<sup>104</sup> Noting that a "child is not the mere creature of the state[,]" the Court stressed that a state cannot force children to accept instruction only from public teachers.<sup>105</sup>

Another two years later in *Farrington v. Tokushige* the Supreme Court expanded the *Meyer* and *Pierce* principles in striking down a Hawaii statute that severely regulated private schools to such a degree that the regulations were almost identical to those for public schools.<sup>106</sup>

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97. *Id.* at 402.

98. *Id.* at 399-401; Lukasik, *supra* note 26, at 1923.

99. *Meyer*, 262 U.S. at 399.

100. *Id.* at 400.

101. *Id.* at 403.

102. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 530, 534-36 (1925).

103. *Id.* at 534-35.

104. *Id.*

105. *Id.* at 535 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.").

106. *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927) (stating that "the School Act and the measures adopted [by the state legislature] thereunder go far beyond mere regulation of privately supported schools, where children obtain instruction deemed valuable by their parents and which is not obviously in conflict with any public



Once parents make the decision to educate their children outside of the public school system, the state cannot diminish that choice by directing all the "intimate and essential details" of the alternative school.<sup>107</sup> The Supreme Court made it clear that enforcing the statute would "deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful."<sup>108</sup> Once again, the Court emphasized that a parent has a constitutional "right to direct the education of his own child without unreasonable restrictions."<sup>109</sup>

The Supreme Court has never specifically held that parents have a fundamental right to homeschool their children, but advocates of homeschooling argue that parents do possess this right under the Fourteenth Amendment.<sup>110</sup> In 1972, the Supreme Court extended the *Meyer* and *Pierce* analysis to what could be considered a semi-homeschooling context in *Wisconsin v. Yoder*, as discussed above.<sup>111</sup> The Court affirmed the fundamental right of parents to direct the education and upbringing of their children found in *Pierce*, noting that a state regulation cannot be constitutional if it abridges this right without the state proving a sufficiently compelling interest to override the parent's fundamental liberty interest.<sup>112</sup>

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interest"). The Act in question strictly regulated the hours, textbooks, and curriculum used in private schools that taught in a language other than English (i.e., in the native language of the children), and it also made it illegal to teach foreign languages to students in schools without a permit. *Id.* at 291–96.

107. *Id.* at 298; Lukasik, *supra* note 26, at 1924–25.

108. *Farrington*, 273 U.S. at 298.

109. *Id.*

110. See Macmullan, *supra* note 38, at 1320.

111. See *Wisconsin v. Yoder*, 406 U.S. 205, 207, 214 (1972); see also *supra* notes 36–47 and accompanying text.

112. *Yoder*, 406 U.S. at 213–14, 232, 234. The Court emphasized that "[a] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief[,] not merely a "subjective evaluation and rejection of the contemporary secular values accepted by the majority." *Id.* at 215–16. However, based on their history as an identifiable religious sect and evidence of their true religious practices, the Court determined that "the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living." *Id.* at 216. The Court focused on the continued success and self-sufficiency of the Amish community throughout history, and the tendency for the Amish to remain in their self-sustaining community throughout their entire lives. *Id.* at 222–24. The Court determined that an additional one to two years of formal secondary education for Amish children would do little to serve the State's



The *Yoder* Court ultimately balanced the parents' interest against the State's interest to determine whether the parents' religious beliefs outweighed the State's interest in educating its citizens.<sup>113</sup> Because states have a recognized interest in ensuring that their citizens are educated in order to guarantee that they can "participate effectively in a democratic political system" and can become "self-sufficient members of society[,]" states can require their citizens to be educated, but this interest may be limited "when it infringes upon the fundamental rights and interests of citizens."<sup>114</sup> In order to survive a constitutional challenge by parents claiming a violation of their fundamental right to raise their children, "the state interest must outweigh any such fundamental right or interest."<sup>115</sup> Even though the Supreme Court has not specifically ruled on homeschooling in this regard, this same balancing of interests should apply.<sup>116</sup>

## II. BALANCING THE INTERESTS AT STAKE: COMPARING THE CONSTITUTIONAL RIGHTS OF HOMESCHOOLED STUDENTS, PARENTS, AND THE DUTIES OF THE STATE

In balancing the parents' fundamental liberty interest to direct the upbringing of their children against North Carolina's duty and obligation to "guard and maintain" every child's right to the opportunity to receive a sound basic education,<sup>117</sup> courts often fail to consider the children's rights and legal interests.<sup>118</sup> The usual scene before the court involves a

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interests of educating children so that they will be "self-reliant and self-sufficient participants in society." *Id.* at 221-22.

113. *Id.* at 234.

114. Macmullan, *supra* note 38, at 1316.

115. *Id.*

116. *Id.* at 1320.

117. N.C. CONST. art. I, § 15.

118. James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors*, 74 N.C. L. REV. 1321 (1996). In this article, Dwyer points out:

Substantial litigation and legal commentary has surrounded religious objections to a few sorts of state child welfare and education laws. Most relates to objections to vaccinations or to blood transfusions or other medical care for children at risk of dying, and objections by church school officials or home schooling parents to teacher certification requirements. These are cases in which a state has refused to accommodate the religiously grounded desires of parents regarding the care and education of their children, and the parents have sued the state claiming a violation of their constitutional rights. No one has ever advanced in court, however, a claim that when the state does



parent asserting that the state education law violates the parent's fundamental rights, while the State advances arguments of its interest in education and the purpose behind such regulations. The lack of claims asserting the child's right to an education when the parent seeks a religious accommodation to state education laws should not be surprising "since neither state officials nor parents would have an interest in advancing such a claim."<sup>119</sup> Moreover, "both courts and commentators have analyzed religious exemptions principally in terms of the religious free exercise rights of the parents who receive the exemptions," not the child's right to an education.<sup>120</sup> Consider, for example, a parent who chooses to homeschool her child for religious reasons. As described in Part I, she has the constitutional authority to do so.<sup>121</sup> After meeting the minimum state requirements, which are described in-depth in Part III,<sup>122</sup> the parent has total control over the child's education. As long as the parent meets these requirements, the parent can choose what and how to teach the child, and can even leave out entire subjects.<sup>123</sup> The parent, because of her own religious convictions, may choose not to teach the child a complete science curriculum, leaving out certain aspects of biology.<sup>124</sup> Or consider a

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accommodate "religious objector" parents it thereby violates a fundamental right of their children—namely, the children's Fourteenth Amendment right to equal protection of the laws.

*Id.* at 1324.

119. *Id.*

120. *Id.*

121. See *supra* notes 110–16 and accompanying text (recognizing that while the Supreme Court has never specifically held that parents have a right to homeschool their children, the Court in *Wisconsin v. Yoder* extended the fundamental right of parents to direct their child's upbringing and education to a semi-homeschooling context).

122. See *infra* notes 184–298 and accompanying text.

123. Homeschooling parents use a wide variety of sources to obtain books or curriculum materials to assist in their child's education. These sources may include one or more of the following: a public library, a homeschooling catalog, a homeschooling individual specialist, a retail bookstore, an education publisher not affiliated with homeschooling, curriculum and/or books from homeschooling organizations, material from religious institutions, and material from the student's public school district. NAT'L CTR. FOR EDUC. STATISTICS, HOMESCHOOLING IN THE UNITED STATES: 2003: STATISTICAL ANALYSIS REPORT 16 (U.S. Dep't of Educ. 2006), available at <http://nces.ed.gov/pubs2006/2006042.pdf>.

124. In a 2003 survey regarding where "[p]arents of homeschooled students obtain curriculum or books," 36.5% of homeschooling parents used, either primarily or in addition to other sources, "curriculum or books from a church, synagogue or other religious institution." *Id.* Furthermore, 72.3% of homeschooling parents cited the desire "[t]o provide religious or moral instruction" to their child as a reason for homeschooling.



parent with strong political viewpoints who does not want her homeschooled child to be exposed to any counter viewpoints, so she fails to teach a complete civics curriculum.<sup>125</sup> Or consider a parent who has no knowledge of technology and does not have a computer at home for her homeschooled child to learn to use, so the child eventually graduates high school without a basic understanding of how to conduct research online or how to type a paper.<sup>126</sup>

The parent, in directing the education of her child, is enjoying her maximum constitutional protection.<sup>127</sup> However, the child, who has a constitutional right to an opportunity to receive a sound basic education in North Carolina, may not be enjoying her full constitutional rights

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*Id.* at 13. This was the second highest response to the question asking parents to indicate which particular reasons for homeschooling were applicable to their situation, the most frequently cited reason being "concern about the environment of other schools including safety, drugs, or negative peer pressure" with 85.4% of parents indicating this reason as being applicable. *Id.* at 13–14. In a follow-up question, parents were "asked which of those applicable reasons was their most important reason for homeschooling." *Id.* at 13. Again, the desire "[t]o provide religious or moral instruction" was the second most cited reason with 29.8% of homeschooling parents indicating that this was their most important reason for homeschooling. *Id.*

125. For example, 68.2% of homeschooling parents indicated that "[d]issatisfaction with the academic instruction at other schools" was an *applicable* reason for choosing to homeschool. *Id.* In addition, "[s]ixteen percent of homeschooled students had parents whose primary reason for homeschooling was dissatisfaction with the academic instruction available at other schools, making this the third most common primary reason for homeschooling." *Id.* at 15.

