No. 60A20 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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ASHLEY DEMINSKI, as guardian ad litem on behalf of C.E.D., E.M.D., and K.A.D., Plaintiffs-Appellants, v. PITT COUNTY BOARD OF EDUCATION, Defendant-Appellee, and THE STATE BOARD OF EDUCATION, Defendant.	From Wake County No. 17-CV-15159 COA18-988

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BRIEF OF AMICUS CURIAE
NORTH CAROLINA ADVOCATES FOR JUSTICE

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No. 60A20 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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ASHLEY DEMINSKI, as guardian ad litem on behalf of C.E.D., E.M.D., and K.A.D.,

Plaintiffs-Appellants,

v.

PITT COUNTY BOARD OF EDUCATION,

Defendant-Appellee,

and

THE STATE BOARD OF EDUCATION,

Defendant.

From Wake County
No. 17-CV-15159
COA18-988

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BRIEF OF AMICUS CURIAE NORTH CAROLINA ADVOCATES FOR JUSTICE

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INTRODUCTION

In *Leandro v. State*, this Court established that the North Carolina Constitution "guarantee[s] every child of this state an opportunity to receive a sound basic education in our public schools." 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997). This landmark decision recognized a broad and vital constitutional mandate, holding that "[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate." *Id.* While many ongoing *Leandro* issues, such as appropriate funding schemes or teacher training, present complex questions of constitutional law and educational policy, Plaintiff's position is fundamental: a school that fails to create a safe and secure learning environment deprives students of a meaningful opportunity for a sound basic education and thus violates their constitutional rights.[1]

The decision below, if affirmed, would nullify or overrule the controlling precedent this Court established in *Craig v. New Hanover Board of Education*, 363 N.C. 334, 678 S.E.2d 351 (2009), which re-affirmed that students have remedies for violations of the right to education declared in the North Carolina Constitution. Further, the majority opinion below improperly narrowed this Court's precedents regarding the scope of the constitutional right to a sound basic education. This Court's precedents, statutes enacted by the General Assembly, evidence and factfinding in the ongoing *Leandro* litigation, education research, and decisions

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[1] No person or entity—other than the NCAJ, its members, and its counsel—directly or indirectly wrote this brief or contributed money for its preparation.

from other states all recognize that a safe and secure learning environment is essential for a sound basic education.

ARGUMENT

I. THE COURT OF APPEALS DECISION CONTRAVENES THIS COURT'S PRECEDENTIAL DECISION IN *CRAIG v. NEW HANOVER COUNTY BOARD OF EDUCATION*

In *Craig v. New Hanover Board of Education*, 363 N.C. 334, 678 S.E.2d 351 (2009), this Court unanimously affirmed that sovereign immunity cannot bar constitutional claims, including claims regarding the fundamental right to access a sound basic education established by this Court's *Leandro* decisions.[2] While seemingly acknowledging that *Craig* is the relevant controlling precedent, the Court of Appeals ignores its fundamental holding regarding the inapplicability of sovereign immunity to these constitutional claims (and the corresponding right to interlocutory appeal) by improperly proceeding to assess the substantive merits (the "colorability") of Plaintiffs' claims.

Presented with nearly identical facts and legal issues as the case at bar, *Craig* recognized that a student who was sexually harassed or assaulted at school could rightfully bring a state constitutional claim against the school district. In *Craig*, as here, a student was sexually harassed at school, and sought to bring claims against the school district. *Id.* at 336–37, 678 S.E.2d. at 353. As here, the school district's governmental immunity barred common law negligence claims. *Id.*

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[2] For purposes of this brief, amici use the term "*Leandro*" collectively to refer to this Court's holdings in *Leandro v. State*,346 N.C. 336, 488 S.E.2d 249 (1997) and *Hoke County v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004).

at 335–36, 678 S.E.2d. at 353. As here, the plaintiff brought claims under the North Carolina Constitution, asserting that the district had violated his constitutional educational rights. *Id.* at 335, 678 S.E.2d. at 352. The trial court then denied the school district's summary judgment motion regarding the constitutional claim, and the district made an interlocutory appeal, citing sovereign immunity. *Id.* Finally, as here, the Court of Appeals reversed the trial court, concluding that the district's dispositive motion was improperly denied. *Id.* at 336, 678 S.E.2d. at 352-3.

This Court then reversed the Court of Appeals, finding that "without being permitted to pursue his *direct colorable constitutional claims*, [the plaintiff] will be left with no remedy for his alleged constitutional injuries." *Id.* at 340, 678 S.E.2d. at 356 (emphasis added). In doing so, this Court recognized that students who have been subject to abuse or harassment at school that prevents them from accessing a sound basic education have direct, colorable claims against the district.

The majority below acknowledged *Craig's* controlling authority regarding governmental immunity, but missed its main point by assessing the merits of Defendants' 12(b)(6) motion ("We must consider whether Plaintiff has stated such a [colorable direct constitutional] claim here." Slip Op. p 9). The majority thereby gave controlling weight to a claim of sovereign immunity where it has no application. *Craig* made clear that the similar, if not identical, constitutional claims are not subject to sovereign immunity or to an interlocutory appeal, but rather should be pursued in the ordinary course of litigation ("This holding does not predetermine the likelihood that plaintiff will win other pretrial motions, defeat

affirmative defenses, or ultimately succeed on the merits of his case.") *Id.* at 340, 678 S.E.2d at 355.

The near-perfect alignment between this case and *Craig* is striking. Both plaintiffs were subjected to ongoing sexual harassment and abuse at school, about which their school districts had actual knowledge. When the districts took no action, the plaintiffs brought claims asserting that the school district's failure to provide a safe and secure learning environment violated their constitutional right to a sound basic education. In *Craig* this Court reversed a decisions much like the one below and affirmed the trial court's denial of defendant's motion for summary judgment. Although the Court did not rule on the substantive merits of the claims, by reinstating the trial court's determination, its holding implicitly established that plaintiff's identical constitutional claims were direct and colorable, and *explicitly* and *repeatedly* described them as such throughout its opinion:

- "But as we held in *Corum*, plaintiff may move forward in the alternative, bringing his *colorable claims directly under our State Constitution...*" *Id.* (emphasis added);
- "[W]ithout being permitted to pursue his *direct colorable constitutional claims*, he will be left with no remedy for his alleged constitutional injuries" *Id.* (emphasis added);
- "Accordingly, we reverse the Court of Appeals and affirm the trial court's denial of defendant's motion for summary judgment on plaintiff's *direct colorable constitutional claims*."

Id. at 342, 678 S.E.2d at 357 (emphasis added).

Despite this clear language, the majority below misreads *Craig,* concluding that its rejection of sovereign immunity for constitutional claims applies only to

"colorable" claims, and then assuming interlocutory jurisdiction to determine whether Plaintiff's claims meet that standard. But *Craig* made clear that school districts could not do what the Defendant is attempting to do here—use sovereign immunity to avoid litigation of a constitutional claim by interlocutory appeal from the trial court's decision allowing the claim to proceed. Pursuant to *Craig*, if a Defendant believes its 12(b)(6) motion was improperly denied, the time to raise that error is in the ordinary course of appeal, following Plaintiff's opportunity to develop her constitutional claim.

The majority below made the same error reversed in *Craig*: it improperly and prematurely closed the courthouse doors on the Plaintiff's claim. In *Craig*, the panel did so by finding that the plaintiff's negligence claim was an adequate remedy; here the majority determined that Plaintiff did not even allege a colorable claim. Both rulings suffer from the same fatal flaw: they improperly denied plaintiffs the right to bring a constitutional claim where there is no adequate remedy at common law. This case is controlled by *Craig*; the opinion below violates that precedent and must be reversed.

II. A SAFE AND SECURE LEARNING ENVIRONMENT IS A NECESSARY COMPOMENT OF THE OPPORTUNITY TO RECEIVE A SOUND BASIC EDUCATION.

The Court of Appeals' determination that "*Leandro's* enumeration of the right to education [is] strictly confined to the intellectual function of academics[,]" Slip. Op. at 13 (citing *Doe v. Charlotte-Mecklenburg Board of Education*, 222 N.C. App. 359, 370, 731 S.E.2d 245, 253–53 (2012)), if adopted by this Court, would

improperly constrict and undermine a fundamental constitutional right. This Court's precedents, state education statutes, the latest developments in the ongoing *Leandro* litigation, decisions from similar cases in other jurisdictions, as well as leading education research, all demonstrate that the right to education is more broadly defined and understood.

A. The Court of Appeals Erroneously Narrowed the Scope of a Sound Basic Education

The lower court's ruling conflicts with the plain language of *Leandro,* which recognized that the constitutional right to a sound basic education encompasses more than just the intellectual function of academics. "An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work," the *Leandro* Court held, "is devoid of substance and is constitutionally inadequate." *Leandro v. State.* 346 N.C. at 345, 488 S.E.2d at 254. Notably for the Court's consideration of this case, the *Leandro* decision did *not* limit the constitutional rights of students to sound academic instruction or basic reading, writing, and arithmetic.

While this Court did enumerate several academic guideposts for meeting the constitutional mandate, including basic minimum standards for reading, writing, mathematics, science, geography, history, and vocational skills, it also specifically noted that these academic requirements were just *some* of the minimal aspects of a sound basic education, and not an exhaustive list. ("For purposes of our Constitution, a 'sound basic education' is one that will provide the student with *at least*:..." *Id.* at 347, 488 S.E.2d at 255 (emphasis added). In fact, the Court

expressly acknowledged that the measure of a constitutionally adequate education is not narrowly confined to academic content:

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

Id. at 357, 488 S.E.2d at 260 (emphasis added).

Leandro involved not just academics, but also the critical issue of a student's learning environment and its impacts on the provision of the opportunity to receive a sound basic education. Specifically, this Court noted that "inadequate school facilities with insufficient space, poor lighting, leaking roofs, erratic heating and air conditioning, peeling paint, cracked plaster, and rusting exposed pipes" were among the factors limiting access to a sound basic education. *Id.* at 343, 488 S.E.2d at 252.

This Court elaborated on the scope of the right to education in its second *Leandro* ruling. In that decision the Court recognized that evidence of a sound basic education included both "outputs" (metrics that measure academic achievement and student performance; e.g. test scores, graduation rates, post-secondary education success); and "inputs" (defined broadly as "what the State and local boards provide to students attending public schools," and includes, for example, competent and well-trained teachers and administrators, adequate curriculum, access to educational resources and technology, and a safe and secure learning environment). *Hoke County v. State,* 358 N.C. at 623, 599 S.E.2d at 381, 386–87. The *Leandro*

decisions thus explicitly contradict the Court of Appeals' narrowly circumscribed definition of the constitutional right to a sound basic education.

This Court re-affirmed its assessment of the scope of students' constitutional right to education in *King v. Beaufort Cty. Bd. of Ed.*, 364 N.C. 368, 704 S.E.2d 259 (2010). In that case, which concerned access to a sound basic education for students subject to school disciplinary policies, the Court recognized that threats to student safety, particularly by other students, "impedes the educational progress." *Id.* at 376, 704 S.E.2d at 267. The Court then quoted Justice Powell: "The primary duty of school officials and teachers . . . is the education and training of young people. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students." *N.J. v. T.L.O.*, 469 U.S. 325, 350 (1985) (Powell, J., concurring). The decision below ignored or overlooked these fundamental aspects of the constitutional right to a sound basic education.[2]

In *Silver v. Halifax Cty. Bd. of Comm'rs*, 371 N.C. 855, 821 S.E.2d 755 (2018), this Court acknowledged that a physically safe school environment is one facet of a sound basic education under *Leandro*. There, the student plaintiffs alleged that their "school buildings and facilities [were] woefully inadequate, with crumbling infrastructure and regularly failing heating and cooling systems. Plaintiffs also include[d] a report that students at [their school] recently...had to walk through

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[2] The *King* decision also noted, as Judge Zachary pointed out in the dissent below, that "None of the preceding cases contains any suggestion that the fundamental right to the opportunity for a sound basic education is limited to any particular context." *King,* 364 N.C. at 381, 704 S.E.2d at 267 (Timmons-Goodson, J. concurring in part and dissenting in part).

sewage to move between classes because of defective plumbing." *Id.* at 859, 821 S.E.2d at 758. Although the *Silver* Court did not rule directly on this issue due to the case's procedural posture, the Court explicitly stated that the "allegations in plaintiffs' complaint, if true, are precisely the type of harm *Leandro I* and its progeny are intended to address." *Id.* at 869, 821 S.E.2d at 764. Thus this Court made clear that the scope of a sound basic education is not "strictly confined to the intellectual function of academics," Slip Op. at 13, but includes the provision of physically safe school environments.

More recently, the latest developments in the still-ongoing remedial phase of the original *Leandro* litigation reinforce this Court's determination of the scope of the constitutional right to education. In 2019, WestEd, an expert education consultant group retained by the trial court, issued a comprehensive report on the necessary measures that the State must take to ensure that every child has the opportunity to secure a sound basic education. *Sound Basic Education for All: An Action Plan for North Carolina* (the "WestEd Report") (https://files.nc.gov/governor/Leandro-NC-Report-Final.pdf), repeatedly noted the constitutional necessity of establishing a safe learning environment for students.

For example, in its third recommendation ("provide a qualified and well-prepared principal in every school"), the WestEd Report states that "principals should be prepared and supported to...establish a culture in which all students feel welcome, safe, supported, and challenged as learners." WestEd Report, at 32. Later, in detailing the "success factors that enable...schools to provide their students with

a sound basic education[,]" the WestEd Report lists as the number one factor "a school culture in which...all students...experience a comfortable and safe environment that supports their social, emotional, and academic growth." *Id.* at 126. Finally, in describing the necessary elements of effective teacher development, the first item listed is the "extent to which the school is a safe environment, where rules are consistently enforced, and administrators assist teachers in their efforts to maintain an orderly classroom." *Id.* at 206. In these excerpts and others, the WestEd report repeatedly identified a safe classroom environment as one of – if not *the* – most important factor in providing all students with their constitutional right to a sound basic education.[3]

North Carolina education statutes also recognize the vital importance of safe classroom environments for ensuring student learning. N.C.G.S. § 115C-47, which is the statutory provision that lists the (over 60) specific educational powers and duties which are exclusively exercised by local boards of education, begins by stating:

> In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty: (1) To Provide the Opportunity to Receive a Sound Basic Education.--It shall be the duty of local boards of education to provide students with the opportunity to receive a sound basic education and to *make all policy decisions* with that objective in mind, including employment decisions, budget development, and other administrative actions, within their respective local school administrative units, as directed by law. (emphasis added)

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[3] The WestEd Report also notes, for example, teacher surveys that measure "policies and practices that address student conduct issues and ensure a safe school environment," p. 8; a survey of school principals that specifically "identified school climate and safety" as an important indicator of access to a sound basic education, p. 154; the importance of programs to address student discipline and safety issues, *id.*; and the importance of a safe environment as a factor in student success, p. 272

This provision was added to the General Statutes in 2015. The purpose was to legislatively link the constitutional mandate of *Leandro* to the broad range of statutory duties and obligations of local school boards.[4] Among those are several that specifically deal with student health, safety, and a secure learning environment, including the obligations to:

- "set a tone of decorum in the classroom that will be conducive to discipline and learning," N.C.G.S. § 115C-47(29).
- "provide a safe schools environment," N.C.G.S. § 115C-47(61);
- "report all acts of school violence," N.C.G.S. § 115C-47(36);
- develop alternative school programs to, among other goals, reduce "disruptive behavior," N.C.G.S. § 115C-47(32);
- "adopt a School Risk Management Plan relating to incidents of school violence," N.C.G.S. § 115C-47(40); and
- address hazardous substances in school facilities, N.C.G.S. § 115C-47(47)-(50).