126. In a 2007 study, Dr. Brian D. Ray of the National Home Education Research Institute reported that 98.3% of the 11,739 homeschoolers "used a computer at home." HOMESCHOOL PROGRESS REPORT 2009: ACADEMIC ACHIEVEMENT AND DEMOGRAPHICS 2, 5 (Nat'l Home Educ. Res. Inst. 2009), *available at* [http://www.hsllda.org/docs/study/ray2009/2009\\_Ray\\_StudyFINAL.pdf](http://www.hsllda.org/docs/study/ray2009/2009_Ray_StudyFINAL.pdf). While this number is extremely high, the fact that it is not 100 percent signifies that not every single homeschooled student has the opportunity to gain familiarity with a computer. On the other hand, it is plausible that this 1.7% without computer access at home regularly uses a computer at a public library to access the Internet, conduct research, or type a report. However, as this Article will go on to suggest, as long as one homeschooled student does not have access to a computer—whether at home, at a public library, or elsewhere—in order to gain sufficient computer skills to comply with the *Leandro* definition of a sound basic education, then North Carolina's laws on homeschooling are not doing enough to ensure that each child within the state has an opportunity to receive a sound basic education. *See infra* notes 277–82 and accompanying text; *see also Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

127. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that "liberty" as it appears in the Due Process Clause of the Fourteenth Amendment includes the right "to marry, establish a home and bring up children").



because of the education that her parent chooses for her.<sup>128</sup> If a parent pulls her child out of the public school system and then fails to provide a curriculum that would give the child the opportunity to receive a sound basic education at home, the child, through no fault of her own, has lost her constitutional right to a sound basic education. The parent clearly has the liberty "to direct the upbringing and education" of her child,<sup>129</sup> while the child is left with no voice to advocate for her right to a sound basic education. These children cannot speak for themselves to ensure that they receive the same educational benefits as other children—those that they will eventually have to compete against to obtain a job.<sup>130</sup> The State must step in to fulfill its duty to "guard and maintain" that right or these children will have "no one to speak for them except the very parents who want to deny them the benefits and protections that the law guarantees other children."<sup>131</sup>

At the same time, the State not only has an *interest* in educating its citizens<sup>132</sup> and protecting "the well-being of its youth,"<sup>133</sup> but it also has a constitutional *obligation* to protect the education of its youth.<sup>134</sup> The Supreme Court has recognized that states have an interest in safeguarding children "from abuses" that might stunt their "growth into free and independent well-developed men and citizens."<sup>135</sup> The North Carolina State Constitution also makes clear that it is the State's duty to "guard and maintain" its citizens' "right to the privilege of education."<sup>136</sup> This situation raises an interesting dichotomy between the various interests at stake in homeschool decisions. As explained in Part I, *Leandro* and the State's interest and constitutional duty applies to homeschooled students.<sup>137</sup> A child's constitutional right to be educated survives when a parent takes her out of the public school system.<sup>138</sup> Recognizing the child's rights and acting on its constitutional duty to guard and maintain it, the State can curtail the rights of parents in various circumstances when the interests of the State outweigh the rights

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128. See N.C. CONST. art. I, § 15; *Leandro*, 488 S.E.2d at 255.

129. *Pierce v. Soc'y of Sisters*, 268 U.S. 519, 534 (1925).

130. Dwyer, *supra* note 118, at 1323.

131. *Id.*; N.C. CONST. art. I, § 15.

132. E.g., *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); *Pierce*, 268 U.S. at 534.

133. *Ginsberg v. State*, 390 U.S. 629, 640 (1968).

134. N.C. CONST. art. I, § 15.

135. *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944).

136. N.C. CONST. art. I, § 15.

137. See *supra* notes 59–72.

138. See *supra* notes 82–90.



of the parents.<sup>139</sup> Specifically, regarding education, the parent's "Pierce right" can be limited to ensure that homeschooled children have the opportunity to receive a sound basic education.<sup>140</sup>

A. *Curtailing the Rights of Parents to Protect the Rights of Children*

As explained in Part I, the Supreme Court has recognized "that the custody, care and nurture of the child reside[s] first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."<sup>141</sup> States cannot enter "the private realm of family life."<sup>142</sup> However, "rights of parenthood" are not "beyond limitation" and can be regulated when it is in the child's best interest.<sup>143</sup> For example, in *Prince v. Massachusetts*, the Supreme Court held:

Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience.<sup>144</sup>

In effect, states can limit "parental freedom and authority" in matters "affecting the child's welfare," thus overriding the parents' *Pierce* right.<sup>145</sup>

One way in which states have tremendous authority to limit "parental freedom and authority" regarding the child's welfare is when a

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139. See *supra* notes 110–16; N.C. CONST. art. I, § 15.

140. See *supra* notes 110–16.

141. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (citing *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925)). The Court noted the precedent and stated:

Previously, in *Pierce v. Society of Sisters*, . . . this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. And in *Meyer v. Nebraska*, . . . children's rights to receive teaching in languages other than the nation's common tongue were guarded against the state's encroachment.

*Id.* (citing *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923)).

142. *Prince*, 321 U.S. at 166.

143. *Id.*

144. *Id.*

145. *Id.* at 167.



child is removed from the home following abuse or neglect.<sup>146</sup> “When circumstances of abuse or neglect are reported to a department of social services (DSS), the DSS investigates the report and, if necessary, removes the child from the home.”<sup>147</sup> Normally, states do not interfere “with the constitutionally protected rights of parents to raise their own children. Only when parents abuse or neglect their children does the state’s interest in protecting the child become more compelling than that of preserving family autonomy.”<sup>148</sup> The State then “has an urgent interest in the welfare of the child,” and thus shares the “parent’s interest in the accuracy and justice of the decision to terminate his or her parental status.”<sup>149</sup>

The General Assembly established the Office of the Guardian ad Litem (GAL) as a means of protecting the rights of children against the interests of parents when a child’s welfare is affected.<sup>150</sup> “Pursuant to G.S. 7B-601, when a petition alleging abuse or neglect of a juvenile is filed in district court, the judge appoints a volunteer Guardian ad Litem advocate and an attorney advocate to provide team representation to the child, who has full party status in trial and appellate proceedings.”<sup>151</sup> Every child in North Carolina who has been “alleged by the Department of Social Services to have been abused or neglected receive[s] Guardian ad litem legal advocacy services.”<sup>152</sup> According to the North Carolina General Statutes section 7B-601, in addition to the mandatory appointment of a Guardian ad Litem to represent the juvenile in an

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146. *Id.* at 165, 167. This example is not included to suggest a comparison or analogy between a parent’s decision to homeschool her child and a parent’s choice to abuse or neglect a child. Homeschooling is not remotely similar to the horror of a child’s abuse or neglect by the person who has been entrusted with that child’s care. This illustration on abuse or neglect merely serves to show one way in which the State has authority to step in and override parents’ freedom to raise their child as they wish when there is a greater interest at play. Clearly, in abuse or neglect cases, the parents’ freedom should be limited by the State to protect the child’s safety and well-being. This Article will suggest that the State may have authority to override a parent’s *Pierce* right in homeschooling decisions when necessary to serve the public interest in educating its citizens and to ensure that children’s right to an education is properly guarded and maintained. N.C. CONST. art. I, § 15.

147. Daniel W. Clark, *Best Interests: The Courts’ Polar Star Illuminates Foster Parent Concerns*, 65 N.C. L. Rev. 1317, 1317 (1987) (citing N.C. GEN. STAT. § 7A-544 (1986)).

148. *Id.*

149. *Lassiter v. Dep’t of Soc. Servs. of Durham County*, N.C., 452 U.S. 18, 27 (1981).

150. *Guardian ad Litem Program*, N.C. ADMIN. OFFICE OF THE COURTS (Aug. 2012), <http://www.nccourts.org/Citizens/GAL/Documents/GALFactsheet.pdf>.

151. *Id.*

152. *Id.*



abuse or neglect case, the court also has discretion to appoint a Guardian ad Litem “[w]hen a juvenile is alleged to be dependent.”<sup>153</sup> Though vastly different from a parent’s decision to homeschool, the State’s involvement in cases involving abuse or neglect, including appointment of a Guardian ad Litem to represent a minor child’s interests, demonstrates that the State has the authority to step in and speak for the child under certain instances.

Another way in which the State has the authority to limit parental authority is through custody orders.<sup>154</sup> Under North Carolina law, “[a]n order for custody of a minor child . . . shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child.”<sup>155</sup> In issuing a custody order, the court must determine “what is in the best interest of the child” and must “include findings of fact” in the custody order to support this determination.<sup>156</sup> If the court determines that it is in the best “interest and welfare of the child” for the mother to have “exclusive custody,” for example, then the child’s father’s parental authority will be limited.<sup>157</sup> Custody orders, like the appointment of a Guardian ad Litem for a minor child or removing a child from the home upon findings of abuse or neglect, are acts by the State to protect the rights of children within its jurisdiction and suggest that the State has authority to curtail parental rights when necessary to guard the rights of children.

*B. Limitations on Parents’ Pierce Right to Direct  
the Education of Their Child*

Education is another recognized area in which states are given authority to step in and override parents’ wishes when those wishes affect a child’s well-being or have the potential to affect the community at large.<sup>158</sup> The Supreme Court has stated that a “democratic society rests, for its continuance, upon the healthy, well-rounded growth of

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153. N.C. GEN. STAT. § 7B-601(a) (2013).

154. This Article does not mean to compare homeschooling to a custody dispute or signify in any way that a parent’s decision to homeschool is not in the best interest of a child.

155. N.C. GEN. STAT. § 50-13.2(a).

156. *Id.* To make this determination, the court must “consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party.” *Id.*

157. *Id.* § 50-13.2(a)–(b).