Other sections of Chapter 115C echo the significance of student safety and a secure learning environment. N.C.G.S. § 115C-105.33, for example, establishes that "a school improvement team or a parent organization at a school may ask the local

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[4] *See,* N.C. Session Law 2015-241, pp. 97-98 (Stating that it is the intent of the General Assembly to "Clarify the role of local boards of education to ensure that their main focus is to provide each public school student with the opportunity to receive a sound basic education, and that all policy decisions should be made with that objective in mind...")

board of education to provide assistance in promoting or restoring safety and an orderly learning environment at a school."

These statutes, like this Court's holdings in the *Leandro* and *King* cases and the comprehensive findings of the WestEd Report, emphasize that a safe, secure, and orderly learning environment is a critical element of a student's ability to access the opportunity to a sound basic education. As the trial court and Judge Zachary's dissent recognized below, Defendant's failure to provide such a learning environment gives rise to an actionable claim under *Leandro*. Consequently, the Court of Appeals erred when it concluded that the constitutional right to education is narrowly limited to "the nature, extent, and quality of the educational opportunities made available to students in the public school system." Slip. Op. at 13 (quoting *Doe*, 222 N.C. App. at 370, 731 S.E.2d at 252-53). Its decision must therefore be reversed.

B. A Safe Learning Environment Is a Necessary Prerequisite to Accessing a Sound Basic Education

Like this Court, the WestEd Report, and the General Assembly; social science research and courts in other states also recognize that a safe and secure classroom environment is a necessary prerequisite for student learning, and therefore a vital element of a state's constitutional mandate to provide a sound basic education. Unsurprisingly, "[i]f students are in environments that interfere with their ability to focus on school work, their academic achievement suffers." Derek Black, *Reforming School Discipline*, 111 Nw. U. L. Rev. 1, 47 (2016) (citing Ina V.S. Mullis et. al., *Trends in Int'l Mathematics and Sci. Studies*, TIMSS 2011 International

Results in Mathematics, 263–64, (2012) (finding lower achievement in disorderly schools in an analysis of international math scores); Valerie E. Lee & Anthony S. Bryk, *A Multilevel Model of the Social Distribution of High School Achievement*, 62 Soc. Of Educ. 172, 189 (1989) ("At a purely behavioral level, a minimum of disciplinary problems is a necessary condition for the routine pursuit of academic work.") (attached at App. pp. 1-22). As Professor Black noted, social science increasingly demonstrates that this interference in learning is not merely the product of individual student misbehaviors, but "also a function of the school environment...." Black, at 47. Accordingly, "academic achievement is a function of the social and disciplinary environment in the school." *Id.* at 52.

The link between a safe classroom environment and student learning compels the conclusion that the establishment of safe classrooms is an inherent part of the state's constitutional duty to provide all students with the opportunity to receive a sound basic education. "The state has the ultimate and final constitutional duty to ensure equal and adequate education opportunities. That duty extends beyond just money to nearly any educational policy or practice that deprives students of the educational opportunity their state constitution mandates. It also includes monitoring and supporting local districts to ensure students receive these opportunities." *Id.* at 46.

Other states considering this issue have also recognized the vital role of a safe learning environment in ensuring student learning and, accordingly, in providing a constitutionally adequate education. In New York, state regulations

aimed at protecting the constitutional right to a sound basic education require schools to "assure the security and safety of students and school personnel" by maintaining safe, orderly learning environments through school codes of conduct, social workers and psychologists, and other similar measures. 8 NYCRR § 100.2.

Similarly, in New Jersey, courts have recognized that school safety generally, and student protection from repeated physical and verbal harm specifically, are necessary for student learning and the provision of a "thorough and efficient education," New Jersey's constitutional educational guarantee. *See* N.J. Const. Art. 8 § 4. In *Abbott et al., v. Burke et. al.*, 153 N.J. 480 (1998) (*Abbott V*), the New Jersey Supreme Court generally recognized that school and classroom "[s]ecurity is a critically important factor in the provision of a thorough and efficient education...[because] inadequate security frustrates the education process and is a great barrier to learning." *Id.* at 514. Ensuring measures to increase school safety, the court noted, would "make the school environment conducive to learning." *Id.* at 513.

More specifically, *M.P. and G.P., parents of R.P., v. Board of Education of the Township of Delran, Burlington County*, 1985 S.L.D. 1817 (1985) (attached at App. pp. 23-40), presented facts and claims directly paralleling this one: a student who had been repeatedly physically and verbally abused by other students in school claimed that the school district had violated her constitutional educational rights. Because the district "failed to take the appropriate action deemed necessary to guarantee [the student's] safe access to attend the public school...without fear of

intimidation and possible physical harm...[,]" the court ruled that it had indeed violated her constitutional educational rights, and ordered subsequent relief. *Id.* at 1834. Although not controlling authority in the case at bar, these examples illustrate statutory and judicial support of the foundational premise that establishing student safety is a necessary prerequisite to fulfilling constitutional educational rights.

Recently, federal judges have also recognized that fulfilling a student's constitutional right to a foundational education requires a secure classroom environment. In *Gary B. v. Whitmer*, the 6th Circuit held that "the right to a basic minimum education...is implicit in the concept of ordered liberty[,]" and therefore "a fundamental right protected by the Due Process Clause of the Fourteenth Amendment." 957 F.3d 616, 655 (6th Cir. 2020). In reviewing the elements of access to a basic education, the court recognized that the learning environment is critical, and that classrooms with "unsafe physical conditions . . . . make learning nearly impossible." *Id.* at 626 (internal quotations omitted). While the court's ruling regarding secure learning environments focused primarily on facilities (like heating and air conditioning) rather than physical or sexual harassment, the foundational premise remains the same: the physical safety and security of students is a necessary prerequisite to student learning, and, indeed, to the provision of a constitutionally adequate education.

The horrific facts of this case further illustrate the necessity of ensuring student safety in providing the opportunity to receive a sound basic education.

Here, repeated, known, severe, and unaddressed instances of physical and sexual harassment prevented the students from accessing classroom instruction, leading to significant academic regression and, eventually, the additional educational disruption of needing to change schools. *See* Slip Op. at 2–5. No matter the potential caliber of academic instruction otherwise being provided to these students, because the school district failed to establish a safe and secure classroom environment, they were denied the opportunity to access a sound basic education.

As Judge Zachary stated in dissent:

> [I]t would be credulous to differentiate, for constitutional purposes, between a student whose teacher refuses to teach math and a student whose teacher fails to intervene when other students' harassing and disruptive behavior prevents her from learning it. In the latter instance, the instructional environment may be so disordered, tumultuous, or even violent that the student is denied the opportunity to receive a sound basic education.

Slip Op., Zachary, J., dissenting, at 5.

This Court's education law precedents, the WestEd Report, state statutes, social science, and rulings from other states are all in alignment: establishing a safe and secure learning environment is necessary for student learning, and therefore a prerequisite to ensuring the opportunity to receive a sound basic education. Accordingly, this Court should reverse the Court of Appeals.

III. THE SCHOOL BOARD CANNOT ASSERT SOVEREIGN IMMUNITY BUT CAN ASSERT OTHER DEFENSES AGAINST A SECTION 15 CLAIM BASED ON THE FACTS AND LAW OF THE CASE

The power to sue for violation of a student's constitutional right to education, as guaranteed by Article I, Section 15 of the North Carolina State Constitution (hereinafter "Section 15"), inures to the people collectively *and* individually.

Governmental entities, including local boards of education, have no immunity to suit for violation of Article I rights. In explaining these fundamental principles, this Court opined

> it is the judiciary's responsibility to guard and protect [constitutional] rights. [S]overeign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights. It would indeed be a fanciful gesture to say on the one hand that citizens have constitutional individual civil rights that are protected from encroachment actions by the State, while on the other hand saying that individuals whose constitutional rights have been violated by the State cannot sue because of the doctrine of sovereign immunity[.] Such constitutional rights are a part of the supreme law of the State. *Ex rel. Martin v. Preston*, 325 N.C. 438, 385 S.E.2d 473 (1989). On the other hand, the doctrine of sovereign immunity is not a constitutional right; it is a common law theory or defense established by this Court[.] Thus, when there is a clash between these constitutional rights and sovereign immunity, the constitutional rights must prevail.

Corum v. University of North Carolina, 330 N.C. 761, 785-786, 413 S.E.2d 276, 291-292 (1992).

The unavailability of sovereign immunity as a defense does not alter a Section 15 plaintiff's burden to prove his or her case the same as any other complainant. Likewise, such plaintiff remains subject to an evidentiary framework that governs standards of proof and defenses. Consequently, a school board defendant is not handicapped or prevented from availing itself of whatever "defense [it may have] to the action. [A school board] is entitled to all defenses that may arise upon the facts and law of the case." *Corum,* 330 N.C. at 786, 413 S.E.2d at 292.

As noted in Argument I of this Brief, in *Craig,* this Court affirmed the validity of a claim for violation of a student's constitutional right to access a sound basic education that sounded in negligence. In so doing, it opined "[t]his holding

does not predetermine the likelihood that plaintiff will win other pretrial motions, defeat affirmative defenses, or ultimately succeed on the merits of his case." *Craig,* 363 N.C. at 340, 678 S.E.2d at 355.

Before the decision below, our courts had not confined or limited constitutional claims based on the right to a sound basic education to any particular theory or category. The ultimate question is whether the complained of conduct has resulted in violation of a student's Section 15 right. *See, e.g., Hoke,* 358 N.C. at 612, 599 S.E.2d at 374 (2003) (n. 1), ("... while plaintiffs could pursue claims showing that the State violated [their constitutional right to education] ... plaintiffs' ultimate burden [is] to demonstrate that such violations contributed to depriving school children of the opportunity to receive a sound basic education.")

This Court has specifically acknowledged the right to education is necessary to meet "the needs of a great and progressive people." *Board of Educ. v. Board of Comm'rs of Granville County*, 174 N.C. 469, 472, 93 S.E. 1001, 1002 (1917). Without a doubt, an education prepares a student to traverse and compete in an ever more complex society. Given the importance of this right, a plaintiff alleging violation of their fundamental right to education should at least be afforded an opportunity under the law to develop their evidence in connection with the theory (or theories) of liability asserted in the complaint, instead of having their case improperly cut off and summarily dismissed under the specter of sovereign immunity.

To date, the Court of Appeals has refused to give effect to this Court's rulings regarding the inapplicability of sovereign immunity to Section 15 claims, the *right*

to access a sound basic education, and the importance of safety and security in the learning environment. Students are therefore denied any meaningful opportunity "to demonstrate that such violations contributed to depriving" them "of the opportunity to receive a sound basic education." This Court should make clear, in reversing the Court of Appeals' opinion in the present case, that sovereign immunity does not bar a Section 15 claim, that the right to education necessarily requires the right to access it, and that a safe and secure educational environment is vital to a student's ability to learn.

Finally, this Court has made clear that where a "fundamental law of this state" is violated, it is the duty of the court to "fashion[...] a remedy at common law to ensure an opportunity for the plaintiff to have ... his injury redressed ...." *Craig*, 363 N.C. at 341, 678 S.E.2d at 356. In determining the parameters of the remedy, this Court has provided it is to be tailored "depending upon the right violated and the facts of the particular case." *Corum*, 330 N.C. at 784, 413 S.E.2d at 291. This being so, a school board would only be subject to liability on a Section 15 claim to the extent necessary to redress the plaintiff's injury.

CONCLUSION

An unsafe learning environment compromises a student's ability to learn, no matter the quality of the academic opportunity being offered. Controlling and persuasive authority and educational research, including the WestEd report in *Leandro,* all demonstrate this fundamental principle. As the protectors of the People's individual constitutional rights, it is the duty of the courts to determine

constitutional claims after providing meaningful opportunity to demonstrate those rights have been denied-- here access to a sound basic education-- and to require school boards to defend against such in the ordinary course of litigation in whatever manner allowed in view of the facts and claims alleged. To do otherwise would elevate a court-created affirmative defense over a fundamental right, contrary to *Corum*, *Leandro*, and *Craig*.

Amici urge the Court to overturn the Court of Appeals' decision and affirm the trial court's denial of the motion to dismiss.

Respectfully submitted this the 5th day of August, 2020.

NORTH CAROLINA ADVOCATES FOR JUSTICE

/s/ Maria T. Perry
Maria T. Perry (N.C. Bar No.: 38514)
E-mail: perrylegalservicesllc@gmail.com
PERRY LEGAL SERVICES, PLLC
401 N. Mangum Street
Durham, North Carolina 27701
Telephone: (919) 701-5353

N.C. R. App. R. 33(b) Certification: I certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

/s/ Mark Dorosin
Mark Dorosin (N.C. Bar No. 20935)
E-mail: mdorosin@lawyerscommittee.org

/s/ Elizabeth Haddix
Elizabeth Haddix (N.C. Bar No. 25818)
E-mail: ehaddix@lawyerscommittee.org

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
Post Office Box 956
Carrboro, North Carolina 27510
Telephone: (919) 261-3668

Counsel for North Carolina Advocates for Justice

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she served a copy of the foregoing **BRIEF** on counsel for all parties by mailing a copy via the United States Post Office department, postage prepaid, addressed as follows:

Troy D. Shelton
Matthew Nis Leerberg
Ashley Honeycutt Terrazas
FOX ROTHSCHILD LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601
Counsel for Plaintiffs-Appellants

Deborah Stagner
Tharrington Smith LLP
P.O. Box 1151
Raleigh, North Carolina 27602
Counsel for Defendant-Appellee

This the 5th day of August, 2020.

Electronically submitted
Maria T. Perry

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A MULTILEVEL MODEL OF THE SOCIAL DISTRIBUTION OF HIGH SCHOOL ACHIEVEMENT

Valerie E. Lee
University of Michigan

Anthony S. Bryk
University of Chicago

The study reported here identified some characteristics of secondary schools that encourage a high level of achievement and promote an equitable distribution of achievement across the diverse social class, racial/ethnic, and academic backgrounds of students. The data consisted of a subsample of 10,187 students in 160 high schools from High School and Beyond. Hierarchical linear modeling techniques were used to investigate the effect of the normative environment and academic organization of high schools on four social distribution parameters related to mathematics achievement. High average achievement is related to school social composition and to the school's academic emphasis. Although a smaller gap between the achievement of minority and white students is associated with an orderly school climate, less differentiation by social class and academic background are associated with smaller school size, less variability in course taking in mathematics, and a fair and effective disciplinary climate.

Several researchers have shown that the relationship between social background and academic achievement is weaker in Catholic than in public schools (Coleman, Hoffer, and Kilgore 1982; Hoffer 1986; Hoffer, Greeley, and Coleman 1985; Lee 1985). This finding formed the basis of Coleman, Hoffer, and Kilgore's (1982) often-cited claim that Catholic schools more closely resemble the ideal of "the common school" than do their public counterparts. Similarly, Greeley (1982), Hoffer (1986), Keith and Page (1985), and Lee (1985) reported a weaker relationship between minority-group status and academic achievement in the Catholic sector.

A compelling educational puzzle involves discovering *why* some schools are better able to induce academic outcomes among a broad social and racial distribution of students. A comparison of Catholic and public schools provides a useful natural experiment for considering this question. First, by examining organizational differences between schools in the two sectors, we can identify school characteristics that may play a role in this regard. Then, by statistically modeling the relationships between these organizational features and the social distribution of achievement, we can examine whether such features (1) are linked to a more equitable distribution of achievement and (2) can actually explain away the reported sector effects.

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BACKGROUND

The Social Distribution of Achievement

Previous field research in Catholic high schools has suggested that the academic organization and normative environments of these schools distinguish them from public secondary schools and may contribute to their favorable social distribution of academic achievement (Bryk et al. 1984; Lesko 1988). Specific characteristics of the schools appear to be particularly important in this regard: a safe and orderly environment, a strong press toward academic work for all students, generally high levels of commitment by and involvement of teachers with their students, and a tightly structured academic organization with a constrained choice of curriculum by students.

In a recent article, we focused on how differentiation among students' academic experiences moderated the link between social and academic background and mathematics achievement in the senior year (Lee and Bryk

1988). In particular, we showed that two characteristics of students' educational experiences—track placement and the number of academic courses taken—play major roles. Observed differences between the two sectors in the strength of the associations between the students' background and cognitive outcomes appear to operate through differential exposure of students to advanced academic work. Furthermore, we demonstrated that differences in students' experiences in the two sectors result, at least in part, from school policies, rather than exclusively from the characteristics of the students enrolled.

Another stream of research—the so-called effective-schools research—also has focused on the social distribution of achievement. These studies have attempted to identify the characteristics of schools that make them instructionally effective for disadvantaged students (see, for example, Brookover et al. 1979; Clark, Lotto, and McCarthy 1980; Edmonds 1979; Rutter et al. 1979; for critiques, see Purkey and Smith 1983; Rosenholtz 1985; Rowan, Bossert, and Dwyer 1983). This research has generally proceeded in two stages. First, schools that are particularly effective for children of below-average social class are identified and then the common characteristics that these schools share are isolated. This research has engendered criticism, both methodological and substantive, and not all studies have agreed on the salient factors for effective schooling for disadvantaged children. Certain factors, however, are commonly identified: strong leadership focused on academic outcomes; close monitoring of students' work; positive expectations by teachers for all students; a purposeful social environment, or "ethos"; and an orderly climate. Although these findings are intuitively appealing, none of the studies has been able to provide solid statistical evidence for the claimed school effects.

Difficulties with Previous Research

Considerable conceptual and methodological difficulty has plagued research on this topic. It has been unclear how best to represent the school effects in analyses that investigate relationships between the background and achievement of individual students. Although we argued that school policy and organizational differences influence students' academic behaviors and concomitant outcomes, we did not investigate that link directly in our student-level analysis (Lee and Bryk 1988). Gamoran (1987) performed student-level analyses to investigate the effect of between-school stratification and differential learning opportunities on high school achievement. He concluded that he "had more success in identifying the effects of schooling than in discovering the effects of schools, . . . finding few school-level conditions that contribute to achievement" (p. 152).

Warnings, such as the one by Cronbach (1976), have been sounded to alert researchers that single-level analyses of school effects can produce misleading results. Inherently, such research requires the formulation and testing of hypotheses involving data from multiple levels. A number of problems have beset the analysis of multilevel data in the past (for reviews, see Burstein 1978; Burstein and Miller 1981; Haney 1980). Among the most commonly encountered difficulties have been aggregation bias, misestimated standard errors, and heterogeneity of regression.

Aggregation bias can occur when a variable takes on different meanings and, therefore, has different effects at different levels of aggregation. The average social class of a school, for instance, has an effect on a student's achievement above and beyond the effect of the individual child's social class (Alexander et al. 1979). Misestimated standard errors occur in multilevel data when investigators fail to take into account the dependence among the outcomes of students who attend the same school. This dependence arises because of shared school experiences and because of the ways in which students are assigned to schools. Heterogeneity of regression occurs when the relationships between students' characteristics and students' outcomes vary across schools. Although this phenomenon has often been viewed as a methodological nuisance, the causes of such heterogeneity should be a central concern in research on school effects.

By their very nature, questions about school effects require the exploration of hierarchical relationships. Such investigations involve a search for statistical associations between school factors, on the one hand, and student-level variables, on the other hand. Fortunately, recent developments in the statistical theory of hierarchical linear models

(HLM) now provide appropriate tools for modeling within- and between-school phenomena (Raudenbush and Bryk 1986). Such a methodology allows direct representation of the influence of school factors on structural relations within schools. Specifically, HLM enables the investigator explicitly to represent a set of regression coefficients as multivariate outcomes to be simultaneously explained as a function of measured differences between schools. Hence, the variation among schools in regression slopes (for example, the relationship between social class and achievement) become dependent measures to be explained by school-level characteristics.

Overview of HLM

The simplest form of an HLM consists of two equations, a within- and a between-unit model. Some or all the parameters of the within-unit model become outcome variables to be explained in the between-unit equations.

In the application that follows, the within-unit model represents the achievement outcome for student i in school j, Y_{ij}, as a function of various student background characteristics, X_{ijk}, and random error, e_{ij}:

$$Y_{ij} = \beta_{j0} + \beta_{j1}X_{ij1} + \beta_{j2}X_{ij2} + \ldots + \beta_{jk}X_{ijk} + R_{ij}. \quad (1)$$

The β_{jk} regression coefficients are structural relations occurring within school j that indicate how achievement in each school is distributed with regard to measured student characteristics. In the HLM model of school effects developed in this article, the β_{jk} coefficients capture the social distribution of achievement in each school.

A distinctive feature of HLM is that these structural relations are presumed to vary across units. Therefore, we formulate a between-unit model that represents the variability in each of the structural parameters, β_{jk}, as a function of school-level variables, W_{pj} and random error, U_{jk}:

$$\beta_{jk} = \gamma_{0k} + \gamma_{1k}W_{1j} + \gamma_{2k}W_{2j} + \ldots \gamma_{pk}W_{pj} + U_{jk}, \text{ or} \quad (2)$$

structural relations in school j = effects of school-level characteristics on within-school relationships + unique random effect associated with school j.

The γ_{pk} coefficients represent the effects of school-level variables, W_{pj}, on the structural relations within school j. The W variables considered in this article are measures of school organization and normative environment. The γs are the effects of these school-level characteristics on the social distribution of achievement within schools.

Statistical Estimation. One obvious difficulty with estimating the parameters of the between-unit model is that the outcome variables, β_{jk} (the k structural relations in school j), are not directly observed. They can be estimated using standard methods such as ordinary least squares, but these estimates, β_{jk}, contain error, that is:

$$\beta_{jk} = \hat{\beta}_{jk} + e_{jk}. \quad (3)$$

Substituting from Equation 3 into Equation 2 for β_{jk} yields an equation in which the estimated relation, $\hat{\beta}_{jk}$, varies as a function of measurable characteristics and a random error equal to $U_{jk} + e_{jk}$:

$$\hat{\beta}_{jk} = \gamma_{0k} + \gamma_{1k}W_{1j} + \ldots + \gamma_{pk}W_{pj} + U_{jk} + e_{jk}. \quad (4)$$

Equation 4 resembles a conventional linear model except that the structure of the error term is more complex. A consequence of this more complex error term is that neither the γ coefficients nor the covariance structure among the errors can be appropriately estimated with conventional linear-model methods. However, recent developments in statistical theory and computation now make this estimation possible. A brief summary is provided here. For a more comprehensive treatment, see Raudenbush (1988).

From a technical point of view, estimation of the coefficients in Equation 4 can be viewed as a generalized or weighted least-squares regression problem in which the weighting factor involves the covariance structure among the errors in Equation 4 (see Goldstein 1987). Maximum likelihood estimation of these covariance structures using empirical Bayes methods can be obtained using the EM algorithm (Dempster, Laird, and Rubin 1977). As a result, efficient estimates for the γs are also available.

The estimates generated by this procedure have several important properties. First, the precision of the β_{jk} coefficients estimated in any school j depend on the amount of data

available from that school. In estimating the β_{jk} coefficients, HLM methods weight the contribution of the individual $\hat{\beta}_{jks}$ proportional to their precision. This optimal weighting procedure minimizes the effects of the sampling variance on inferences about key parameters of the model. Second, the estimation procedures are fully multivariate, since they take into account the covariation among the β coefficients. To the extent that these parameters do covary, estimation will be more precise.

Third, HLM estimation enables the investigator to distinguish between variation in the true parameters, β_{jk}, and the sampling variation that arises because β_{jk} measures $\hat{\beta}_{jk}$ with error. That is, from Equation 3:

$$\underbrace{\text{Var}\,(\hat{\beta}_{jk})}_{\text{total observed variance}} = \underbrace{\text{Var}\,(\beta_{jk})}_{\text{parameter variance}} + \underbrace{\text{Var}\,(e_{jk})}_{\text{sampling variance.}}, \text{ or} \qquad (5)$$

Knowledge of the amount of variability in the parameters is important in the process of formulating HLMs and in evaluating results, since it is only variability in the structural parameters, Var (β_{jk}), that can be explained by school factors.

METHOD

Sample and Data

The sample was drawn from both the base-year (1980) and first follow-up (1982) from High School and Beyond (HS&B). All Catholic high schools (n = 83) and a random subsample of public high schools (n = 94) were included. Because of missing data at the school level, the final sample was reduced to a total of 160 schools. The student-level sample consisted of a composite from both the sophomore and senior cohorts (n = 10, 187). Only students who were still enrolled in high school in the spring of their senior year were included. The follow-up data on the sophomore cohort (their responses in the senior year) and the baseline data from the senior cohort were combined to increase the size of the sample of students in each school. The student samples per school ranged from 10 to 70, although samples of fewer than 45 were rare. Since the senior-year HS&B achievement tests, given in 1980 and 1982, were not identical, scores were equated using IRT scaling to make maximum use of the available student responses. School variables were drawn from two sources: (1) the HS&B school file, which contains information provided by school principals, and (2) school-level aggregation of student data. Details of the construction of each variable used in these analyses are presented in Figure 1.

Discussion of Student Variables

These variables include measures of senior-year achievement and of demographic characteristics (social class and race-ethnicity) and a measure of the academic background of students as they entered high school.[1] The latter factor includes several components: remedial mathematics or English placement or both, college expectations in Grade 8, whether the student was read to before starting school, and whether the student repeated an elementary grade. The last two measures provide information that is clearly prior to any high school effect. However, although the retrospective measure of whether students planned to go to college in the eighth grade is meant to tap their academic aspirations when they entered high school, it could be tainted by students' initial experiences in high school. Similarly, although remedial placement in high school can be viewed as an objective indicator of the students' initial status on entry into high school, this measure can also include some high school effects. Thus, the composite factor is an attempt to create a measure of academic status largely before high school, although some school effects may be contained within it.

[1] The academic background variable is slightly different for the two HS&B cohorts that were combined for our sample of students. Enrollment in remedial courses, reported in 1980, included four years of possible enrollment for the 1980 seniors, but only two years for the 1980 sophomores. In addition, a grade-repeating history was available for the 1982 seniors only, since that variable was not included in the base-year questionnaire. Despite these discrepancies, correlations between academic background and other model variables for the two cohorts were similar, which suggests that the academic background measure tapped the same underlying construct for both groups.

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Figure 1. Description of Variables Used in HLM Analyses

Student-level Dependent Variable

MATHACH: Senior-year IRT mathematics score, measured in either 1980 or 1982.

Student-level Predictors

ACADBKGD: A factor composite of HS&B variables that indicate if the respondent has taken remedial mathematics or English or both (BB011A or BB011B—a dummy variable called REMEDIAL, coded 1 if the student took either, 0 otherwise), expected to attend college in the eighth grade (BB068A), has been read to before starting school (BB095), and has ever repeated a grade (FY59). Student-level factor loadings are as follows: REMEDIAL, −.59; BB068A, .71; BB095, .57; FY59, −.47. Factor has an eigenvalue of 1.40 and explains 35 percent of the combined variance.

MINORITY: A dummy variable (1 = black or Hispanic; 0 = others).

SES: The HS&B standardized composite.

School-level Predictors

1. The Social and Academic Composition of Schools

SECTOR: An effects-coded dichotomous variable: 1 for Catholic schools, −1 for public schools.
AVACBKGD: School average of the student-level variable ACADBKRD.
AVSES: Average social class of students within the school.
HIMNRTY: An effects-coded dichotomous variable: 1 if minority enrollment in excess of 40 percent (black or Hispanic); −1 otherwise (see footnote 5).
SIZE: Total enrollment of the school divided by 100, as reported by the principal.

2. Perceived Quality of Instruction and Teachers' Interest in Students

TEACHINT: School average of students' ratings of their teachers' interest in them (FY69J).
STFPBLM: A composite of principals' reports about the staff's absenteeism and lack of commitment and motivation (SB056E, SB056F). Correlation of variables: .73.
PCDQLTCH: A factor composite of students' reports about the percentage of their teachers who enjoy their work, make clear presentations, work students hard, treat students with respect, are witty and humorous, do not talk over the students' heads, are patient and understanding, return work promptly, and are interested in students outside class (school-level average of factor made from FY68 series). Student-level factor loadings are as follows: FY68A, .72; FY68B, .76; FY68C, .33; FY68D, .70; FY68E, .36; FY68F, .60; FY68G, .76; FY68H, −26. Factor has an eigenvalue of 2.92 and explains 37 percent of the combined variance.

3. Disciplinary Climate of the School

DISCLIM: A composite index based on (1) a factor score from students' reports about the incidence of students talking back to teachers, refusal to obey instructions, attacks on teachers, and fights with each other (school-level average of factor based on variables from the YB019 series. Student-level factor loadings are as follows: YB019C, .79; YB019D, .81; YB019E, .71; YB019F, .60. Factor has an eigenvalue of 2.163, and explains 54 percent of the combined variance); (2) the school average of students' reports about their own disciplinary problems in school, suspension, probation, and cutting class (school average of variables from the BB059 series). Student-level factor loadings are as follows: BB059B, .75; BB059C, −.46; BB059D, .72; BB059E, .62. Factor has an eigenvalue of 1.687 and explains 42 percent of the combined variance.
SAFE: Percentage of students who feel safe in the school environment (school average of dummy coded BB059F);
AUTHRTY: Students' ratings of the fairness and effectiveness of discipline within the school (FY67F and FY67H, averaged to school level). Correlation of the student-level variables: .50.