158. *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).



young people into full maturity as citizens.”<sup>159</sup> Because society will suffer if citizens are not properly educated, educating our youth is in the community’s best interest.<sup>160</sup> Moreover, a sound education is in a child’s best interest and ultimately affects her welfare.<sup>161</sup> When a parent’s control affects the child’s well-being, as education does, the parent’s *Pierce* right may be burdened in favor of other interests, including both that of the state in raising a productive and intelligent citizenry and that of the child in receiving her constitutional right to an education.<sup>162</sup>

The right of a parent to control her child’s education as first recognized in *Pierce*<sup>163</sup> was expanded upon in *Wisconsin v. Yoder*.<sup>164</sup> In *Yoder*, the Court held that Amish parents’ interests in raising their children in accordance with their strongly held religious convictions outweighed the State’s interest in compulsory school attendance beyond the eighth grade.<sup>165</sup> The Court’s holding emphasizes the balancing that must occur between parents’ constitutional rights and society’s interest in raising an educated citizenry, because no matter how “strong the State’s interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.”<sup>166</sup>

However, the Court viewed the Amish as a distinct, unique group, stating that most other religious groups would not be able to make such a “convincing showing” that the state law inhibits their religious beliefs.<sup>167</sup> The Amish students in *Yoder* were distinguished because they had jobs waiting for them upon graduation in their community.<sup>168</sup> Upon the children’s completion of elementary school, “Amish teens went to

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159. *Id.* at 168.

160. *See id.*

161. *Id.* at 167.

162. *See id.* at 166–67. In *Prince*, the Supreme Court stated:

[N]either rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth’s well being, the state as *parens patriae* may restrict the parent’s control by requiring school attendance, regulating or prohibiting the child’s labor, and in many other ways. . . . [T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare . . . this includes, to some extent, matters of conscience and religious conviction.

*Id.*

163. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925).

164. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

165. *Id.* at 219.

166. *Id.* at 215. For further discussion on the facts and holding in *Wisconsin v. Yoder*, see *supra* notes 36–47 and accompanying text.

167. *Id.* at 235–36.

168. *Raley*, *supra* note 46, at 684–85.



work on 'family farms' in order to receive the training necessary to fulfill 'Amish beliefs [that] require members of the community to make their living by farming or closely related activities.' Formal high school attendance, the Court determined, would interfere with this religio-agricultural training.<sup>169</sup> Future employment is one aspect in which Amish communities are vastly different from modern homeschoolers who do not have jobs waiting for them at home on the farm, but must compete for jobs in the workforce among students educated in both public and private schools.<sup>170</sup> Furthermore, the Court highlighted that "the agricultural training Amish teens received on family farms after quitting school adequately prepared them to support themselves both inside the Amish community and—if they were to leave—in the broader society."<sup>171</sup> However, over the past forty years since *Yoder* was decided, society, including the Amish community, has experienced significant economic changes.<sup>172</sup> In today's society, it is difficult to argue that agricultural training, without a high school diploma, sufficiently prepares an individual to support herself.<sup>173</sup> Modern homeschoolers are more likely to go to college and begin a career, not stay inside their own niche and work on the family farm.<sup>174</sup> Despite the many changes that

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169. *Id.* (quoting *Yoder*, 406 U.S. at 210).

170. *See id.*

171. *Id.* at 685.

172. *Id.* at 691 (describing the decrease in reliance on agriculture among the Amish). In his article, Raley emphasizes:

Today . . . most Amish youth no longer work on family farms. The past forty years have shown a "steady decline" in Amish youth who farm or grow up on farms, with land prices being the most frequently cited reason for the move away from farming in Amish communities. This bleak economic situation has led many Amish to abandon their reliance on agricultural work. Today, approximately two-thirds of Amish breadwinners have left the fields.

*Id.* (citations omitted).

173. Claire Gordon, *Now Even File Clerks Need A College Degree*, AOL JOBS (Mar. 28, 2013, 12:01 PM), <http://jobs.aol.com/articles/2013/03/28/high-school-diploma-careerbuilder-survey/> (describing the need for a college degree). Gordon reports:

In a CareerBuilder survey of more than 2,600 employers nationwide, conducted by Harris Interactive, almost a third of hiring managers said jobs at their companies that were historically held by people without a college education were increasingly going to applicants with degrees. . . . [This phenomenon] was pronounced in every industry, from manufacturing to hospitality to retail. Increasingly, students need to spend four years studying, and going into debt, to get a low-wage job as a file clerk or receptionist.

*Id.*

174. Brian C. Anderson, *An A for Home Schooling*, CITY J., Summer 2000, available at [http://www.city-journal.org/html/10\\_3\\_an\\_a\\_for\\_home.html](http://www.city-journal.org/html/10_3_an_a_for_home.html) ("Sixty-nine percent of



have occurred, the decision in *Yoder* remains relevant to modern homeschoolers and balancing society's interest in children's education with parents' interest in making decisions as to their children's education and upbringing.

Although the Court in *Yoder* focused primarily on Amish youth, the case is significant because it strengthens the notion that a court must consider both the state's interest and the parents' rights when addressing matters dealing with children's education.<sup>175</sup> North Carolina's children have a constitutional right to an education; this right does not disappear simply because a parent removes the child from a public school.<sup>176</sup> A parent may be able to dictate the means of the child's education under the right established in *Pierce*, but the child still has "a right to the privilege of education" under the North Carolina Constitution<sup>177</sup> and the State still has a duty to "guard and maintain" that right.<sup>178</sup> North Carolina's duty to ensure access to education not only applies to those children enrolled in public and private schools, but it also applies to children with parents who have opted to homeschool.

Homeschooled students, like all other students in North Carolina, have a constitutional right to equal educational access.<sup>179</sup> In *King ex rel. Harvey-Brown v. Beaufort County Board of Education*, the Supreme Court of North Carolina determined that a student's behavior had the potential to limit the student's access to equal educational opportunities during her semester-long suspension and "because exclusion from alternative education [during this period] potentially infringes on [the] student's state constitutional right to equal educational access, school administrators must articulate a reason when they exclude a long-term suspended student from alternative education."<sup>180</sup> But with regard to

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home schoolers go on to college, compared with 71 percent of grads from public high schools and 90 percent of private school grads.").

175. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

176. N.C. CONST. art. I, § 15.

177. *Id.*

178. *Id.*; e.g., *Yoder*, 406 U.S. at 213; *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925).

179. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); see also *Sneed v. Greensboro City Bd. of Educ.*, 264 S.E.2d 106, 113 (N.C. 1980).

180. *King ex rel. Harvey-Brown v. Beaufort Cnty. Bd. of Educ.*, 704 S.E.2d 259, 262 (N.C. 2010). In *King*, the plaintiff was suspended (by the principal and with approval from the superintendent) for the rest of the school year for fighting and was not assigned to any alternative school. *Id.* at 260–61. The plaintiff filed suit against the school board of education, claiming that it deprived her of her *Leandro* right for an opportunity to receive a sound basic education. *Id.* at 261. The plaintiff argued that *Leandro* mandates that strict scrutiny should be applied to the school board's decision to not assign her to



homeschooling, it is the parents', not the student's decision to remove the student from the public school system and potentially interfere with the student's right to equal educational access. Applying the same analysis from *King* to the homeschooling context, the State has a duty to ensure that a student's fundamental right to the opportunity to receive a sound basic education under *Leandro* is protected.<sup>181</sup> North Carolina has the authority and constitutional responsibility to curtail a parent's *Pierce* right to control the education and upbringing of her child in order to ensure that every child's right to equal educational access is met.<sup>182</sup> Not only is North Carolina capable of enacting stricter guidelines for homeschools that will ensure every child's constitutional rights are being met, but it has the constitutional duty to do so.<sup>183</sup>

### III. STATUTORY RULES FOR HOMESCHOOLS AND THE RESULTING CONSTITUTIONAL RISKS FOR STUDENTS

After considering the interests at stake in homeschooling decisions, this Article now shifts to examine whether North Carolina's homeschooling laws are sufficient to ensure that all homeschooled children are afforded their constitutional right to an opportunity to receive a sound basic education as expressed in *Leandro*.<sup>184</sup> The North Carolina General Assembly has enacted various laws that provide requirements that parents must abide by if they wish to homeschool their children.<sup>185</sup> However, these requirements are very minimal.<sup>186</sup> In order for a parent or guardian to become a state-approved homeschool teacher, she must meet the following few requirements: have at least a high school diploma, register with the Department of Non-Public Education, elect to operate either as a "religious" or "non-religious" school, operate "on a regular schedule," and maintain disease

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an alternative school during her suspension. *Id.* at 261–62. However, the Supreme Court of North Carolina disagreed and found that intermediate scrutiny applies to a school district's decision to deny alternative education to a student who has been suspended long-term. *Id.* at 265. The long-term suspended student maintains her *Leandro* right to an opportunity to receive a sound basic education through alternative education, and the school district must "articulate a reason for denying [the student] access to alternative education during her long-term suspension." *Id.* at 261.

181. *Id.*

182. See N.C. CONST. art. I, § 15.

183. *Id.*; *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); see Dwyer, *supra* note 118, at 1345.

184. *Leandro*, 488 S.E.2d at 255.