4. Academic Press of the School

AVHMEWRK: Hours per week students spend on homework (school average of BB015, recoded to hours/week).
AVLACKAC: Students' reports about the lack of academic press in the school (school average of EB035A).
ATTACAD: School aggregate of student-level factor composed of variable measuring students' (1) attitudes toward getting good grades (YB052AA and YB052AB) and (2) interest in academics (BB008 series). Student-level factor loadings are as follows: YB052AA, .82; YB052AC, .83; BB008AB, .22; BB008AC, .22; BB008BB, .20; BB008BC, .13. Factor has an eigenvalue of 1.76 and explains 29 percent of the combined variance.

5. Curricular Structure

AVACDPGM: Percentage of students in the academic program (from BB002).
AVMTHEMP: Average number of advanced mathematics courses taken by students (a school measure of the emphasis on academic course work, from a sum of dummy coded variables FY5B–FY5E). These variables measure whether the student has taken Geometry, Algebra II, Trigonometry, and Calculus.
SDMTHEMP: Standard deviation within each school of the number of advanced mathematics courses taken by students (a school measure of differentiation in academic course work from the FY5B–E series).

The academic background measure may be an imperfect indicator of students' ability on entry into high school, but it is clearly preferable, for theoretical reasons, to the use of the sophomore-year achievement measure from HS&B. Previous research has shown that the stratification of learning opportunities occurs early in high school through placement in curricular tracks (Gamoran 1987; Garet and DeLany 1988; Heyns 1974; Vanfossen, Jones, and Spade 1987). Moreover, it has been demonstrated that this academic stratification has a strong effect on subsequent achievement (Gamoran 1987; Lee and Bryk 1988). Were sophomore achievement used as a proxy for differences in ability on entry into high school, the effects of school organization on the social distribution of achievement would be almost entirely adjusted away because much of these distributional differences are likely to be in place by the end of the sophomore year. That is to say, sophomore achievement is far from the "pure" pretreatment measure that is a prerequisite for an appropriate adjustment variable in an analysis of school effects (see Anderson et al. 1980 for a more extended discussion of this issue). As a result, controlling for sophomore status residualizes out of senior achievement not only differences in students' latent ability but a portion of the anticipated school effect between the sophomore and senior years based on the school effect that has already occurred.

Discussion of School Variables

These measures were developed to indicate features of the academic organization and normative environment of schools that are hypothesized to have an impact on the social distribution of achievement in public and Catholic high schools. The variables have been grouped into four categories. The first category consists primarily of demographic characteristics of the schools (social and racial composition, average students' academic background, and size). The second category focuses on teachers and teaching. It includes students' perceptions of the degree to which the faculty care about them; students' opinions about the general quality of instruction in the school; and principals' assessments of the degree to which staff behaviors, such as absenteeism and a lack of commitment, present problems for the school.

School climate, in terms of order-discipline and academic emphasis, is considered in the next two categories. The order/discipline elements in a school's normative environment are indicated by several variables: a composite measure of the incidence of disciplinary problems, students' perceptions of the school as an unsafe environment, and a factor tapping students' opinions about adults' exercise of discipline in the school. The academic climate is measured by the average amount of time spent on homework, the degree to which students want more academic emphasis in their schools, and average attitudes of students toward academics. The final set of measures captures aspects of the academic organization of schools. One variable measures the proportion of students in the academic curricular track. Another measures the average number of advanced mathematics courses taken by students in each school. Finally, the variability in mathematics course taking is included as a measure of curricular differentiation.[2] Descriptive statistics (means and standard deviations) of the individual variables just described are presented in Table 1. All analyses in this article use modified HS&B design weights.[3]

[2] Other research (Hoffer, Greeley, and Coleman 1985; Lee and Bryk 1988) has shown that students in Catholic schools follow a more homogeneous curriculum than do students in public schools, as well as take more academic courses. It was argued that such behaviors of students were, at least in part, a result of different school policies regarding the constraint of curricular choice. Therefore, not only the average number of mathematics courses (AVMTHEMP) but a measure of differentiation in students' course-taking patterns within each school (SDMTHEMP) was included in the analysis model. Because variability in course taking is likely to be related also to the size of a school, it is important that these two variables be considered together.

[3] The HLM analyses used the HS&B school-level design weights. This weighting was necessary because of the HS&B survey design, in which certain types of schools were oversampled. The weights were normalized to a mean weight of 1, so standard errors and resultant significance tests would be based on the actual number of schools (160) in the sample. When one uses HLM on the HS&B high school data, student-level weighting is unnecessary, since students were sampled within schools with equal probability. No adjustment to school weights owing to sampling down in the public sector was introduced.

Table 1. Means and Standard Deviations, in Catholic and Public Schools, of Variables Used in HLM Analyses[a]

Variables	Catholic Schools		Public Schools	
	Mean	(SD[b])	Mean	(SD)
Student-level Variables	(N = 5,355)		(N = 5,644)	
Mathematics achievement	14.67	(6.26)	11.25	(7.13)
Social class	0.09	(0.74)	−0.26	(0.90)
Percentage of minority students	0.12	(0.33)	0.19	(0.39)
Academic background	0.17	(0.95)	−0.12	(1.03)
School-level Variables	(N = 74)		(N = 86)	
School composition				
Average school social class	0.04	(0.35)	−0.36	(0.33)
Percentage of high-minority schools[c]	4.72	(21.3)	12.45	(33.2)
Average academic background	0.09	(0.34)	−0.24	(0.31)
Teacher quality				
Teacher interest	2.97	(0.24)	2.55	(0.23)
Staff problems	−0.54	(1.53)	1.26	(1.71)
Perceived quality of instruction	0.10	(0.36)	−0.20	(0.35)
Social climate				
Disciplinary climate	−0.87	(0.65)	0.65	(0.74)
Percentage of students who feel safe	0.93	(0.05)	0.89	(0.08)
Perceptions of authority as fair and effective	2.80	(0.27)	2.51	(0.28)
Academic climate				
Average hours a week on homework	5.45	(1.49)	3.28	(1.39)
Attitude toward academics	0.18	(0.63)	−0.12	(1.93)
Average lack of academic press	2.57	(0.23)	2.83	(0.27)
Curricular communality:				
Average number of mathematics courses	3.06	(0.54)	1.80	(0.57)
Standard deviation of mathematics courses	1.17	(0.30)	1.41	(0.27)
Percentage in the academic track	0.72	(0.24)	0.33	(0.18)

[a] Details of the construction of variables are explained in Figure 1.

[b] Means and standard deviations are weighted, using the HS&B weights. Student-level variables use the student weight, while school variables use the school weights. Both weights were standardized to mean = 1.

[c] For the purpose of this descriptive table, this variable is dummy coded (1 for schools that enroll over 40 percent minority students, 0 for other schools).

Descriptive Differences between the Sectors

Students in Catholic schools score about one-half a standard deviation above their public school counterparts in mathematics achievement in the senior year. They are also somewhat more advantaged in terms of both social and academic backgrounds and are less likely to be from a minority group. Similar differences between the sectors also occur on measures of the social composition of the school (average social class, proportion of schools that enroll over 40 percent minority students, and average academic background). In general, Catholic school students report a higher level of interest by teachers and a higher quality of instruction. These students' reports are corroborated by principals' reports of a lower incidence of staff problems in Catholic schools. There are also substantial differences in the social climates of the two sectors. The incidence of disciplinary problems is considerably lower, and students are somewhat more likely to report that they feel safe and to perceive discipline as fair and effective in Catholic schools.

These data also indicate a stronger academic press in Catholic schools, with students reporting more positive attitudes toward academics and more time spent on homework. Finally, there is a greater emphasis on academic course work in the Catholic sector. In public schools, students are less likely to be enrolled in an academic curricular program and take fewer mathematics courses; there is also greater differentiation within the public sector in students' course-taking experiences. Most of the differences, documented in Table 1, have been noted previously in the literature (see, for example, Coleman, Hoffer, and Kilgore 1982; Hoffer, Greeley, and Coleman 1985; Lee and Bryk 1988).

Analytic Models

The student outcome considered in these HLM analyses is senior-year mathematics achievement. The decision to focus on mathematics achievement was made for three reasons: (1) mathematics is the academic area most influenced by schooling and least affected by home factors (Murnane 1975), (2) mathematics is the longest and most reliable of the six HS&B achievement tests (Heyns & Hilton 1982), and (3) the best information about specific courses students have taken is available in this subject area.

The within-school model regresses mathematics achievement (MATHACH) for student i within school j as a function of minority status (MINORITY), social class (SES), and academic background (ACDBKGD):

$$\begin{aligned}\text{MATHACH}_{ij} &= \beta_{j0} + \beta_{j1}\text{MINORITY}_{ij} \\ &\quad + \beta_{j2}\text{SES}_{ij} \\ &\quad + \beta_{j3}\text{ACADBKGD}_{ij} \\ &\quad + e_{ij} \qquad (6)\end{aligned}$$

The social distribution of achievement in each school is characterized in terms of four parameters: an intercept and three regression slopes. SES and ACDBKGD are continuous variables centered around their respective school means. MINORITY is a dummy variable representing minority-group membership, and it too has been centered around its school mean. As is true in any regression model, each of these parameters has been adjusted for the effects of other variables in the model. As the result, the four parameters may be interpreted as follows:

β_{j0} = Mean mathematics achievement for students in school j.

β_{j1} = The mean difference between the achievement of white and minority students in school j. We refer to this as the minority gap.

β_{j2} = The degree to which differences in the social class of students relate to achievement. We refer to this as the social class differentiation effect.

β_{j3} = The degree to which initial differences in academic background result in subsequent achievement differences. We refer to this as the academic differentiation effect.

Under this model, a school that is effective in equalizing the distribution of achievement would be characterized as simultaneously having a high average level of achievement, β_{j0}; a small minority gap, β_{j1} (since these coefficients are usually negative); and weak differentiating effects with regard to social class and academic background (small positive values for β_{j2} and β_{j3}, respectively).

Each of these distributive parameters is hypothesized to vary across schools as a function of school-level differences in organizational structure and normative environment. Thus, we posed a separate *between-school* model (see Equation 2) for each of the β coefficients. School characteristics that promote an equitable distribution of achievement should demonstrate the following pattern of statistical associations in the between-school model:

- A positive relationship to average school achievement.
- A positive effect on the minority gap. That is, such variables would act to reduce the differences in achievement between white and minority students in a school.
- A negative relationship with the social class differentiation effect. That is, these school variables would act to weaken the relationship between individual social class and achievement.
- A negative relationship with the academic differentiation effect.

A simple test of the explanation that structural and normative aspects of schools combine to influence the social distribution of achievement is that the variables enumerated in Figure 1 explain variance in the school-level distributive effects. A more restrictive test involves determining whether these variables can actually account for the "common school" effects reported by Coleman and others. That is, after we add such characteristics to the model, do the Catholic advantages of (1) higher achievement and (2) a more socially equitable distribution of that achievement still persist? If the more equalized social distribution of achievement in the Catholic sector results from differences in academic organization and normative environment, we would expect the sector effects to disappear once these characteristics were introduced into the model. Finally, the most restrictive test involves acceptance of a homogeneity of residual variance hypothesis. That is, after each distributive effect is modeled as a function of structural features of schools and their normative environments, is there evidence of residual parameter variation that remains unaccounted for?

RESULTS

The Unconditional Model

The HLM program (Bryk et al. 1988) was used to partition the total variance in mathematics achievement into its within- and between-school components. These were estimated by fitting an HLM where only a random average achievement coefficient is specified for the within-school model:

$$y_{ij} = \beta_{j0} + R_{ij},$$

and an unconditional between-school model is also specified:

$$\beta_{j0} = \mu + U_j.$$

This is just an unbalanced one-way random-effects analysis of variance, in which school is a random factor with varying numbers of students per school. The within-school variance pooled across schools was estimated as 39.927 and the between-school variance as 9.335. Thus, the intraclass correlation or proportion of total variance between schools is .189.

The first step in the HLM estimation process involves fitting an unconditional, or random regression, model. For each β coefficient in the within-school model (Equation 1), the between-school equation is simple:

$$\beta_{jk} = \mu_k + U_{jk} \text{ for } k = 0,1,2,3$$

where μ_k is the mean value for the school-level distribution effects.

Table 2. HLM Unconditional Model

Estimated Effects[a]

	Gamma Coefficients	Standard Error	*t*- Statistic	*p*-Value
School Mean Achievement				
Mean	12.125	.252	48.207	.000
Minority Gap				
Mean	−2.780	.242	−11.515	.000
Social Class Differentiation				
Mean	1.135	.104	10.882	.000
Academic Differentiation				
Mean	2.582	.093	27.631	.000

The Chi-Square Table[b]

Parameter	Estimated Parameter Variance	Degrees of Freedom	Chi-Square	*p*-Value
Mean achievement	9.325	137	1770.7	.000
Minority gap	1.367	137	161.01	.079
SES differentiation	.360	137	173.39	.019
Academic differentiation	.496	137	219.02	.000

Correlations among School-level Random Effects

	Mean Achievement	Minority Gap	SES Differentiation
Minority gap	.397		
SES differentiation	.182	−.109	
Academic differentiation	.327	.085	.652

Reliability of School-level Random Effects

Mean achievement	= .922
Minority gap	= .098
SES differentiation	= .167
Academic differentiation	= .330

[a] All estimates for two-level models reported in this article were computed using the HLM program (Bryk et al. 1988).

[b] The chi-square statistics reported in these tables provide only approximate probability values for two reasons. First, they are simple univariate tests that do not take into account the random effects in the model. Second, they are estimated on the basis of only those schools that have sufficient data to compute a separate OLS regression (n = 138 schools in this case).

Table 2 presents these results. The average school achievement is 12.13. The average minority gap is −2.78 (that is, the average school difference between white and minority achievement is 2.78 points), the average social class differentiation (the average within-school social class–achievement slope) is 1.14, and the average academic differentiation is 2.58. All these mean effects include adjustment for the other variables in the model, and all are statistically significant at probability levels less than .001.[4]

In addition to estimating the mean within-school regression equation, the covariance structure among the random effects from the unconditional model also provides other important information. The correlations among the random effects indicate the general structure of distributive school effects. A high average level of achievement is associated with a smaller minority gap (r = .397) and a greater differentiation with regard to academic background (r = .327). There is also a substantial positive association among schools in their differentiating effects. The estimated correlation between social class differentiation and academic differentiation is .652. This relatively high correlation suggests that these two differentiating effects may share some common causes.

An indicator of the reliabilities of the random effects in these data may be derived by comparing the estimated parameter variances, Var(β_{jk}), for each random effect to the total observed variance in the least squares estimates of these effects, Var($\hat{\beta}_{jk}$) (see Raudenbush & Bryk 1986). These results are also displayed in Table 2. The school average achievement estimates are highly reliable (.922). As expected, the regression coefficients are less reliable, ranging from a low of .098 for minority gap effects to a high of .330 for academic differentiation effects. This finding means that much of the observed variability in regression coefficients is sampling variance and, as a result, unexplainable by school factors. Sufficient variability across schools on these distributional effects does exist, however, for us to proceed. This conclusion is supported by the results of the homogeneity of variance tests (see the Chi-Square Chart in Table 2), which indicate significant variation among schools in three of the distributive effects. The probability of the observed variability in the $\hat{\beta}_{jk}$ coefficients, under a homogeneity hypothesis, is less than .001 for average achievement and academic differentiation and less than .02 for the social class differentiation. The p-value associated with the hypothesis of slope homogeneity for the minority gap coefficients is marginal (.079). Since substantial differences between sectors in minority achievement have been previously reported in the literature, however, we decided to continue to treat this effect as random.

'Sector-Effects' Model

Table 3 presents the results of a "sector-effects" model. SECTOR (−1 = public; 1 = Catholic) was added to each of the four between-school equations. Average social class (AVSES), minority concentration (HIMNRTY), and average academic background (AVACBGD) were also included in the model for school average achievement. The latter represents the effects of the composition of students in each school (average social class, average academic background, and minority concentration) on mean mathematics achievement in the school. As expected, school social class, the average academic background of students, and the minority concentration of the school are strongly related to mean mathematics achievement, with positive coefficients of AVSES (3.96) and AVACBGD (1.32) on school average achievement and a negative coefficient (−1.71) for HIMNRTY.[5]

In general, the results in Table 3 support the "common school" hypothesis articulated by Coleman, Hoffer, and Kilgore (1982). The school average mathematics achievement is

[4] In general, the computation of standard errors and resultant significance testing for the gamma coefficients in HLM is based on the number of groups (here, schools) rather than the number of cases within groups (students).

[5] The decision to dichotomize the variable representing the proportion of minority students enrolled in each school was made because of the distinctly nonnormal distribution of this variable. We decided, on the basis of exploratory analyses, on a "break point" of 40 percent, since the relationship of average school outcomes to minority concentrations appeared to change at that point. Furthermore, few schools had minority enrollments in the middle ranges. Thus, the split at 40 percent basically separates the all-minority schools.

Table 3. HLM Sector-Effects Model

	Estimated Effects			
	Gamma Coefficients	Standard Error	*t*-Statistic	*p*-Value
School Mean Achievement				
BASE	13.353	.170	78.468	.000
AVSES	3.956	.403	7.901	.000
SECTOR	.988	.184	5.361	.000
AVACBGD	1.315	.531	2.478	.013
HIMNRTY	−1.712	.561	−3.051	.003
Minority Gap				
BASE	−2.873	.260	−11.068	.000
SECTOR	.718	.260	2.765	.006
Social Class Differentiation				
BASE	1.185	.110	10.768	.000
SECTOR	−.168	.110	−1.531	.126
Academic Differentiation				
BASE	2.479	.094	26.479	.000
SECTOR	.064	.094	.684	.494

The Chi-Square Table

Parameter	Estimated Parameter Variance	Degrees of Freedom	Chi-Square	*p*-Value
Mean achievement	2.899	133	682.51	.000
Minority gap	.771	136	151.11	.178
SES differentiation	.307	136	163.01	.057
Academic differentiation	.493	136	221.51	.000

higher in Catholic schools (a positive SECTOR effect of .99 on average achievement), the minority achievement gap is smaller in Catholic schools (a positive SECTOR effect of .72), and the social class distributive effect is somewhat weaker (a negative SECTOR effect on the social class slope of −.17). Academic differentiation is similar in the two sectors. Note that each of these effects is computed *net* of the other variables in the model. We point out that SECTOR fits three of the four criteria set out earlier for a equitable social distribution of achievement.

Contextual-Effects Model

Before proceeding to investigate the effects of academic organization and normative environment, we next considered the possibility of differential contextual effects in the two sectors. Within HLM, a contextual effect is represented by including the school aggregate of a student-level variable in the between-school model for that differentiating effect, for instance, including school social class (AVSES) in the model that investigates the distributive effects of the students' social class. Differential contextual effects by sector are represented by the inclusion of a school variable-by-sector interaction (or product) term (for example, SECXSES = AVSES × SECTOR) in the model. Specifically, we posed the following between-school models:

Average achievement = f (AVSES, HIMNRTY, AVACBKGD, SECTOR, SECXSES, SECXHIM, SECXACDB).

Minority gap = f(HIMNRTY, SECTOR, SECXHIM).

Social-class differentiation = f (AVSES, SECTOR, SECXSES).

Academic differentiation = f (AVACBKGD, SECTOR, SECXACDB).

Several of the estimated coefficients resulted in *t*-statistic values less than 1.50. These variables were deleted, and the models were reestimated. The final results are reported in Table 4.

The compositional effect of average social class (AVSES) on average achievement varies across the two sectors. For the Catholic sector, the school social class effect on average achievement is 2.54 [4.11 + (1) × (−1.57)]. In the public sector, the relationship is much stronger, 5.68 [4.11 + (−1) ×

Table 4. HLM Contextual-Effects Model, including Sector Interactions

Estimated Effects				
	Gamma Coefficients	Standard Error	*t*-Statistic	*p*-Value
School Mean Achievement				
BASE	13.678	.186	73.393	.000
AVSES	4.106	.493	8.327	.000
SECXSES	−1.572	.432	−3.642	.000
SECTOR	.716	.194	3.700	.000
AVACBGD	1.301	.517	2.514	.012
HIMNRTY	−1.488	.551	−2.699	.007
Minority Gap				
BASE	−2.894	.256	−11.300	.000
SECTOR	.721	.256	2.816	.005
Social Class Differentiation				
BASE	1.381	.141	9.819	.000
AVSES	.131	.325	.402	.697
SECXSES	−.869	.325	−2.671	.008
SECTOR	−.362	.141	−2.571	.010
Academic Differentiation				
BASE	2.482	.093	26.650	.000
SECTOR	.072	.093	.778	.437

The Chi-Square Table				
Parameter	Estimated Parameter Variance	Degrees of Freedom	Chi-Square	*p*-Value
Mean achievement	2.681	132	631.19	.000
Minority gap	.624	136	151.04	.179
SES differentiation	.218	134	159.94	.063
Academic differentiation	.475	136	221.70	.000

(−1.57)]. This means that the average difference in mathematics achievement between the two sectors depends on the social class of the schools we are comparing. For schools of average social class, where AVSES = 0, the mean difference is 1.43 points [(1) × .716 − (−1) × .716]. The Catholic school effect is larger for more disadvantaged schools. For affluent schools, however, (where AVSES > 1 *SD*), average mathematics achievement is actually higher in the public sector.

The only significant contextual effects in these data are for the relationship between the students' social class and mathematics achievement. The differentiating effect of social class within a school depends on the average social class (AVSES) of the school. This effect works differently in the two sectors, however. Higher social class public schools are more differentiating with regard to social class. The effect in the public sector is positive [.131 + (−1) × (−.869) = 1.00.]. In the Catholic sector, however, this effect is negative [.131 + (+1) × (−.869) = −.738], indicating less social differentiation in high social class Catholic schools.

The results of the contextual effects model actually heighten the "common school" effects, rather than explain them away. The Catholic school advantage on mean achievement is largest when comparing low social class schools. The minority gap remains smaller in the Catholic sector, and this difference does not depend on the concentration of minority students in either sector. Social differentiation within schools is also stronger in the public sector. This stronger differentiation is particularly true in high social class public schools, where mathematics achievement is distributed in a very disequalizing fashion. With regard to academic differentiation, there is no evidence of context, sector, or sector-by-context effects.

Final Explanatory Model

The final step in our analysis involved modeling the social distribution of mathematics achievement as a function of characteris-

tics of the academic organization and normative environment of schools. The process of building the explanatory model proceeded as follows. We started with the reduced contextual effects model just described. Each of the four remaining categories of variables was considered separately in modeling each β coefficient. Effects with *t*-statistics less than 1.5 were dropped, and a composite model was estimated, based on the remaining variables from each category. Variables that were deleted in the early steps of the analysis were then reconsidered. The empirical Bayes residuals from the initial composite model were regressed on the excluded variables. On the basis of a residual analysis, the size of the school (SIZE) and perceptions about the fairness and effectiveness of the discipline in the school (AUTHRTY) were added to the models for the distributive effects of social class and academic background. Table 5 presents the results of the final fitted model. The results for each distributive effect are now discussed separately.

School mean mathematics achievement. The average achievement difference between sectors disappeared once the average number of mathematics courses taken (AVMTHEMP),

Table 5. Final HLM Model of the Effect of Academic Organization and Normative Environments on the Social Distribution of Mathematics Achievement

Estimated Effects				
	Gamma Coefficients	Standard Error	*t*-Statistic	*p*-Value
School Mean Achievement				
BASE	8.568	.755	11.342	.000
AVSES	3.020	.487	6.187	.000
SECTOR	.158	.203	.777	.437
AVMTHEMP	1.417	.274	5.167	.000
AVHMEWRK	.284	.120	2.366	.018
STFPBLM	−.269	.088	−3.071	.003
HIMNRTY	−1.788	.525	−3.400	.001
Minority Gap				
BASE	−3.109	.295	−10.554	.000
SECTOR	.066	.427	.155	.877
DISCLIM	−1.081	.454	−2.384	.017
STFPBLM	.132	.165	.804	.421
Social Class Differentiation				
BASE	2.403	1.374	1.748	.080
AVSES	−.127	.330	−.384	.701
SECXSES	−.445	.324	−1.372	.170
SECTOR	−.078	.177	−.437	.660
SDMTHEMP	.804	.414	1.945	.056
AUTHRTY	−.939	.423	−2.219	.025
SIZE	.046	.021	2.105	.040
STFPBLM	−.195	.067	−2.901	.004
Academic Differentiation				
BASE	5.177	1.151	4.494	.000
SECTOR	.551	.124	4.427	.000
SDMTHEMP	.957	.340	2.814	.005
AUTHRTY	−1.699	.365	−4.660	.000
SIZE	.078	.018	4.270	.000
ATTACAD	.187	.066	2.838	.005
STFPBLM	−.098	.054	−1.791	.073

The Chi-Square Table				
Parameter	Estimated Parameter Variance	Degrees of Freedom	Chi-Square	*p*-Value
Mean achievement	2.380	131	626.25	.000
Minority gap	.638	134	146.26	.221
SES differentiation	.153	130	145.54	.167
Academic differentiation	.344	131	190.45	.000

the average amount of homework done by students (AVHMEWRK), and principals' reports about the problems with staff (STFPBLM) were taken into account. The directions of these effects were consistent with our expectations. Greater course work in mathematics, more homework, and fewer staff problems are all associated with higher levels of mathematics achievement across schools.

Minority differences in achievement. Sector differences in the minority gap disappeared once we took into account the disciplinary climate of schools (DISCLIM). The minority gap is largest in schools in which there is a high incidence of disciplinary problems. This finding suggests that the minority gap is smaller in the Catholic sector because the environments are more orderly and less disruptive.

Differentiation in achievement, by social class and academic background. Table 5 provides strong evidence that the academic organization of the schools plays a central role in converting initial differences in social class and academic background into differences in academic achievement. Differentiation among students in mathematics course taking (SDMTHEMP) and larger schools (SIZE) are both associated with a more disequalizing distribution of achievement in schools along class and academic background lines (that is, both these variables are positively related to the social class and academic background slopes). Schools that students perceive as handling discipline fairly and effectively (AUTHRTY) are less differentiating school environments. Positive school attitudes toward academics (ATTACAD), however, are associated with a more academically differentiated distribution of mathematics achievement.

The sector effect on social class differentiation has disappeared, and the sector-by-school social class interaction effect has also been substantially reduced. A significant sector effect has appeared for academic differentiation (SECTOR = .551, t = 4.427). Catholic schools are more differentiating with regard to academic background than we would expect, given their favorable organizational characteristics (smaller size, less differentiation in course taking, fewer staff problems, more positive attitudes toward academics, and fairer and more effective discipline).

Other effects. The pattern of effects for staff problems (STFPBLM) across the four school-effect indicators merits comment. Schools with a high incidence of staff problems are equalizing in the distribution of academic achievement—everyone tends to do poorly. The school average achievement is reduced, the achievement of white students looks a bit more like the achievement of black students, and the achievement of socially and academically advantaged students is more like that of their disadvantaged counterparts. That is, no one benefits when the faculty's commitment to the school begins to break down.

This phenomenon also illustrates an interesting methodological aspect of the application of HLM to school effects research that results from the doubly multivariate structure of the between-unit model (multiple independent variables for multiple outcomes with a full covariance matrix). School characteristics may produce a web of interrelationships among the school differentiation effects. Therefore, care must be exercised in specifying models and interpreting results lest important observations, such as the pattern of effects for STFPBLM, are ignored or misinterpreted.

Table 6. Summary of Results for Proportion of Variance Explained by All Models

	Average Achievement		Minority Status		Social Class		Academic Background	
Model	var(β_0)	R^2 (percentage)	var(β_1)	R^2 (percentage)	var(β_2)	R^2 (percentage)	var(β_3)	R^2 (percentage)
Unconditional	9.325	—	1.367	—	0.360	—	0.496	—
Sector effects (including composition)	2.899	68.9	0.771	43.6	0.307	14.7	0.493	0.6
Reduced context effects	2.681	71.2	0.624	54.4	0.218	39.4	0.475	4.2
Final model	2.380	74.5	0.638	53.3	0.153	57.5	0.344	30.6

Explained Parameter Variance

Table 6 summarizes the estimated parameter variances for the school distributive effects in each of the models described. We also present the proportion of the reduction in variance under each of these models as compared to the unconditional model. The final model accounts for a substantial proportion of the variance in school average achievement (74.5 percent) and in the differentiating effects of social class (57.5 percent), academic background (30.6 percent), and minority gap (53.3 percent). There is still evidence of a significant residual variation among schools in average achievement and academic differentiation (see the Chi-Square Chart in Table 5). The homogeneity hypothesis for social differentiation ($p = .167$) and minority gap ($p = .221$), however, are now sustained, indicating that differences across schools in the relationships of social class and minority status with achievement are adequately explained by the predictor variables included in the model described in Table 5.[6]

Possible Unidentified Selection Artifacts

Important causal questions, of course, still remain. No matter how sophisticated the analysis or how extensive the list of confounding variables considered, there is always some possibility that the estimated school effects are more a function of the kinds of students who are enrolled than of the organizational characteristics of the schools. Thus, an alternative explanation for our results is that the school variables employed in our analyses are simply proxies for other unidentified differences among the students who are enrolled in the various schools. As was noted earlier, the use of achievement in the sophomore year was not deemed appropriate in these models. It was for this reason that we created the academic background measure. There is always the possibility, of course, that the estimated school effects may be somewhat different if we had a better measure of the initial ability of students.

Concerns about unidentified selection artifacts would appear to be the most salient alternative explanation for the observed mean differences among schools. The sector differences in mean achievement estimated in the final model were negligible after we controlled for measures of school composition, average mathematics course taking, average amounts of homework, and staff problems. With the exception of the estimated effect for staff problems, all the observed relationships include both student effects on the outcome (for example, students who do more homework tend to have greater achievement) and potential effects of school policies. We did not attempt to disentangle these student and school effects in the current research, although further analyses with HLM may be useful for this purpose (see Bryk and Raudenbush in press).