185. N.C. GEN. STAT. §§ 115C-547 to 566 (2013).

186. See *id.*



immunization and attendance records for each enrolled child.<sup>187</sup> In addition, the homeschooled child is only required to take yearly tests in the subject areas of English grammar, reading, spelling, and mathematics.<sup>188</sup> In other academic subjects, such as science and social studies, the parent or guardian has complete discretion to direct the curriculum, as the student is not required to demonstrate her competency level on a yearly exam.<sup>189</sup> The few requirements for homeschools, compared to the educational mandates for public schools, illustrate the potential for homeschooled students to be denied their constitutional right to equal access to education.<sup>190</sup>

Comparing North Carolina's homeschooling laws<sup>191</sup> to the definition of a sound basic education found in *Leandro*<sup>192</sup> shows that the State's minimal requirements are not enough to guarantee that all homeschooled students have an opportunity to receive a sound basic education. The homeschooling laws place the homeschooled children's *Leandro* rights at risk. This Part will highlight these potential risks and will urge the North Carolina General Assembly to enact stricter guidelines for homeschools.

#### A. North Carolina Homeschooling Laws

North Carolina, like most states, has a compulsory school attendance law.<sup>193</sup> As interpreted by the Supreme Court of North Carolina in *Delconte v. State*, there are four ways that a school-aged child in North Carolina can satisfy the compulsory school attendance statute<sup>194</sup>: (1) attend a public school within the state;<sup>195</sup> (2) attend an "approved" "nonpublic school" which maintains all required records and conducts its curriculum concurrently with the public school the child would otherwise attend;<sup>196</sup> (3) attend a "private church school or school

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187. *Home School Requirements, Reminders and Recommendations*, N.C. DIV. OF NON-PUB. EDUC., <http://www.ncdnpe.org/hhh103.aspx> (last visited Feb. 4, 2014).

188. *Id.*; N.C. GEN. STAT. § 115C-564.

189. See *Home School Requirements, Reminders and Recommendations supra* note 187; N.C. GEN. STAT. § 115C-564.

190. *K-12 Curriculum and Instruction/NC Standard Course of Study*, N.C. DEP'T OF PUB. INSTRUCTION, <http://www.dpi.state.nc.us/curriculum/> (last visited Feb. 4, 2014).

191. North Carolina's homeschooling laws are found in chapter 115C, article 39 of the North Carolina General Statutes. N.C. GEN. STAT. §§ 115C-547 to 566.

192. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

193. N.C. GEN. STAT. § 115C-378.

194. *Delconte v. State*, 329 S.E.2d 636, 640 (1985).

195. *Id.*; N.C. GEN. STAT. § 115C-378(c).

196. *Delconte*, 329 S.E.2d at 640; N.C. GEN. STAT. § 115C-378(d).



of religious charter" which meets the requirements of chapter 115C, article 39, part 1,<sup>197</sup> or (4) attend a "nonpublic school" which "qualifies" by meeting the requirements of chapter 115C, article 39, part 2 (such as through homeschooling).<sup>198</sup> While North Carolina has a compulsory school attendance law, built-in alternatives exist for parents who seek alternative means of educating their children beyond the traditional public school—including homeschools.<sup>199</sup>

The North Carolina General Assembly has defined "home school" as "a nonpublic school consisting of the children of not more than two families or households, where the parents or legal guardians or members of either household determine the scope and sequence of academic instruction, provide academic instruction, and determine additional sources of academic instruction."<sup>200</sup> In *Delconte*, the court held that the homeschool in question met "the express standards for qualification as a nonpublic school" because it received no state funding, thus complying with section 115C-555.<sup>201</sup> As a "qualified" nonpublic school, homeschools must comply with the administrative requirements of a private church school, a school of religious charter, or a nonpublic school laid out in article 39 of chapter 115C.<sup>202</sup> Each homeschool must maintain annual attendance and disease immunization records for all enrolled students; be subject to fire, health, and safety inspections; and provide information to parents about certain diseases and vaccines, as

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197. *Delconte*, 329 S.E.2d at 640; N.C. GEN. STAT. §§ 115C-547 to 554.

198. *Delconte*, 329 S.E.2d at 640-41; N.C. GEN. STAT. §§ 115C-555 to 562.

199. N.C. GEN. STAT. § 115C-378.

200. *Id.* § 115C-563(a).

201. *Delconte*, 329 S.E.2d at 641-42 (holding that the General Assembly did not intend to preclude home instruction as a means of complying with compulsory attendance statute simply because of its use of the word "school"); N.C. GEN. STAT. § 115C-555. Section 115C-555 provides that a nonpublic school must meet at least one of the following: "(1) It is accredited by the State Board of Education. (2) It is accredited by a national or regional accrediting agency. (3) It is an active member of the North Carolina Association of Independent Schools. (4) It receives no funding from the State of North Carolina." *Id.* However, since *Delconte* was decided, some qualifying homeschools now receive tax credits from the State, negating the argument that a homeschool meets the standards for a "qualified" nonpublic school since it receives no state funding. See Zeise, *supra* note 5. After a homeschool receives state funds, it becomes part of "the general and uniform system" of schools, and therefore, the General Assembly has the obligation to provide "equal opportunities" to all enrolled students under Article IX, Section 2 of the state constitution and as expanded upon in *Leandro v. State*. See N.C. CONST. art IX, § 2; *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); see also *supra* note 83 and accompanying text.

202. N.C. GEN. STAT. §§ 115C-548 to 556.



well as the lawful abandonment of a newborn.<sup>203</sup> Additionally, the homeschool must register with the State by submitting to a state representative “a notice of intent to operate, name and address of the school, and name of the school’s owner and chief administrator.”<sup>204</sup>

Academically speaking, the homeschool must administer standardized tests measuring competency in English grammar, reading, spelling, and mathematics to students in all grades, not just to students in the third, sixth, and ninth grades, as is required for all other private church schools, schools of religious charter, or nonpublic schools.<sup>205</sup> Testing records for each enrolled student must be maintained and available for inspection at each school.<sup>206</sup> The homeschool must also operate “on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.”<sup>207</sup> Furthermore, the person “providing academic instruction in a home school shall hold at least a high school diploma or its equivalent.”<sup>208</sup> The homeschooling statutes do not require a state official or county official to approve the teachers or curriculum used.<sup>209</sup> In fact, the Supreme Court of North Carolina has held that the General Assembly’s purpose in enacting these statutes was “to loosen, rather than tighten, the standards for nonpublic education in North Carolina[,]” making it easier for children to be educated outside the public school system.<sup>210</sup>

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203. *Id.* § 115C-548.

204. *Id.* § 115C-552(a).

205. *Id.* § 115C-564. However, there is no requirement that the child pass these standardized tests, only that the tests be administered. See *Frequently Asked Home School Questions—Nationally Standardized Achievement Tests*, N.C. DEPT OF ADMIN., <http://www.ncdnpe.org/FAQs/hhh114s.aspx> (last visited Feb. 5, 2014).

206. N.C. GEN. STAT. § 115C-549.

207. *Id.* § 115C-548.

208. *Id.* § 115C-564.

209. *Delconte v. State*, 329 S.E.2d 636, 646 (N.C. 1985). The North Carolina statutes regulating private schools also do not mandate that any state or county official approve any particular curriculum or teacher. See N.C. GEN. STAT. §§ 115C-555 to 562.

210. *Delconte*, 329 S.E.2d at 646 (“It would be anomalous to hold that these recent statutes were designed to prohibit home instruction when the legislature obviously intended them to make it easier, not harder, for children to be educated in nonpublic school settings.”).



B. *Risks to Children's Leandro Rights Created by North Carolina's Homeschooling Laws*

As explored in Part I,<sup>211</sup> the Supreme Court of North Carolina has held that the North Carolina State Constitution affords its students the right to "*be educated*."<sup>212</sup> In *Leandro*, the court emphasized protecting student access to educational opportunities for children in North Carolina.<sup>213</sup> The court determined that an "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>214</sup> Even though homeschooled children are not educated in the public school system, upon graduating, they still must live and work in society alongside those students who were educated by public schools. In order to maintain the State's goal of education, all children, regardless of how or where they are educated, need an opportunity to receive a sound basic education.<sup>215</sup> The North Carolina State Constitution mandates to the State the "duty . . . to guard and maintain" the "right to the privilege of education."<sup>216</sup> If the State fails to ensure that each child has the opportunity to receive a sound basic education, the State has failed to meet its constitutional obligation.<sup>217</sup>

The *Leandro* court created a four-part definition to a "sound basic education," and each element must be met to ensure that every child in North Carolina is receiving her state constitutional right.<sup>218</sup> The definition provides the minimum that the State must provide to maintain each child's right.<sup>219</sup> Currently, North Carolina's homeschooling laws are very minimal, and compliance is relatively easy.<sup>220</sup> However, as illustrated below, applying the four-part definition to the homeschooling

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211. See *supra* notes 21–116 and accompanying text.

212. *Delconte*, 329 S.E.2d at 647 (emphasis in original).

213. *Leandro v. State*, 488 S.E.2d 249, 258–59 (N.C. 1997).

214. *Id.* at 254.

215. N.C. CONST. art IX, § 1 ("Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.").

216. *Id.* art I, § 15.

217. *Leandro*, 488 S.E.2d at 259.

218. *Id.* at 254–55.

219. *Id.*

220. See *Delconte v. State*, 329 S.E.2d 636, 646 (N.C. 1985) (stating the purpose of article 39 of chapter 115C is to "loosen, rather than tighten, the standards for nonpublic education in North Carolina" and that "the legislature obviously intended [the statutes] to make it easier, not harder, for children to be educated in nonpublic school settings"); N.C. GEN. STAT. § 115C-564 (2013).



laws shows that the State is not doing enough to ensure that every homeschooled child has the opportunity to receive a sound basic education.