Thus, a cautious interpretation of the results from modeling mean mathematics achievement is that the observed differences between the sectors can be explained in terms of differences in students' academic experiences in the two sectors. Whether these results indicate the presence of school effects or should be attributed to the differences in students who attend Catholic and public schools has been widely debated (compare, for example, Coleman, Hoffer, and Kilgore 1981 with Alexander and Pallas 1983, 1985; Goldberger and Cain 1982). Although some of the observed differences between the sectors may represent selection artifacts, we have presented arguments elsewhere (Lee and Bryk 1988) that point toward school effects.

Nonetheless, the overall pattern of evidence produced in this study tilts in the direction of a school effects explanation. First, the significant effect for staff problems on school mean achievement is harder to explain away as a result of the selection of students. This effect persisted in the final model even though a number of other aggregate student variables (such as average academic background and incidence of disci-

[6] As a more formal test of the hypothesis that the residual variability in β_{j1} and β_{j2} was 0 based on the final model, we performed a likelihood ratio test comparing the deviance statistics from the model estimated in Table 5 with a restricted model that specified these residual variances as 0. The p-value for the likelihood ratio test was greater than .30. We performed a similar likelihood ratio test for the unconditional model (Table 2). The resultant p-value of $<.02$ provides further support for our initial decision to treat β_{j1} and β_{j2} as random. The results from these two likelihood ratio tests also support our contention that most of the original heterogeneity in the slope has been accounted for by the hypothesized school effects model.

Table 7. Estimates of Residual Variability in School-level Random Effects (Based on Estimated Residuals)[a]

SECTOR	Unconditional Model	Final Model	Percentage Reduction
Public Sector			
Mean Achievement	6.833	1.461	78.6
Minority Gap	0.247	0.092	62.7
SES Differentiation	0.130	0.042	67.6
Academic Differentiation	0.240	0.106	55.8
Catholic Sector			
Mean achievement	6.305	2.214	64.9
Minority gap	0.242	0.125	48.4
SES differentiation	0.129	0.034	73.6
Academic differentiation	0.218	0.102	53.2

[a] These estimates of residual variability are based on the Empirical Bayes residuals from the respective HLM models. In general, these estimates will be smaller than the true maximum-likelihood estimates produced for the overall model (see Table 6) because they do not take into account the uncertainty associated within the estimation of the Gamma coefficients (see Raudenbush and Bryk 1986).

plinary problems), considered for inclusion as part of our general analytic approach, failed to achieve significance.

Second, the hypothesized effects of school organization variables on internal differentiation with regard to race/ethnicity, social, and academic background were also supported in our analyses. Although these, too, could be selection artifacts, a more contorted alternative explanation is required, since the estimated differentiating effects are interactions between characteristics of students and specific organizational features.

In general, for an unidentified student selection variable to confound the estimated school effects on internal differentiation, several conditions must hold. Obviously, the unmeasured selection factor must be related to the student outcome. In addition, the relationship between the unmeasured variable and those student variables already included in the model must vary across schools. Finally, this slope variability must be systematically related to the specific school factors considered here. The latter is particularly important because both previous field research and theoretical argument led us to consider a combination of measures of both school normative environment and academic organization as mediating the social distribution of academic outcomes. Why residual selection effects should follow this particular pattern of effects seems unclear.

Third, the relationship of the selection hypothesis to the specific research conducted here is itself complex. In general, the factors involved in selecting a school sector do not necessarily operate in the same manner when one chooses among high schools within the two sectors. For example, although Catholics are more likely to be found in Catholic high schools, it is non-Catholics who are more likely to choose the more advantaged schools within this sector (Bryk et al. 1984). In general, there are three somewhat different selection mechanisms at work here: one set of factors influencing the choice between public and Catholic schools and two somewhat different models for the choice of schools within each of these sectors.[7] If our school variables are just proxies for unidentified selection factors in choosing between public and Catholic schools, a model that accounts for the between-school differences is unlikely to be equally effective in explaining variability among schools within each sector.

As a final empirical check, we calculated—separately for each sector—the variability in the estimated residuals on the basis of the unconditional and final models presented in Tables 2 and 5. We then computed a proportion of the reduction in variability for each random parameter in both sectors. It is clear from Table 7 that the final model accounts for

[7] Substantial choice also exists within the public sector. Although it is difficult to identify the exact proportion of districts that offer a choice of schools to students and their families, the number is not trivial and is growing (Raywid 1983). However, the most pervasive mechanism through which families choose public schools is through their choice of residential location within a particular school district (Murnane 1981). In any case, enrollment patterns of students in public schools are not random and are related to family income.

a large proportion of variance within each sector for all four random effects. In addition to accounting for the sector differences on the social distribution of achievement, the final model explains substantial variability among schools in both sectors. This is exactly what we would expect if the model was tapping some general school organizational processes.

DISCUSSION

The outcomes of interest in this study tap the social distribution of achievement in secondary schools. Social equity is meaningless, however, unless it is accompanied by high average achievement. Equalizing schools in which everyone does poorly are hardly "effective." We examined how various aspects of the normative environment and academic organization of schools influence the distribution of achievement in regard to students' social, racial, and academic backgrounds. Furthermore, we employed in our analyses a new statistical technique, HLM, which was explicitly designed to examine and test multilevel hypotheses of this sort.

Recent research in the sociology of education has focused on the differential learning opportunities provided to students within schools and the role that these opportunities play in determining the achievement of students (Barr and Dreeben 1983; Gamoran 1987; Lee and Bryk 1988; Oakes 1985). This research builds on an important distinction articulated by Bidwell and Kasarda (1980) between the *school* as a context for learning and the instructional processes of *schooling* through which learning actually occurs.

Conceptually, school organization would seem to play an important role in shaping the differential learning opportunities provided to students through which academic achievement is promoted. Yet large-scale quantitative investigations have generally failed to detect such school effects. This pattern has persisted in recent studies using HS&B (see, for example, Gamoran 1987).

The results reported in this study thus provide new evidence that organizational differences among schools exert a substantial impact on students' achievement. Some of the strongest relationships we encountered involved course taking and how it was distributed among students. These results suggest that the academic organization of the school, in terms of the breadth of curricular offerings and expectations about the number of academic courses required of all students, structures differential learning opportunities. A distribution of achievement that maintains a high average level, as well as being socially equitable, is more likely to arise when the average level of academic course taking is high and the differences among students' programs of study are small.

How schools should respond to differences in students' background and interest is a central organizational problem. In principle, initial differences among students can be either amplified or constrained as a result of subsequent school experiences. Our results indicate that schools' decisions about academic structure play a major role here.

In general, Catholic high schools have a constrained academic organization that minimizes the differentiation effects that can accompany wide individual latitude in the choice of courses. There is a strong commitment in Catholic high schools to a core academic program for all students, regardless of background and future educational aspirations (Bryk et al. 1984). The majority of students' programs of study consist of required courses with only a modest number of electives. Furthermore, these limited electives are chosen from a curriculum that emphasizes academic pursuits.

In contrast, the modern comprehensive public high school is portrayed as a "shopping mall" (Powell, Farrar, and Cohen 1985), with many ability levels among the core academic courses and an extensive elective curriculum from which students may freely choose (see also, Cusick 1983). The latter is a highly differentiated structure that, our results indicate, tends to amplify initial social differences among students and to culminate in a less equitable distribution of achievement.

In short, the academic organization of high schools has a significant impact on the social distribution of achievement within them. The effects of greater size of schools bear particular note in this regard. Although the size of schools has no effect on average achievement, it has a strong impact on social and academic differentiation. Quite simply, it is easier to create a more internally differentiated academic structure in a larger school. The limited fiscal and human resources that are generally found in small schools preclude extensive organizational differentiation. Al-

though organizational differentiation is not a necessary consequence of larger size, size does act as a facilitating factor. When accompanied by an educational philosophy that views individual differences in ability and interest as the organizing principle for determining the subject matter to which students are exposed, the observed results should not be surprising.

Our HLM analyses also suggest that the determinants of the social distribution of achievement involve more than just the academic structure of the school. These results touch on claims advanced in the literature on "effective schools" that normative elements play an important role, that is, that good schools have a distinctive ethos (Rutter et al. 1979) and a sense of community about them (Lightfoot 1983).

The development of good measures of the school environment and perhaps subenvironments within a school is a difficult task under any circumstance. We were constrained in working with HS&B to create factors from the available data that would, we hoped, capture some of the important differences among schools that have been documented in the case-study literature just mentioned. We view the variables used in this study as proxy measures of the nature of the social interactions among students and adults within high schools and the norms that envelop these interactions. As a group, these variables point toward important features of school life, but we are reticent to give too much interpretative import to any one of them, given their modest conceptual and empirical base.

The effects of the staff problems measure (STFPBLM) suggest that the interest and commitment of teachers contributes significantly to academic achievement. This finding is consistent with recent research on the productivity of teachers. Metz (1986), for example, described how teachers' beliefs and values helped to sustain students' academic work in the three magnet schools she studied. Recent research has linked the degree of commitment by teachers to the nature of the social interactions that shape schools as workplaces for adults (Ashton and Webb 1986; Bryk and Driscoll 1988; Lee, Dedrick, and Smith 1989; Rosenholtz 1989).

Closely aligned with this finding is the fact that academic achievement, particularly for minorities, is higher in schools with orderly environments (lower values on the DISCLIM variable). At a purely behavioral level, a minimum of disciplinary problems is a necessary condition for the routine pursuit of academic work. But there may be more at work here than just an absence of disorder, since students' perceptions of the fairness and effectiveness of adults' actions (AUTHRTY) are also linked to the social distribution of achievement.

Our interpretive assessment of these findings locates them within larger concerns about "What kind of place is this school?" "How do individuals relate to one another here?" "What kinds of effort from teachers and students are valued?" From this point of view, an equitable social distribution of achievement is advanced in schools in which the quality of social interactions among adults and students—all types of students—is a primary concern. This interpretative view builds on the work of Rutter, Lightfoot, Metz, Rosenholtz, and others, which described good schools as communities that attend to the needs of students for affiliation and provide a rich spectrum of adult roles that, in turn, engage students personally and challenge them to engage in the life of the school.

The positive effect of students' attitudes toward academics on academic differentiation can also be interpreted from a valuative perspective. It seems logical that, at the student level, individual interest in academic activities engenders individual achievement. That is what academic motivation is all about. At the school level, however, the interpretation is less straightforward. The literature on effective schools suggests that high levels of interest by students characterize contexts with a strong press toward academic work and that such contexts are particularly beneficial to disadvantaged students. Yet, students' high levels of interest in academics may also identify schools that are highly competitive and that devote particular attention and resources to preparing the most talented for elite colleges and universities. This conception of purpose, in turn, rationalizes an organizational structure in which initial academic differences trigger extensive differentiation in instructional opportunities to identify talent early and develop it fully. The latter interpretation is consistent with the observed positive effect of students' interest in academics on academic differentiation. For a case description of such an institution, see the

discussion of Highland Park High School in Lightfoot (1983).

On balance, it could be argued that the effects of the normative environment that we reported here would disappear if better measures of the academic structure of schools were available in HS&B. Why one would prefer this explanation, however, is unclear, especially in light of results from field studies that have claimed an important role for school environments.

In our view, these results indicate that educators need attend not only to the technical core of instruction but to the nature of the human environments in which this instruction occurs. The social processes of a school shape the meaning of school events for students and teachers alike. They can help to make schools engaging environments for students and productive workplaces for adults, or they can impede these ends. For a theoretical elaboration of this perspective in terms of students' engagement with school life, see Newmann (1981).

Our HLM analyses further suggest that an equitable social distribution of achievement is not a simple event. No single school variable (other than SECTOR) was associated with both high levels of achievement and low differentiation. An equitable social distribution of achievement appears to require a constrained academic structure that is embedded in a normative environment that provides a supportive school life for most students, regardless of their backgrounds and abilities. This requirement suggests that the "common school" effect, reported by Coleman, Hoffer, and Kilgore (1982), is actually a complex organizational phenomenon. In general, individual school factors that produce high average achievement and contribute to internal differentiation are more common than those that are simultaneously associated with high achievement and social equity. For example, in our analyses, both school social class and an absence of staff problems were associated with academic excellence that was inequitably distributed.

Our final comment is methodological. Attention has increasingly focused on the process through which aspects of school governance, external environments, and internal policies influence differential opportunities for learning within schools. These concerns, from a statistical modeling point of view, are hypotheses about the effects of school and context variables on within-school structural relationships, or regression slopes. Simply adding school variables to a student or school-level linear model implies that the school variables influence mean differences across schools, not that they differentiate effects within the schools. Research on such differentiating effects requires a multilevel formulation for proper estimation and inference.

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***Valerie E. Lee**, Ed.D., is Assistant Professor, School of Education, University of Michigan, Ann Arbor. Her main fields of interest are research methodology and the social organization of schools. She is currently studying school effects on teachers and students, focusing on schools as communities.*

***Anthony S. Bryk**, Ed.D., is Associate Professor, Department of Education, University of Chicago. His main field of interest is the social organization of schools. His present work is on school improvement, quantitative methods, and school organization.*

TC

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 3446-85
AGENCY DKT. NO. 122-5/85

M.P. and G.P.,
Parents of R.P.,
Petitioner,
v.
BOARD OF EDUCATION OF
THE TOWNSHIP OF DELRAN,
BURLINGTON COUNTY,
Respondent.

John A. Sweeney, Esq., for petitioner (Sweeney & Sweeney, attorneys)

Stephen J. Mushinski, Esq., for respondent (Parker, McCay & Criscuolo, attorneys)

Record Closed: October 4, 1985 Decided: November 18, 1985

BEFORE **JOSEPH LAVERY**, ALJ:

This is an appeal by M.P. and G.P., the parents of R.P., on behalf of their daughter, seeking certain relief from the Commissioner of Education. They ask that R.P. be placed in a different school district, specifically that of Cinnaminson. They also ask that the Delran Board of Education asborb the cost of her past and future placement there.

Petitioners base these demands on their allegations that R.P. has been subjected to verbal and physical assaults, threats of violence and harassment by an identifiable group of students in the Delran Township Middle School. Petitioners charge that the Delran Board of Education has been unable and unwilling to prevent these injuries

to their daughter, or to punish those responsible. As a consequence, they ask that the Commissioner provide the foregoing relief as well as any other remedy which he may deem appropriate, within his statutory and regulatory discretion.

PROCEDURAL HISTORY

This appeal was initiated by timely petition filed with the Commissioner on May 7, 1985. Answer was submitted on June 4, 1985 by respondent Board. Thereafter, the Commissioner of Education declared the dispute a contested case filing it with the Office of Administrative Law on June 6, 1985. Following a prehearing conference on July 1, 1985, the proceedings convened on September 9, 1985 in the Delran Municipal Court. After receipt of briefs on October 4, 1985, the record closed.