1. “[S]ufficient 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 . . . .”<sup>221</sup>

Under the current homeschooling laws, annual testing in the subjects of English grammar, reading, spelling, and mathematics is required for each child.<sup>222</sup> As explained on the North Carolina Division of Non-Public Education website, parents can pick from three different options when ordering their requisite annual tests.<sup>223</sup> The minimal requirement, a “basic battery” test includes only English grammar, reading, spelling, and mathematics.<sup>224</sup> A “complete battery” test includes the “basic battery” subjects as well as science and social studies.<sup>225</sup> A “survey” test is a shorter version of the “complete battery” and was designed “to test students with short attention spans or learning disabilities.”<sup>226</sup> While the Department of Non-Public Education “recommends the ‘complete battery’ for a more comprehensive assessment of the student’s subject knowledge, rather than the ‘survey[,]’” it acknowledges that both are legally acceptable, as is administering just the basic battery.<sup>227</sup> Furthermore, it tells home educators that students do not “pass” or “fail” the nationally standardized achievement tests; the child merely must be tested.<sup>228</sup> The tests serve to “compare students with their national age peers.”<sup>229</sup> Students are assigned a grade equivalent score that “indicates a student’s performance relative to the average performance of students at a given grade level.”<sup>230</sup>

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221. *Leandro*, 488 S.E.2d at 255 (reciting the first element to the definition of a “sound basic education”).

222. N.C. GEN. STAT. § 115C-564.

223. *Frequently Asked Home School Questions—Nationally Standardized Achievement Tests*, *supra* note 205.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.* (emphasis in original); see also N.C. GEN. STAT. §§ 115C-549, -557, -564.

228. *Frequently Asked Home School Questions—Nationally Standardized Achievement Tests*, *supra* note 205.

229. *Id.*

230. *Id.*



It is noteworthy that there is no requirement that a child be taught physical science.<sup>231</sup> In fact, a child may go through twelve years of homeschool without ever having her knowledge in this area measured.<sup>232</sup> Parents may choose not to teach it sufficiently, or at all, and there is no oversight by the State to ensure that the child has an opportunity to receive satisfactory knowledge in this area that would allow her “to function in a complex and rapidly changing society.”<sup>233</sup> Without an adequate, basic understanding of physical science, the child may be unable to compete against her peers in jobs that demand a basic competency level in this area; therefore, under *Leandro*, her education is constitutionally inadequate.<sup>234</sup>

By comparison, in North Carolina’s public schools, the State has implemented a curriculum known as “Common Core” and “Essential Standards.”<sup>235</sup> The “Common Core State Standards” in K–12 mathematics and English language arts were adopted “to embrace clear and consistent goals for learning to prepare children for success in college and work.”<sup>236</sup> The “Essential Standards” component “includes the standards for the newly adopted curriculum in the following areas: English as a Second Language, Science, Social Studies, World Languages, Arts Education and Healthful Living.”<sup>237</sup> The State created these standards to “help ensure that every student graduates from high school ready for a post-secondary education or career.”<sup>238</sup> Utilizing these standards in public schools throughout the state will “provide the most appropriate education possible for the diverse learners in the public schools of the state in order to prepare all students to become successful, contributing members of a 21st century society and global economy.”<sup>239</sup> This curriculum, if properly employed, will ensure that public school students are receiving the opportunity to gain a “sufficient ability to read, write, and speak the English language[,]” regardless of whether English is their first language, and “a sufficient knowledge of fundamental mathematics and physical science to enable the student to

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231. See *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

232. See *id.*

233. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

234. *Id.* at 254–55.

235. *K–12 Curriculum and Instruction/NC Standard Course of Study*, *supra* note 190.

236. *Id.*

237. *Id.*

238. *Id.*

239. 2013–2014 *Parent and Student Handbook*, THE ACAD. OF MOORE CNTY. 6 (2013), available at [http://www.academyofmoorecounty.com/secondary/parent\\_student\\_handbook\\_11-12.pdf](http://www.academyofmoorecounty.com/secondary/parent_student_handbook_11-12.pdf).



function in a complex and rapidly changing society[.]” as *Leandro* requires.<sup>240</sup>

In addition to a rigorous and diverse curriculum, North Carolina’s testing of public school students also works to ensure that students are given the opportunity to possess “sufficient knowledge” of mathematics, physical science, and English/language arts.<sup>241</sup> “End-of-Grade Tests” test students in mathematics and reading comprehension in the third through eighth grades.<sup>242</sup> Students are tested in an “End-of-Grade Test” in science in grades five and eight.<sup>243</sup> In addition, students are tested in writing in fourth and seventh grades.<sup>244</sup> In high school, students are tested again in mathematics, science, and language arts through “End-of-Course Tests” in Mathematics I, Biology, and English II.<sup>245</sup> These tests “provide an indication of whether students are making progress toward mastery of state content standards, and test score performance can be used to determine promotion from one grade to the next.”<sup>246</sup> In addition, “[i]f the school’s overall scores are low,” the school may receive penalties from the State or receive “federal and/or state money” for children to receive “tutoring or to transfer to another school.”<sup>247</sup> These tests and the penalties assigned to schools that fail to meet benchmarks or show growth work to ensure that public school students have the opportunity to receive an education that meets the first element of the *Leandro* definition of a sound basic education.<sup>248</sup>

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240. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

241. *Id.*

242. *North Carolina End-Of-Grade Tests at Grades 3–8 and 10*, PUB. SCH. OF N.C., [www.ncpublicschools.org/accountability/testing/eog/](http://www.ncpublicschools.org/accountability/testing/eog/) (last visited Feb. 5, 2014).

243. *Id.*

244. See ACRE: Accountability and Curriculum Reform Effort, PUB. SCH. OF N.C., <http://www.ncpublicschools.org/acre/writing/> (last visited Feb. 5, 2014). However, the writing requirement for tenth graders may resume. See Letter from Michael Yudin, Acting Assistant Sec’y, U.S. Dept. of Educ., to June St. Clair Atkinson, Superintendent of Pub. Instruction, N.C. Dept. of Public Instruction (Nov. 28, 2011), available at <http://www.ncpublicschools.org/docs/accountability/memos/usedwritingmemo.pdf>.

245. *North Carolina End-Of-Course Tests*, PUB. SCH. OF N.C., <http://www.ncpublicschools.org/accountability/testing/eoc/> (last visited Feb. 5, 2014).

246. *Testing in North Carolina: An Overview*, GREATSCHOOLS, <http://www.greatschools.org/students/local-facts-resources/435-testing-in-NC.gs> (last visited Feb. 5, 2014).

247. *Id.*

248. Whether charter schools and private schools afford all students the opportunity to receive a sound basic education as defined in *Leandro v. State* is beyond the scope of this Article. It is worth noting, however, that “non-public schools” in North Carolina must register with the State, but the State does not specify what subjects must be taught, and the State does not require non-public schools to be accredited. See N.C. Gen. Stat.



2. “[S]ufficient 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 . . . .”<sup>249</sup>

Similar to the lack of physical science requirements discussed above, there is no requirement that homeschooled students be taught, or have their knowledge measured in, geography, history, economics, or political science.<sup>250</sup> Because testing in each of these subject areas is not required, no oversight by the State exists to ensure that homeschooled students have the opportunity to receive sufficient fundamental knowledge in each area.<sup>251</sup>

In the areas of economics and politics, strong potential for subjectivity exists, and homeschooling parents become the sole source of information for their children on such subjects. Unlike in the public school system where, ideally, students are more likely to receive an objective set of information from which they can form their own conclusions, parents have the potential and ability to teach their child their own attitudes, stances, and beliefs. No oversight exists to ensure that teaching in homeschools is objective, so as to enable children to make independent, informed choices. When such failure occurs and the student enters society, she may not have the capacity to make “informed choices with regard to issues[,]”<sup>252</sup> having only heard one side of the issue. This will impact how the student later votes, contributes to society, raises her own children, and so on—detrimentally affecting the State’s interest in having an educated citizenry.<sup>253</sup>

On the other hand, in public schools, the “Essential Standards” curriculum discussed above includes standards in social studies.<sup>254</sup> “The North Carolina Social Studies Essential Standards were developed based on research from the national standards that support civics and

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§§ 115C-547 to 562 (2013). As a result, State oversight over non-public schools is minimal, and the State may not be meeting its duty of ensuring that all private school students have the opportunity to receive a sound basic education. *See id.* For information on the requirements of charter schools in North Carolina, see North Carolina General Statute sections 115C-238.29A to 238.29I.

249. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997) (reciting the second element to the definition of a “sound basic education”).

250. *See Home School Requirements, Reminders and Recommendations*, *supra* note 187.

251. N.C. GEN. STAT. §§ 115C-549, -557; *see also Home School Requirements, Reminders and Recommendations*, *supra* note 187.

252. *Leandro*, 488 S.E.2d at 255.

253. *See* N.C. CONST. art. IX, § 1.

254. *K-12 Curriculum and Instruction/NC Standard Course of Study*, *supra* note 190.



government, history, geography, and economics. These national documents provided the framework for the development of standards that are enduring, clear, and measurable.”<sup>255</sup> These Essential Standards are designed to serve the needs of students in the twenty-first century and were “written to identify the most critical (essential) knowledge, understandings and skills that a student must learn in a grade or course in order to be successful at the next level of learning and for life beyond the classroom.”<sup>256</sup> Public school teachers administer a curriculum “designed to ensure that all students at all grade levels acquire the essential knowledge and skills to be informed, active citizens in the 21st century.”<sup>257</sup> Therefore, so long as teachers are properly implementing this curriculum, public school students are receiving the opportunity to obtain an education that meets the second element of the *Leandro* definition of a sound basic education.<sup>258</sup>

Furthermore, North Carolina has taken additional steps to ensure that teachers are effectively providing their students with a satisfactory, fundamental knowledge of history and social studies. In addition to the Essential Standards curriculum, the State has implemented “Common Exams” under a new “Measures of Student Learning” program to evaluate “educator effectiveness,” including “a teacher’s contribution to student learning as an explicit standard in his or her evaluation.”<sup>259</sup> These “Final Exams” were developed to replace locally developed assessments, providing teachers and principals with a common measure for all students state-wide during a given testing window.”<sup>260</sup> Beginning in the 2012–2013 school year, the Common Exam in Social Studies was

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255. *2010 Social Studies Essential Standards: Meeting the Needs of All Students in The 21st Century*, N.C. DEP’T OF PUB. INSTRUCTION 1, <http://www.ncpublicschools.org/docs/acre/standards/new-standards/social-studies/meeting-needs.pdf> (last visited Feb. 5, 2014).

256. *Id.*

257. *Id.* at 2.

258. *Id.*; see also *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

259. *North Carolina Student Growth Portfolio Pilot: Spring 2013*, N.C. DEP’T OF PUB. INSTRUCTION 1, <http://wlnces.ncdpi.wikispaces.net/file/view/SGPPortfolioDvptScoringGuide.FINAL.Spring2013Pilot.pdf> (last visited Feb. 6, 2014); see also *Measures of Student Learning: NC’s Common Exams*, N.C. DEP’T OF PUB. INSTRUCTION (Mar. 2013), available at <http://www.ncpublicschools.org/docs/accountability/common-exams/implementation-guide.pdf>.

260. *Standard Course of Study for United States History*, N.C. DEP’T OF PUB. INSTRUCTION 1 (Dec. 2013), <http://www.ncpublicschools.org/docs/accountability/common-exams/ncfeushistoryspecs1314.pdf>.



administered for students in the fourth through eighth grades.<sup>261</sup> These Common Exams use multiple-choice items to test students in grades fourth through eighth, and further test eighth graders with constructed response (CR) items.<sup>262</sup> The CR questions “allow[] students to demonstrate understanding of social studies concepts by using facts to support these ideas through written expression.”<sup>263</sup> Many of the test questions “require students to process factual content as they read, interpret, and/or analyze stimulus material, including maps, graphs, and excerpts of primary and secondary-source documents.”<sup>264</sup>

Likewise, there are also Common Exams for High School Social Studies courses.<sup>265</sup> These tests are set up in a similar way, with both multiple choice questions and one CR item, and measure students’ knowledge in World History, American History I, American History II, and Civics and Economics.<sup>266</sup> In addition, there is also a separate Common Exam for U.S. History to coincide with the Standard Course of Study in U.S. History that was “adopted by the North Carolina State Board of Education in 2006.”<sup>267</sup> The Common Exam in U.S. History contains fifty multiple choice questions with four answer options, and students are given one hundred and twenty minutes to complete the exam.<sup>268</sup> “Final Exams will count at minimum 20% toward the student’s final course grade.”<sup>269</sup>

The North Carolina Department of Public Instruction (NCDPI) has designed these exams “for paper/pencil mode only,” although it previously allowed schools the option of using computers.<sup>270</sup> As these Common Exams (along with other assessment scores from End-of-Grade or End-of-Course tests) are designed to evaluate student growth, and thus, teacher effectiveness,<sup>271</sup> they work to ensure public school teachers

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261. *Essential Standards for Elementary and Middle Grades Social Studies Courses*, N.C. DEP’T OF PUB. INSTRUCTION 1 (Dec. 2013), <http://www.ncpublicschools.org/docs/accountability/common-exams/socialstudieselemmidspecs1314.pdf>.

262. *Id.*

263. *Id.* at 4.

264. *Id.*

265. See *Essential Standards for High School Social Studies Courses*, N.C. DEP’T OF PUB. INSTRUCTION (Dec. 2013), <http://www.ncpublicschools.org/docs/accountability/common-exams/ncfesocialstudieshssspecs1314.pdf>.

266. *Id.* at 2–4.

267. *Standard Course of Study for United States History*, *supra* note 260, at 1.

268. *Id.* at 2.

269. *Id.* at 1.

270. *Id.* at 2.

271. *Id.* at 1.



are effectively providing their students with the opportunity to acquire a sufficient knowledge of history, civics, economics, and geography at various stages throughout their education. This guarantees that when a student graduates from high school, she has had the opportunity to receive a "sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices[.]" as required under *Leandro*.<sup>272</sup>

3. "[S]ufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training[.]"<sup>273</sup>

In *Leandro*, the Supreme Court of North Carolina emphasized that every child in North Carolina has the right to receive an education that will "prepare the child to participate fully in society."<sup>274</sup> The North Carolina State Constitution requires that a student have the right to receive a meaningful education.<sup>275</sup> In order to be successful post-graduation and to be a contributing member of society, the student presumably will have to obtain a job, either soon after graduation through engaging in some kind of vocational education or on-the-job training, or after receiving a post-secondary education. In order to be successful, the student will need to have a sufficient knowledge of how to interact with others, how to communicate effectively, and how to function in society, including understanding basic norms and social customs. These skill sets are gained throughout the student's K-12 education, and without the proper foundation, the student will not be able to participate fully and successfully in society.<sup>276</sup>

In order to engage in vocational training or post-secondary education in today's society, the student must also have a sufficient knowledge of technology. Almost all jobs today use technology, in some capacity, in order to be more efficient.<sup>277</sup> Even vocational jobs often

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272. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

273. *Id.* (reciting the third element to the definition of a "sound basic education").

274. *Id.*

275. *See id.* at 254-55; *see also* Packard, *supra* note 62, at 1503.

276. *See* Thomas L. Hungerford & Robert W. Wassmer, *K-12 Education in The U.S. Economy: Its Impact on Economic Development, Earnings, and Housing Values* 5 (NAT'L EDUC. ASS'N, Working Paper, Apr. 2004), available at <http://www.nea.org/assets/docs/HE/economy.pdf>.

277. CRAIG D. JERALD, *DEFINING A 21ST CENTURY EDUCATION* 1-4 (Ctr. for Pub. Educ. July 2009), available at <http://www.centerforpubliceducation.org/Learn-About/21st-Century/Defining-a-21st-Century-Education-Full-Report-PDF.pdf>. While *Leandro* does not specifically mention technology, the court did mandate that students must have the opportunity to receive "sufficient academic and vocational skills to enable the student to



require a basic ability to use technology—from operating a high-power machine to inputting customer information on a computer.<sup>278</sup> Most jobs in the United States require the ability to type with at least a rudimentary competence, whether it is in preparing a report, inputting data, ordering products or supplies, or managing inventory.<sup>279</sup> If a student chooses to pursue post-secondary education, a basic understanding of technology, especially computers, will certainly be required. As society's reliance on technology increases and advances in technology become more rapid, it is becoming harder to imagine a post-secondary course that does not require the student to use a computer to do research, to type a paper, or to make a presentation.<sup>280</sup>

North Carolina's homeschooling laws do not require a student to engage in any kind of technology training.<sup>281</sup> A homeschooled student is not compelled to enroll in computer applications classes, like most students in public schools, and the State does not require testing homeschooled students' ability to operate a computer or to type efficiently.<sup>282</sup> If a homeschooling parent does not have a computer at home and does not regularly visit a public library to use a computer, the homeschooled child may never be taught how to type, to conduct research, or to operate basic programs on a computer. Thus, the student will lack a sufficient knowledge of technology to successfully engage in post-secondary or vocational training.

Additionally, the homeschooling laws do not require students to complete assignments that employ critical thinking or enhance creativity.<sup>283</sup> No measures are in place to ensure homeschooled students are required to think analytically or to develop problem solving skills.<sup>284</sup> Because of these loose requirements, homeschooled students may not be

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successfully engage in post-secondary education or vocational training." *Leandro*, 488 S.E.2d at 255. In today's society, it is hard to imagine that a student would be able to successfully engage in a job or post-secondary education without having a sufficient understanding of technology and a basic ability to use it in day-to-day life. See JERALD, *supra*.

278. See JERALD, *supra* note 277, at 2.

279. See *id.*, at 1–8.

280. *Id.*

281. N.C. GEN. STAT. § 115C-564 (2013); *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

282. See N.C. GEN. STAT. § 115C-564; *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

283. See N.C. GEN. STAT. § 115C-564; *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

284. See N.C. GEN. STAT. § 115C-564; *Home School Requirements, Reminders and Recommendations*, *supra* note 187.



receiving the opportunity to develop sufficient academic and vocational skills to successfully engage in post-secondary education or vocational training.

In contrast, North Carolina public school students are exposed to "Information and Technology" as part of the "Future Ready Occupational Course of Study" of the North Carolina Essential Standards.<sup>285</sup> Students throughout grades K–12 are exposed to technological concepts and are taught how to use technology.<sup>286</sup> By high school, the curriculum includes evaluating sources for reliability, using technology to access information, analyzing safety and ethical issues with the Internet, and gaining familiarity with the research process.<sup>287</sup> Information and technology play an integral part in both post-secondary education and in vocational training, as most jobs in the twenty-first century rely on technology for communicating information in some way.<sup>288</sup> Making information and technology part of the required curriculum ensures that public school students have the opportunity to develop "sufficient academic and vocational skills to enable the student[s] to successfully engage in post-secondary education or vocational training."<sup>289</sup>

The NCDPI also oversees a "State School Technology Plan,"<sup>290</sup> which is "a comprehensive State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance in the public schools through the use of learning

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285. *NC Essential Standards*, N.C. DEP'T OF PUB. INSTRUCTION, <http://www.ncpublicschools.org/acre/standards/new-standards/#it> (last visited Feb. 6, 2014).