ISSUES

The issues in this case may be phrased as follows:

1. Whether respondent Board failed to protect R.P. from verbal and physical assaults, threats of violence, and harassment by an identifiable group of students in Delran Township Middle School, and, if so,

2. Whether this failure deprived R.P. of the thorough and efficient education which the Board is obligated to provide, and, if so,

3. Whether M.P. and G.P., as parents of R.P., are entitled to reimbursement for the costs of unilaterally placing R.P. in another school district.

Burden of Proof:

Petitioner must carry the burden of proof by a preponderance of the credible evidence.

Undisputed Facts:

A number of facts are disputed here. However, some of the material background is not in contention:

R.P. has, from kindergarten through the first semester of eighth grade, attended schools in the Delran school district. Apart from an initial concern over learning speed which caused her placement in a "pre" first grade, petitioner has proceeded through the system without incident until October of the 1983-84 school year. At that time she was in seventh grade. She then became involved in a verbal dispute with S.R., which ended in a fist-fight. S.R. suffered a swollen lip. Both R.P. and S.R. were given one day in-school detention. The penalty was imposed by the vice-principal, L. Bruce Smith. For the remainder of the year, R.P.'s schooling was uneventful.

When R.P. reached eighth grade, during the 1984-85 school year, her difficulties began again. Antagonism had developed between herself and a collection of former girl friends at Delran Middle School. Friction increased between R.P. and these girls, who were approximately her age. Eventually, these girls were known by school administrators as "the Group". The girls involved in the group were S.R., G.W., J.W., N.P. and V.F. Occasionally, non "Group" members drifted in and out, participating in the adversary relationship with R.P. The hostility between the group and R.P. surfaced both in school and out. Salient examples of in-school confrontations during 8th grade included a "booing" incident at a December dance and a shouting match followed by a physical altercation on January 30, 1985. The latter followed a school-sponsored basketball game held on school property. This incident was the culmination of continuing verbal clashes between R.P. and the Group during the 1984-85 school year. Afterward, petitioners kept their daughter at home, refusing to return her to Delran Middle School.

Board officials had been aware of problems between R.P. and the Group. In December 1984, petitioner and the Group had been counselled by Charlene Nathans (now Burd). Eventually, during that same month, Mr. Gallucci, Principal of the Delran Middle School, was also drawn into the controversy. Following the final January 30 fight, G.P. met with Mr. Gallucci, the superintendent of schools, Mr. Chinnici, and eventually a committee from the Board of Education. Stanley Halpern, school psychologist and

coordinator of the CST, was also called upon. These meetings were prompted by the decision of R.P.'s parents to keep her at home until what they perceived to be a physical threat to their daughter was removed. The Board and its administrators eventually proposed 4 "plans" to resolve this impasse (R-1, R-2). These "plans" were designed to remove R.P. from her normal scheduling to avoid confrontation, or promote her up and out of Delran Middle School to the High School.

Dissatisfied with the "plans" and their discussions with the foregoing Board officials, M.P. and G.P. removed their daughter from Delran Middle School. Around February of 1985, they unilaterally placed her in the Cinnaminson school district. This placement necessarily involved payment of monies to that district approximating $1,000 for the remainder of the 1984-85 school year and $3,000 for the current 1985-86 academic year.

It is from these circumstances that the present appeal has arisen.

ARGUMENTS OF THE PARTIES:

The parties in their testimony and legal arguments focused on who was responsible for R.P.'s current dilemma, and whether any financial liability may be ascribed to the Board.

Petitioners' Argument:

Petitioners argue that the Board failed to provide a safe environment for R.P. The Board also suggested solutions which were biased and prejudicial to the interest of R.P. Its failure to meet its responsibilities compelled petitioners unilaterally to remove R.P. from Delran Middle School and to absorb costs which should be borne instead by the Delran Board of Education.

Recalling her experiences with the Group, R.P. testified that her relationship with these girls was friendly prior to the initial October 1983 incident. However, shortly after leaving the Group, she was attacked by S.R., who was more than a foot taller. In self-defense, she punched S.R., inflicting a swollen lip. After this, the Group harassed her constantly despite R.P.'s attempts to stay away from them. They would force her aside in hallways, and verbally abuse her with threats using vile and often anti-semitic epithets, such as "scum" and "Jew". During one out-of-school incident on Halloween 1984, the Group came to R.P.'s house. The girls asked for and received candy. When they left, they nevertheless proceeded to scribble graffiti over her fence and sidewalk. Some names scrawled on those surfaces were "scum", "slut", "Jew", "bitch", "leave town", "fucking Jew whore", "R. fucks", and "Jew bitch". Mrs. P. confirmed the episode, adding that she had much later informed school officials of this conduct during the course of her many meetings with them in 1984-85.

R.P. and her mother stated that the conceded "booing" occurrence followed an announcement during the December 1984 dance that R.P. had won the door prize. The negative reaction was initiated by the Group. Despite the presence of Assistant Principal Smith, and the building principal, Mr. Gallucci, nothing was done. R.P. left the event after being reduced to tears.

Recounting details of the January 30, 1985 fight, R.P. recalled that it took place on school property. After a basketball game sponsored by the school, J.W. and V.F. of the Group began shouting at her in a teachers' room where R.P. had gone. R. was attending as a cheerleader, but had forgotten her shirt. Four janitors who were present told them to "get out of here if you're going to fight". Some girls called her "Jew", "whore", and "scum". When R.P. escaped through a side door she was told by a teacher that her mother had left. In tears, R.P. sought to call her mother from a phone located well away from the scene of her confrontation. However, the girls of the Group followed her down the hall punching her and pushing her from behind. A fight ensued. R.P. eventually found a ride home. Shortly after, her mother arrived and was told her daughter had been seen in a distraught state. Calling home, G.P. was answered by R.P. who was hysterical. R.P. never returned to the Delran Middle School. She remembered that her subsequent mental condition was bleak. G.P. testified that R.P. threatened to kill herself or run away from home if she were forced to return to Delran Middle School.

Retracing her own participation in her daughter's ordeals, G.P. stated that telephone calls and off-school harassment began as early as September 1984. From October 1984 onward, the girls of the Group followed R.P. to cheerleading practice. They harassed her there and in the locker room. They pushed her and called her names. This forced Ms. Holt, the cheerleading coach, ultimately to threaten disbandment of the cheerleading team if these attacks continued. The steady stream of abusive phone calls forced petitioners to apply a "tracer" through the phone company. By August 16, 1984, it was discovered that S.R. of the group had been making calls. This information is currently the subject of municipal court proceedings.

G.P. stated that she and her husband cautioned R.P. to avoid the Group, and R.P. obeyed, but to no avail. The harassment continued and culminated in the basketball game attack of January 30, 1985. At this point, G.P. called the superintendent of schools, Mr. Chinnici. She outlined R.P.'s entire history of abuse, and told the superintendent they would keep their child at home until her safety was assured. Homebound instruction followed after a two-week hiatus. Eventually, the school, through Dr. Halpern, sought to have R.P. referred for classification through the Child Study Team. Eventually the "plans" suggested in Exhibits R-1 and R-2 were presented as an alternative to homebound tutoring. Mrs. P. recalled that she never agreed to to do more than consider the plans. At no time did she accept them. She resented that her child was being singled out while the remaining members of the Group were left unpunished. Their conduct, in her opinion, was clearly deserving of discipline. Relying on the advice of her own psychologist, Dr. Fox, she continued to keep R.P. at home in order to avoid further victimization. Assessing her contacts with school officials, Mrs. P. believed that in her conversations with Ms. Nathans she was told that R. should not be returned to school. Morever, Mr. Gallucci's response included suggestions as to what other non-public schools were available to R.P.

Mrs. P. also described her active participation in school programs. She was president of the PTA, and often found herself on school premises as a helping mother. Mrs. P. was certain she did not call and complain to any of the mothers of the Group, with the exception of S.R.'s mother. She called her once in an attempt to make peace, without success. She also discussed the Halloween incident with J.W.'s mother, instead of calling the police. Any other contacts with Group mothers were in the course of her role as helping mother. R.P. was not discussed on those occasions.

Finally, Mrs. P. testified that after meeting with the Board's committee, she knew she could not accept the Board's last offer. Specifically, the Board and its officials suggested that a meeting be called at school with school administrators, R.P. and the Group. Mrs. P. would be excluded. All the girls would be told that further conflict would result in discipline. Mrs. P., lacking confidence that the school would look to her daughter's safety, refused this offer because her presence was not permitted. R.P. did not return to school, and petitioners, on their own, arranged placement in the Cinnaminson Township school district.

Board's Argument:

The Board, through testimony by its district officals and Board president, insists that it made all possible efforts to alleviate R.P.'s distress. Despite every attempt, including numerous alternative proposals, R.P.'s parents unilaterally withdrew their child from the district. Effectively, the parents thus ended the possibility of resolution and terminated any liability on the part of the Board.

Ms. Nathans, the school guidance counsellor, remembered that she viewed R.P.'s problem as arising from typical developing attitudes characteristic among preadolescent girls. From mid-January 1984, she met with the Group and R.P. The five or six girls who were members of the Group said their difficulties with R.P. stemmed from (a) negative verbal action between them and her and (b) their anger over R.P.'s mother's intervention. The Group conceded that they had engaged in name-calling and other epithets against R.P. However, they believed the conflict between the group and R.P. would not end until Mrs. P. removed herself from any intrusion. They also charged that R.P. was "two-faced". She presented one personality to adults and another, less praiseworthy, personality to her schoolmates. The Group agreed that the antagonism had been ongoing for a long time. So informed, Ms. Nathans concluded that these meetings with the girls and R.P. should not be disciplinary. Ms. Nathans viewed the matter as a "peer" problem, stemming from behavior which was not unnatural. She did not believe meeting with other parents was appropriate. It would only exacerbate the conflict. She recalled that the parent of one Group member was angry that her daughter missed class because of discussions relating to R.P.

Ms. Nathans remembered participating in preparation of the alternative "plans" which would temporarily remove R.P. from the mainstream, and in this way avoid confrontation with the Group. Ms. Nathans "accepted R.'s perception" of the Group's pattern of harassment. As a consequence, she believed that an abbreviated schedule under "Plan C" would probably best serve R.P. It permitted her gradual reentry from homebound study back into the Middle School environment.

L. Bruce Smith, the assistant principal at Delran Middle School, also believed that the pattern of behavior described by R.P. and her mother emerged from typical preadolescent conduct. He recalled that in October 1984 he knew of the Halloween incident at R.P.'s home. He also was present in the building at the time of the December dance "booing". Mr. Smith imposed no discipline at the time because of the confusing crowd circumstances and uncertainty over whether he had authority to impose discipline for booing.

The principal of Delran Middle School, Michael Gallucci, knew in December 1984 that R.P.'s mother had complained of neighborhood and school harassment, abusive telephone calls, and scurrilous name-calling which was in part anti-semitic. He investigated, and met with the girls involved in order to find facts. The girls of the Group told him, as they had Ms. Burd, that the problem was not R.P. They insisted that R.P.'s mother was the root cause. She constantly telephoned their mothers with untrue complaints. The Group reaffirmed to Mr. Gallucci their consistent position that the conflict would continue until Mrs. P. removed herself from the situation. The Group also resented Mrs. P.'s frequent presence on the school premises.

Mr. Gallucci recalled that Mrs. P. was almost in daily contact with the school over R.P. She seemed most interested in having her "pound of flesh" through discipline of the Group. He himself believed that R.P. should be left to "suffer the normal vicissitudes" of her age group. Then, perhaps, the friction between R.P. and the group would die a "natural death." The approach taken by school officials centered on attempts to "heal the wounds" between the girls. The "plans" suggested were only temporary expedients and were not meant to be exclusive methods.

Turning to Mrs. P.'s and R.P.'s conduct, Mr. Gallucci recalled that the mother of J.W. was certain that R.P. was making crank calls. J.W.'s mother also told him G.P. had called her five or six times over the ongoing problems of their children. G.P. had

even stated to him personally that the conflict in part may have arisen because R.P. was better dressed and more affluent. Mr. Gallucci did not recall suggesting placement at other schools. He did agree during conversations with Mrs. P. that the Friends School in Moorestown was "good". His own children were in attendance. Mr. Gallucci never thought that discipline was appropriate under the circumstances. He also felt the problem emanated in good measure from Mrs. P.'s intrusions. He conceded that her deliberate absence from the scene during December 1984 was followed by the alleged January attack after R.P.'s return from the winter break.

Superintendent **Joseph A. Chinnici** remembered his involvement after this latter occurrence. He met with the parents of R.P. the following day, on January 31, 1985. They disclosed to him the entire history of R.P.'s embroilment with the Group. Consequently, he asked for suggestions from Dr. Halpern, the school psychologist. These were embodied in Dr. Halpern's report of February 13, 1985 (R-2). Assessing the psychological state of R.P., Dr. **Stanley Halpern** believed that keeping R.P. out of school would enhance her present depression and cause "school phobia". He felt there was a need for the Child Study Team to evaluate R.P. for possible classification. A special education rule required such referral, he thought. He did not believe that similar evaluation of the girls in the Group was permitted by law. (The Board stipulated through counsel that this was not a special education dispute). Mr. Halpern remembered that Mr. Gallucci said he did not have sufficient evidence to discipline, yet all the officials were certain that "something was happening." He agreed that a child's threats of suicide, such as R.P.'s, should never be taken lightly.

Mr. Chinnicci also did not believe that discipline was appropriate in the absence of clear proof against the other girls. He emphasized the overriding importance of due process for all. At no point did Mr. Chinnici think it necessary to call in the parents of the Group. He noted his April 3, 1985 letter of response to Mrs. P.'s inquiry about what discipline was imposed after the January altercation (P-1). He had replied therein that it would not be possible to discipline one girl involved with R.P. when R.P. herself was not in school to share that penalty. Due process would not be served if a penalty was imposed in that fashion. Moreover, the Board did not specifically direct the superintendent to suspend the other girl involved in the January 30, 1985 incident. **Dorothy Oppman**, Board president, corroborated this, and stated that the Board did not demand discipline in this instance since the January 30 conflict was after normal school hours. Moreover, Mrs. P. had not returned R.P. to school on February 19, violating her verbal agreement to do so, reached after meeting with the Board committee.

FINDINGS OF FACT

Therefore, after considering the testimony previously set forth, and independently assessing the credibility of witnesses and parties, as well as reviewing the record as a whole, I make the following FINDINGS OF FACT:

As to UNDISPUTED facts, I FIND those designated on pages 3 and 4 of this opinion.

As to matters which are disputed or CONTESTED, pursuant to N.J.A.C. 1:1-16.3(c)7, I FIND:

1. In addition to the school-centered incidents undisputed by the parties, R.P was verbally harrassed and threatened by the Group sporadically, while attending Delran Middle School from September 1984 through January 1985.

2. The "Halloween incident" took place as described by R.P. and her mother G.P. at pp. 4 and 5 of this Initial Decision.

3. By no later than December 1984, Delran Middle School officials, including the Guidance Counsellor, Ms. Nathans and the Principal, Michael Gallucio, knew of the Halloween incident and ongoing friction between R.P. and the Group.