286. *Id.* Previously in North Carolina, beginning in the eighth grade, students were required to take a computer skills assessment "based on the competencies of the K–8 computer skills curriculum as defined in the North Carolina *Standard Course of Study*." *Test of Computer Skills (Archive Only)*, N.C. DEP'T OF PUB. INSTRUCTION, <http://www.ncpublicschools.org/accountability/testing/computerskills/> (last visited Feb. 6, 2014) (emphasis in original). Students were required to pass this assessment before graduating from high school. *Id.* However, this assessment was eliminated as of the 2009–2010 school year. *Id.* Now, "Information and Technology" is included as a component of the North Carolina Essential Standards Curriculum, with specific competency goals for elementary, middle, and high school students. *NC Essential Standards*, *supra*.

287. *North Carolina Essential Standards: Grades 9–12, Information and Technology Essential Standards*, N.C. DEP'T OF PUB. INSTRUCTION, <http://www.ncpublicschools.org/docs/acre/standards/new-standards/info-technology/grades9-12.pdf> (last visited Feb. 6, 2014).

288. See JERALD, *supra* note 277, at 1–8.

289. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

290. N.C. GEN. STAT. §§ 115C-102.5 to -102.7 (2013).



and instructional management technologies.”<sup>291</sup> This technology plan was designed to ensure that “the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century.”<sup>292</sup> The purpose of the technology plan is to use “cost-effective” technology “to promote substantial gains in student achievement.”<sup>293</sup> This plan is in alignment with the emphasis on education in the North Carolina Essential Standards Curriculum, and it will continue to guarantee that all public school students are exposed to technology in the classroom.<sup>294</sup>

4. “[S]ufficient 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>295</sup>

In order to compete with students from traditional schools in education or employment opportunities, a homeschooled student needs to have a comparable understanding of the academic and vocational skills expected of applicants. Typical academic and vocational skills may include how to interact with others, how to communicate effectively, and how to function in society, as well as a sufficient understanding of how to effectively use technology.<sup>296</sup> As indicated above, North Carolina’s homeschooling laws do not require any testing of critical thinking, problem solving skills, or technology.<sup>297</sup> A homeschooled student whose parent chooses not to focus on these skill sets may lack an opportunity to receive an education that allows her to successfully compete with her counterparts from public or private schools—whether it be in post-secondary education or in the workplace—as required under *Leandro*.<sup>298</sup>

#### IV. PROPOSED RESOLUTIONS

The North Carolina homeschooling laws specify the requirements for parents or guardians who wish to homeschool their children in lieu

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291. *Id.* § 115C-102.6A.

292. *Id.* § 115C-102.6.

293. *Id.* § 115C-102.6A.

294. See NC Essential Standards, *supra* note 287; N.C. GEN. STAT. §§ 115C-102.5, -102.6A.

295. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997) (reciting the fourth and final element to the definition of a “sound basic education”).

296. See Hungerford & Wassmer, *supra* note 276, at 5; JERALD, *supra* note 277, at 1–8.

297. See N.C. GEN. STAT. § 115C-564; *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

298. *Leandro*, 488 S.E.2d at 255.



of traditional school attendance.<sup>299</sup> As discussed above, these requirements are not strict enough to ensure that every homeschooled child within the state is afforded her constitutional right to the "opportunity to receive a sound basic education."<sup>300</sup> The General Assembly needs to create stricter, more detailed guidelines to guarantee that every child within the state is receiving opportunities that satisfy all four critical elements of the *Leandro* definition of a sound basic education.<sup>301</sup> This Part proposes two potential resolutions to minimize or eliminate the risk of losing the opportunity to receive a sound basic education for homeschooled students within the state: (1) more state oversight regarding the curriculum parents or guardians use, and (2) expanded testing requirements.

A. *Possible Resolution Number One: Curriculum Oversight by the State*

As discussed in Part III, when a homeschooling parent fails to present to her child a curriculum that includes the components necessary for a sound basic education, the child's constitutional rights have been violated.<sup>302</sup> To ensure that homeschooled children's constitutional rights are protected, the State needs to more closely supervise and control homeschooling parents' actions, particularly their curriculum. Under North Carolina's current homeschooling laws, homeschooling parents have considerable leeway in both what they teach and how they teach it.<sup>303</sup> The homeschooling laws do not mandate that parents use any state-approved or county-approved curriculum.<sup>304</sup> Homeschools are *encouraged* to "[o]ffer instruction of at least similar quality, scope and duration as local conventional schools."<sup>305</sup> However, this is merely a recommendation, not a requirement, so homeschooling parents are free to establish their own curriculum and teach that curriculum in any manner they wish.<sup>306</sup>

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299. *Home School Requirements, Reminders and Recommendations*, *supra* note 187. For a discussion of the North Carolina homeschooling requirements, see *supra* notes 184–298 and accompanying text.

300. *Leandro*, 488 S.E.2d at 255.

301. *See id.*

302. *See supra* notes 184–298 and accompanying text.

303. *See supra* notes 184–298 and accompanying text.

304. *Delconte v. State*, 329 S.E.2d 636, 645–46 (N.C. 1985).

305. *Home School Requirements, Reminders and Recommendations*, *supra* note 187 (emphasis added).

306. *Id.*



The State needs to have more control over what homeschooling parents and guardians are actually teaching—beyond just simply requiring the child to take an annual achievement test in core subject areas and presuming she is receiving the opportunity to obtain a sound basic education from her parent. There are two ways that the State can implement increased curriculum oversight. First, the State could issue a standard course of study for all homeschooling parents to use when teaching their children, conceivably similar to the curriculum used in public schools.<sup>307</sup> Second, the State could require parents to submit a written, detailed curriculum to a state agent who would review it and monitor what is actually being taught in each home—i.e., to ensure that the parent is actually following the submitted and approved curriculum.<sup>308</sup> Both of these options, though effective, are expensive.

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307. However, if the State chose to implement a standard course of study for homeschooling parents to use when educating their children, it would have to take care to not direct all the “intimate and essential details” of homeschooling. See *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927). In *Farrington*, the Supreme Court struck down a Hawaii law that made it illegal for teachers to teach foreign languages without a permit. *Id.* at 290–91, 298–99. The Court determined this law violated the Due Process Clause of the Fifth and Fourteenth Amendments. *Id.* at 298–99. The state law went “far beyond mere regulation of privately supported schools” and instead gave “affirmative direction concerning the intimate and essential details of such schools.” *Id.* at 298. Thus, enforcement of the law “deprive[d] parents of fair opportunity to procure for their children instruction which they think important and [the Court] cannot say is harmful.” *Id.* Therefore, any curriculum implemented by the State for use by homeschooling parents to ensure that students have the opportunity to receive a sound basic education as defined in *Leandro* must allow some degree of parental discretion and control. See *id.*; *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997). Parents must retain the fair opportunity to control these intimate details of their children’s education, so long as their decisions are not harmful to the child. See *Farrington*, 273 U.S. at 298. However, this does not mean that the State cannot step in and require homeschooling parents to teach from a state-approved curriculum. It only means that the State cannot go so far as to diminish the parent’s choice to homeschool by directing the “intimate and essential details” of homeschooling. See *id.*

308. In doing so, the State must take care to ensure that it does not “unreasonably interfere[] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). However, the State must also keep in mind that the child’s education is in her parents’ hands and that the child does not have a voice to advocate for her educational right. One way to safeguard homeschooled children’s rights could be through the use of a guardian ad litem to acknowledge and speak on the child’s behalf. See N.C. GEN. STAT. § 35A–1379 (2013). The State could require all homeschooling parents to submit a curriculum to the State. A state agent could then review the curriculum for compliance with the *Leandro* standard. If the *Leandro* standard is met, then no further action is required. If the *Leandro* standard is not met, then additional steps may be required. The State should appoint a guardian ad litem to oversee the child’s interest in her right to the



Although the first option seems to be less time-consuming and more cost-efficient for the State, at the very outset it is counter to the general object of homeschooling. On the other hand, the latter option, though more expensive, provides greater flexibility for homeschooling parents and allows them to retain as much of their constitutional rights to guide the education of their child as possible.<sup>309</sup>

For example, in the public school system, North Carolina has established a standard course of study that determines “the appropriate content standards for each grade level and each high school course to provide a uniform set of learning standards for every public school in North Carolina.”<sup>310</sup> This curriculum is to be made available to every child within the public school system and has been established to “prepare all students to become career and college ready.”<sup>311</sup> Through this standard course of study, along with State oversight as directed by *Leandro*, there are measures in place to ensure that all public school students have the opportunity to receive a sound basic education.<sup>312</sup> Additionally, the concerns addressed regarding education in homeschools do not exist in other alternative schools, such as private schools. In private schools, market forces work to protect the integrity of the curriculum. Parents who pay tuition for their child’s education at a private school generally have a significant, vested interest in ensuring that the school has a solid curriculum that will give the child the opportunity to receive a sound basic education. A private school with a weak, unchallenging curriculum that does not prepare its students to be successful simply will not attract parents or tuition dollars, and thus,

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opportunity to receive a sound basic education under *Leandro*. The guardian ad litem would need to acknowledge that the child’s constitutional rights are not being violated, or, if a component of a sound basic education is missing, the guardian must acknowledge that the child is waiving the opportunity to receive such an education on her own behalf—and not that the parent is waiving the child’s right for her. This will prevent a potential lawsuit from the child when she reaches the age of majority, alleging that the State failed to ensure that she was afforded the opportunity to receive a sound basic education. See *Leandro*, 488 S.E.2d at 255.