4. School janitors were present at the outset of the January 30, 1985 altercation between R.P. and the Group. The janitors ejected the pupils from the room in which it started, without intervening. The Group followed R.P. to the telephone, where R.P. attempted to have her mother come and transport her from school grounds. R.P. was involved in a physical fight with at least one member of the Group in the course of this confrontation, and was pushed by others. This incident occurred following a school-sponsored basketball game, attended by R.P. as a cheerleader, on school grounds.

5. R.P.'s mother G.P. continually pressed Delran Middle School officials to resolve the physical and verbal contacts between R.P. and the Group.

6. G.P. was present often in school in her capacity as president of the PTA and helping mother. G.P.'s only contact with mothers of the Group were in relation to school business with two exceptions: the first was a telephone call during the 1983-84 year during which G.P. attempted unsuccessfully to reach some kind of accord with S.R.'s mother. The second contacts were with S.R.'s mother and J.W.'s mother after the Halloween incident, in lieu of involving the police.

7. R.P. and her parents were subjected to crank telephone calls throughout the time frames at issue here. Eventually, a tracer through the telephone company identified S.R.'s phone number as the source of one such call. That matter is pending in the Municipal Court.

ANALYSIS

An analysis of this matter can be best understood by adhereing to the issues outlined on page 2 of this opinion.

Whether Respondent Board Failed to Protect R.P. on School Premises:

It is important to remember that the administrative burden of proof falls on petitioners. They must show by a preponderance of the evidence that the facts are as they have propounded. Stated another way, the standard is reasonable probability, so that the evidence must be such as to "generate the belief that the tenured hypothesis is in all human likelihood the fact. Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), certif. den. 31 N.J. 75 (1959), overruled on other grounds, 36 N.J. 487 (1962). The findings in this case have in large measure turned on the question of credibility. Credible testimony must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances, in Re Perrone, 5 N.J. 514, 522 (1950). Hearsay is admissible, but some legally competent evidence must be present to support each ultimate Finding of Fact. N.J.A.C. 1:1-15.8(b).

On this record, the credible testimony of petitioners and R.P. amounts to the preponderating evidence. They have outlined a lengthy history of circumstances in which R.P. has been subjected to physical and verbal abuse, both in school and out. That information has been available to school officials from the beginning of the pattern of

conflict between R.P. and the Group. The other children have admitted both their antagonism and much of their actions, according to the guidance counsellor and school principal. The Board did not rebut testimony that the final incident on January 30, 1985 was observed by four school maintenance employees. According to Mr. Chinnici the Board itself, without hearing, apparently made a judgment concerning this latter incident that both R.P. and at least one member of the group participated and bore equal responsibility. None of the Group members testified before the Board nor did any of their parents. None appeared at the instant hearing. The evidence adduced on their behalf by administrative officials of the Board was hearsay lacking any residuum of competent evidence. Weston v. State, 60 N.J. 36 (1972).

Whether R.P. was Deprived of a Thorough and Efficient Education:

These proceedings cannot resolve what individual culpability exists among the children involved. That was not the purpose of this hearing. Nevertheless, it would be difficult to defeat the conclusion that R.P.'s thorough and efficient education, which the Board must provide, was halted on January 31, 1985, after petitioners removed their daughter from school. Homebound education made available two weeks later, with no sure end in sight, cannot be thought to satisfy this constitutional right. In rebuttal to petitioners' charges, the Board attests through its officials that it did what it could. These efforts included attempts by the guidance counsellor to assist the Group and R.P. in exploring their feelings. Eventually, school action expanded to discussions with the school principal, Mr. Gallucci, and the superintendent, Mr. Chinnici. Neither the principal nor the superintendent believed that discipline was appropriate. Mr. Gallucci thought that R.P. should be left to "suffer the normal viscissitudes" which are inescapable in a school setting for children her age. Mr. Chinnici saw no possibility of intrusion by the school that went beyond the "plans" of R-1 and R-2. The need for "due process" to the Group stood as a bar. Additionally, the school psychologist had persuaded officials that an answer might lay in referral of R.P. for evaluation under the special education regulations (only partially because of the length of her absence). The Group, on the other hand, was not viewed as sharing the need for discipline or referral.

The Board's response to petitioners' charges is puzzling. Whatever the good intentions of these experienced school administrators, it is obvious they failed in their efforts to assure that a thorough and efficient education was available to R.P. Board

officials, in all the incidents reported, put too fine a point on how far they might involve themselves. The child was plainly traumatized to a degree requiring psychological care by her experience. Moreover, there was, throughout, a danger that she would be physically harmed by the Group (or even, to a lesser extent, the reverse). According to the Board's own witnesses, no one involved, including the Group itself, disavowed the continuing hostilities involving R.P. The school had an obligation to intervene and end this state of affairs. Instead of assisting the Group to get in touch with its feelings, thorough and efficient education would have been better served if the school had gotten in touch with all the girls' parents. Due process does not mean that selected participants in harmful and improper behavior be freed from inconvenience. The school had an obligation to alert the parents of all the children involved, as opposed to fending off the persistent, and undoubtedly irritating complaints of R.P.'s mother. At that point, both any contributory behavior of R.P. and that of the Group could be gauged. Firm and forthright action by the school thereafter could have been subject to challenge by any or all of the parents through an informal hearing before Administrators, and upward. Thus would the needs of due process have been satisfied, Goss v. Lopez, 419 U.S. 565 (1975). These needs would not have been met by isolating R.P., in full or in part, as the school's "plans" would have done.

There is a real danger to second-guessing school administrators with decades of experience. The circumstances of this intense dispute are removed in time and memory. However, the evidence of record is wholly persuasive that the school, and eventually the Board, gave way to a group of children who disliked R.P. and her mother. They resented the official presence of R.P.'s mother on school grounds for school-related activities which she had a right to pursue. School administrators adopted a conciliatory approach apparently on the theory that these unfortunate circumstances were a predictable by-product of normal pre-adolescent female development. R.P. was obliged to endure and to profit from these "viscissitudes". It is at least arguable whether such a defense can withstand the application of common sense, much less legal doctrine. In any event, it is virtually certain that the law is inconsistent with such a theory.

The Board had an obligation to provide for the safety of R.P. and, for that matter, the Group. All the children involved were exposed to physical as well as emotional hazard in the course of their recurring, often violent clashes. R.P. herself was under the care of a doctor who counselled her to avoid the Middle School altogether. There is no doubt that in New Jersey, school personnel have a duty to exercise reasonable

supervisory care for the safety of students entrusted to them. Their accountability for injuries resulting from failure to discharge that duty is firmly established. Caltavuturo v. Passaic, 124 N.J. Super., 361, 366 (App. Div. 1973), Jackson v. Hankinson and Bd. of Ed., New Shrewsbury, 51 N.J. 230, 235, 236 (1968); Titus v. Lindberg, 489 N.J. 66, 73 (1967). The "plans" proffered by the Board and its administrators do not amount to supervision. They are palliatives which place the onus on R.P. and her mother to adapt quiescently in the face of physical and mental abuse emerging from her relationship with a group of schoolmates. The Board had a duty to impose a firm control over the environment of their school. Instead, the school administrators adopted what was, at least in part, a "hands-off" policy with respect to the Group and their parents. The nearest step toward firm control was the last offer following petitioners' meeting with the Board. R.P. was to be dropped at the school without her mother. School officials, at that late date, would then have cautioned all involved that discipline would follow if friction continued. This exclusionary approach was hardly an enticing gesture, to a mother and child already frantic from anxiety over lack of protection.

Whether Petitioner Should be Reimbursed for Unilateral Placement of R.P. outside the Delran district:

The Commissioner of Education has authority to direct the Board to reimburse petitioners. His constitutional duty is to assure the maintenance and support of a "thorough and efficient system of public schools," N.J. Const., Art. VIII, Sec. 4, par. 1. Following Robinson, et al., v. Cahill, 62 N.J. 473 (1973) and its sequellae, the Public School Education Act of 1975 particularized the Commissioner's affirmative obligation to see to it that the statutory objectives are met L., 1975, c. 212 (N.J.S.A. 18A:7A-1 et seq.), Robinson, et al., v. Cahill, 62 N.J. at 509n. The Act at N.J.S.A. 18A:7A-5 demands that a thorough and efficient system of free public schools include a number of elements. One among them is:

> F. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies; [emphasis added]

The broad-ranging power of the Commissioner and the State Board of Education (as head of the Department of Education) to inquire into the thoroughness and efficiency of the operation of local public schools, has been made clear by the Supreme

Court in In re Upper Freehold Reg'l School Dist., 86 N.J. 265, 272-273 (1981). Neither party has cited any case in this State supporting compensation for unilateral placement of a child in a different school district for safety reasons. The nearest analogy may be found in the special education regulations, at N.J.A.C. 6:28-1.1 et seq. These regulations control placement of educationally handicapped pupils. There, at N.J.A.C. 6:28-4.2(a)7, the rule permits placement of a handicapped pupil in a privately operated special class, only with written approval of the Department of Education through a county office. However, the Commissioner in exceptional circumstances of unilateral placement, has awarded reimbursement. He has done so after discerning shortcomings in the conduct of a local Board. Harbor Hall School v. Township of Weehawken Boe., 77 S.L.D. 342; "J.G.", by his parents v. Boe. of Pompton Lakes, 79 S.L.D. 105. The rationale for these exceptions was the Board's failure to provide a free, appropriate education, N.J.A.C. 6:28-2.1(a).

Here, special education regulations obviously do not govern. However, in like fashion, the Commissioner should exercise his constitutionally and statutorily based powers, cited supra to carve out an exceptional remedy. He should require reimbursement for past expenses in the Cinnaminson School district, because of the Board's failure to provide R.P. with a thorough and efficient education.

Petitioners did all that they could to obtain assurances of their daughter's safety. In response, the Board offered alternatives which would remove R.P., in whole or in part, from the schedule accorded all other students at Middle School. The girls in the Group suffered no such removal from the Middle School mainstream. Once the Board took its final position, G.P. sought timely intervention by the Commissioner for any relief available. In the interim, petitioners moved to insure the safety of their child in a different school district. They should not now be penalized for doing so by absorbing the costs of this last desperate attempt to have their child educated in a public school system without peril.

The Board argues correctly that its decision should not be overturned unless it is arbitrary, capricious and abusive of its discretionary power. However, in focusing on the isolation of R.P., failing to resolve whether discipline was appropriate, and, finally, seeking to bar R.P.'s mother from a meeting which included her alleged tormentors en masse, the Board's actions warranted reversal.

Nevertheless, although compensation for past schooling is appropriate, this subsistence should not be indefinite. All the girls are older, and apparently in High School. New efforts should be made by the Board to resolve this impasse between R.P. and the Group. These steps should include a meeting of school administrators with the parents of all involved. The administrators should outline what has occurred and express those cautions which seem appropriate concerning future discipline for verbal or physical assaults. Clearly specified guidelines concerning conduct and penalties should be provided all the parents and all the children. Once done, R.P. should then return to the next level of schooling in the Delran school district.

CONCLUSION

I CONCLUDE, based on my review of the record, including the credibility of witnesses, and for the reasons expressed in the ANALYSIS portion of this decision that:

1. Petitioners should be reimbursed for the cost of placement of R.P. in the Cinnaminson school district from February 1985 through her return to the Delran High School.

2. The parents of all the children involved in this long history of antagonism, including petitioners, should be asked to meet with the appropriate board and school officials. These officials should outline the history of what has occurred. They should also set guidelines and provide safeguards to assure proper deportment in the future. Clear penalties for violations should be made known to the Group, R.P., and all the parents..

3. Compensation for attendance at Cinnaminson High School should terminate upon completion of these steps, and R.P. should then return to Delran High School.

ORDER

I ORDER, therefore, that petitioners be compensated for past and current expenses incurred by placement in the Cinnaminson school district, and

I **ORDER** further that the Board now take those steps which are consistent with the foregoing initial decision.

This recommended decision may be affirmed, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, SAUL COOPERMAN,** who by law is empowered to make a final decision in this matter. However, if Saul Cooperman does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with **SAUL COOPERMAN** for consideration.

November 18, 1985
DATE

JOSEPH LAVERY, ALJ

Receipt Acknowledged:

NOV 19 1985
DATE

DEPARTMENT OF EDUCATION

Mailed To Parties:

NOV 21 1985
DATE

Ronald J. Parker / x.s.
OFFICE OF ADMINISTRATIVE LAW

ij

M.P. AND G.P., parents of R.P.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF DELRAN, BURLINGTON COUNTY,	:	DECISION
RESPONDENT.	:	

The Commissioner has reviewed the record of this matter including the initial decision rendered by the Office of Administrative Law.

It is observed that no timely exceptions to the initial decision were filed with the Commissioner pursuant to the applicable provisions of N.J.A.C. 1:1-16.4a, b and c.

The Commissioner has previously held that parents are generally not entitled to tuition reimbursement if they unilaterally withdraw their children from the school district of residence and send them to another school district. See Magdalene Lichtenberger v. Board of Education of the Borough of Maywood, 1966 S.L.D. 163, aff'd State Board 1970 S.L.D. 458; William Potter v. Board of Education of the Township of Holmdel, 1971 S.L.D. 384, aff'd State Board 1972 S.L.D. 689.

The factual circumstances of the instant matter warrant a different conclusion. It is clear that the Board herein failed to take the appropriate action deemed necessary to guarantee R.P.'s safe access to attend the public school in Delran without fear of intimidation and possible physical harm from a certain group of pupils whose behavior was not subject to the imposition of disciplinary action.

Instead the Board offered R.P. home instruction or, in the alternative, a modified shortened school day. Consequently, the alternatives left open to R.P. accorded her disparate treatment from all other pupils with regard to her right to access and attendance at school during regular school hours. It can only be concluded therefore that it was R.P. who was being unjustly disciplined for the unacceptable behavior engaged in by a group of her peers.

The Commissioner cannot condone the Board's decision in this regard which in effect excluded R.P. from regular daily attendance in the Delran School District.

Although the remedy granted herein by the Commissioner which accords petitioner tuition reimbursement is exceptional, it is nevertheless appropriate given the specific circumstances which prevail in this matter wherein the Delran Board of Education and its officials by their inaction and avoidance of responsibility gave petitioners no option but to either accept an inferior educational status or withdraw the child from school and seek alternate relief through the Commissioner. The record clearly establishes that petitioners exhausted all available avenues of redress short of formal appeal with no success. When all such avenues for redress had been exhausted, petitioners were left with no choice other than to remove their daughter from an intolerable situation and to seek the due process relief granted herein by the ALJ and affirmed by the Commissioner. Such remedy clearly is, as indicated by the ALJ, consistent with the Commissioner's broad authority pursuant to Robinson v. Cahill, supra.

The Commissioner upon review of the record hereby affirms those findings in the initial decision as his own.

Accordingly, as concluded by the ALJ the Board is directed to compensate petitioners for the past and current expenses incurred by the placement of R.P. in the Cinnaminson School District. However, the Board in effecting R.P.'s immediate return to Delran High School is directed to adopt its own remedial plan in order to take those appropriate measures deemed reasonable and equitable in providing an atmosphere within the Delran School District which promotes the safety and well-being of R.P.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 30, 1985