309. With either option, exceptions for certain students must exist, especially for special education students. These exceptions can be similar to the exceptions to the public school curriculum in North Carolina for special education students. See *Testing Students with Disabilities*, N.C. DEPT OF PUB. INSTRUCTION (July 2005), <http://www.ncpublicschools.org/docs/accountability/testing/alternate/disabilities/testingstudents.pdf>. The curriculum for these students will need to be based on the specific needs of the child.

310. *K–12 Curriculum and Instruction/NC Standard Course of Study*, *supra* note 190.

311. *Id.*

312. See *Leandro*, 488 S.E.2d at 255.



will not be able to stay open. However, there are neither market forces nor state-mandated curriculum standards at work within the homeschool setting, and thus, nothing to regulate a homeschooled child's education. Supervision over the curriculum would ensure that homeschooled children are actually receiving their constitutional right to the opportunity to receive a sound basic education—a right that extends to homeschooled children even though their parents have opted out of the uniform system of public education.<sup>313</sup>

*B. Possible Resolution Number Two: Expanded Testing of Homeschooled Students and Consequences for Inadequate Performance*

An alternative to stricter curriculum oversight is for the State to develop more rigorous testing requirements for homeschooled students. While adopting curriculum measures would allow for oversight on the front end, stricter testing requirements would allow for State oversight on the back end. In order to make sure homeschooled children are receiving the opportunity to receive a sound basic education, the State must test the competency level of homeschooled children in subjects beyond those currently being tested. Then, the State needs to implement measures—i.e., consequences for continual poor student performance—to incentivize homeschooling parents to teach the material being tested, thus holding the parent accountable for providing the child with the opportunity to receive a sound basic education.

As examined in Part III, the current minimal testing requirements are not sufficient to alleviate potential risks to the homeschooled child's opportunity to receive a sound basic education.<sup>314</sup> Additional testing in a greater number of subjects would help address this concern. The State should require that homeschooled students take an annual standardized examination in physical science, geography, civics, history, and economics, along with the already required English grammar, reading, spelling, and mathematics. The State should also ensure that each homeschooled student has a sufficient basic understanding of computer programs, such as Word processing, spreadsheets, and databases. To accomplish this, the State should require homeschooled students to take a computer-based competency test.

However, as previously stated, simply mandating that homeschooled students take annual tests in various subject areas is not sufficient to resolve the risk of a homeschooled child being deprived of

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313. See *supra* notes 117–83 and accompanying text.

314. See *supra* notes 184–298 and accompanying text.



her right to a sound basic education. Under current homeschooling laws, a homeschooled student does not “pass” or “fail” her annually required standardized tests; rather, the student is simply given a “grade equivalent score” that “indicates [the] student’s performance relative to the average performance of students at a given grade level.”<sup>315</sup> No homeschooling law requires a student to achieve a certain score in order to complete one grade level and move on to the next.<sup>316</sup> A student could fail each test given, in each subject area throughout her entire educational career, yet still continue to graduate to the next grade level.<sup>317</sup> Therefore, simply administering a test in each subject area mentioned under the *Leandro* definition of a sound basic education will not ensure that the child is receiving her full, constitutional right. In order to ensure that homeschooled children are actually receiving their opportunity for a sound basic education, the State must create a procedure to guarantee that these children are achieving a basic competency level in each subject area mentioned in *Leandro*. Otherwise, homeschooling parents or guardians have little incentive to teach the tested material, thus, potentially denying their child the opportunity to receive a sound basic education.

For example, in the public school system, there are such measures in place.<sup>318</sup> The State Board of Education is required to “set annual performance standards for each school to measure the growth of student achievement.”<sup>319</sup> Each school is required to devise a “school improvement plan” that includes a goal of increasing school performance on end-of-grade tests.<sup>320</sup> Individual schools are held accountable for students’ performance each year.<sup>321</sup> A school that exceeds its goals “will receive recognition and possible financial rewards.”<sup>322</sup> Conversely, “[i]f a school fails to meet its minimum growth standard and the majority of students are performing below grade level, the school is held accountable and steps are taken to improve the school’s performance.”<sup>323</sup>

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315. *Frequently Asked Home School Questions—Nationally Standardized Achievement Tests*, *supra* note 205.

316. *Id.*; see N.C. GEN. STAT. §§ 115C-549, -557, -564 (2013).

317. See *Frequently Asked Home School Questions—Nationally Standardized Achievement Tests*, *supra* note 205; N.C. GEN. STAT. §§ 115C-549, -557, -564.

318. Packard, *supra* note 62, at 1509.

319. *Id.* (citing N.C. GEN. STAT. § 115C-105.20).

320. *Id.*

321. *Id.*

322. *Id.* (citing N.C. GEN. STAT. § 115C-105.20).

323. *Id.* (citing N.C. GEN. STAT. §§ 115C-105.37 to -105.39).



Not all subjects mentioned in the *Leandro* definition of a sound basic education are tested in public schools, even though this Article recommends testing homeschooled students in all of the mentioned subjects. Public school students in elementary school and middle school are only tested in reading and mathematics each year, as well as science in grades five and eight.<sup>324</sup> High school students are tested in core "EOC" classes, which include science, mathematics, and English.<sup>325</sup> The state-mandated curriculum for public schools, which dictates what teachers teach their students in each subject area, guarantees that public school students have the opportunity to receive a sufficient education from their teachers.<sup>326</sup> Furthermore, in private schools, despite the lack of testing in the subject areas mentioned in *Leandro*, market forces remove any possibility that students are not receiving a quality, sound education.<sup>327</sup>

Because there is no state-mandated or state-approved curriculum at work for homeschools, or market forces driving results, there is nothing in place to minimize the risk of a deprivation of *Leandro* rights for homeschooled children. Accordingly, the State must take additional steps to make sure homeschooled children are presented with the opportunity for an adequate foundation in English, mathematics, physical science, geography, history, economics, civics, and computer skills. After testing students in these subjects, the State should grade the examinations and track the progress of each student. If a student in a particular homeschool fails to pass an examination in any given year, a state agent should closely monitor the student for future growth. This monitoring would encourage the homeschool to increase its educational efforts and to boost student performance through programs such as: increasing tutoring for low-performing students, school-wide tutoring in

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324. See *North Carolina Testing Program*, N.C. DEP'T OF PUB. INSTRUCTION, <http://www.dpi.state.nc.us/accountability/testing/> (last visited Feb. 6, 2014).

325. *Id.*

326. See Packard, *supra* note 62, at 1492.

327. Parents who are dissatisfied with the education that their child receives in a private school will no longer send their child to that school, and if enough parents are dissatisfied, the school will ultimately be forced to close from a lack of tuition. However, it is worth noting that the State does not require private schools to be accredited; accreditation by any non-public school is purely optional. N.C. GEN. STAT. § 115C-555. The State also does not specify which subjects must be taught in private schools. See *id.* §§ 115C-547 to -562. Therefore, market forces are the only available way for the State to ensure that private school students in North Carolina are receiving the opportunity to a sound basic education as defined in *Leandro*. Whether the State is meeting its obligation to protect the constitutional rights of private school students is beyond the scope of this Article.



particular subject areas that the homeschooling parent is not competent in or unwilling to teach, additional testing of students throughout the year, or submitting monthly progress reports to a state agent. If the homeschool fails to show growth in subsequent years, measured by student performance on annual tests, the State should step in and take over the homeschool in a similar manner as is done in under-performing public schools.<sup>328</sup> Once it takes over the homeschool, the State can take appropriate action to ensure the students' constitutional rights are not being violated—with the most extreme action being shutting down the homeschool and forcing the students to attend either public school or private school. State-mandated consequences for a homeschool that fails to demonstrate through satisfactory student performance that it is complying with *Leandro* would force the homeschool to both modify its curriculum and to teach the tested material, and thus, present each child the opportunity to receive a sound basic education.<sup>329</sup>

## V. CONCLUSION

Parents have a fundamental right to direct the education and upbringing of their children. The State has a competing compelling interest in educating its citizens so that they may become productive members of society. In balancing these two interests, the constitutional rights of children cannot be ignored. The Supreme Court of North Carolina has recognized that the state constitution affords students the right to be educated, holding in *Leandro* that students have the constitutional right to the opportunity to receive a sound basic education.<sup>330</sup> The General Assembly has the obligation to ensure that each child within its jurisdiction is receiving this opportunity. This obligation extends to all students, regardless of where they are educated, as the state constitution does not distinguish between public and nonpublic schools when providing that "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."<sup>331</sup>

North Carolina's homeschooling requirements can easily be met without substantial oversight from the State and with minimal effort by

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328. For information on how low-performing public schools are dealt with in North Carolina, see North Carolina General Statutes chapter 115C, section 105.37A.

329. *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

330. *Id.*

331. N.C. CONST. art. I, § 15.



both the parent and child.<sup>332</sup> The homeschooling laws neither mandate a particular curriculum nor require any fixed student competency level, but merely require that the students take a standardized test in certain core subjects.<sup>333</sup> These requirements are not strict enough to ensure that the homeschooled student, who is at the mercy of learning only what her parent chooses to teach her, has the opportunity to receive a sound basic education. The General Assembly needs to revise the homeschooling laws to allow for greater oversight by the State, thus ensuring that each child, regardless of where he or she is educated, is afforded the opportunity to receive a sound basic education.

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332. *Home School Requirements, Reminders and Recommendations*, *supra* note 187.

333. *Id.*



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