SUPREME COURT
OF THE
STATE OF CONNECTICUT

SC 19768

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING INC., *et al*.,

PLAINTIFFS-APPELLEES,

v.

M. JODI RELL, *et al*.,

DEFENDANTS-APPELLANTS.

BRIEF OF PLAINTIFFS-APPELLEES/CROSS-APPELLANTS

JOHN S. KIERNAN, ESQ.
JOSEPH P. MOODHE, ESQ.
MEGAN K. BANNIGAN, ESQ.
GREGORY P. COPELAND, ESQ.
DAVID B. NOLAND, ESQ.
DUSTIN N. NOFZIGER, ESQ.
EMILY A. JOHNSON, ESQ.
OLIVIA CHENG, ESQ.
ALEXANDRA S. THOMPSON, ESQ.
CHRISTEL Y. THAM, ESQ.
EDWARD BRADLEY, ESQ.
CARA A. MOORE, ESQ.
DEBEVOISE & PLIMPTON LLP
919 THIRD AVENUE
NEW YORK, NEW YORK 10022
TEL.: (212) 909-6000
FAX: (212) 909-6836

DAVID N. ROSEN, ESQ.
DAVID ROSEN & ASSOCIATES, P.C.
400 ORANGE STREET
NEW HAVEN, CONNECTICUT 06511
TEL.: (203) 787-3513
FAX: (203) 789-1605

Attorneys for Plaintiffs-Appellees/ Cross-Appellants Connecticut Coalition for Justice in Education Funding Inc., et al.

TO BE ARGUED BY:
JOSEPH P. MOODHE, ESQ.
TEL.: (212) 909-6000
FAX: (212) 909-6836
EMAIL: jpmoodhe@debevoise.com

TABLE OF CONTENTS

STATEMENT OF ISSUES

1) Whether the trial court erred in determining the applicable constitutional standard for adequacy of educational resources.
2) Whether the trial court erred in its application of the constitutional standard for adequacy of educational resources to the record before it.
3) Whether the trial court correctly determined that the state must have rational policies and standards in providing an opportunity for an adequate education to all students, and correctly determined that the state's policies for funding education in Connecticut are not rational.
4) Whether the trial court erred in its determination that the Plaintiffs failed to prove their claim that they are being denied substantially equal educational opportunities.
5) Whether the trial court correctly determined that the Plaintiffs have standing to bring this action.

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF PROCEEDINGS AND FACTS

This case was filed in the Superior Court on November 21, 2005 by the Connecticut Coalition for Justice in Education Funding, Inc. ("CCJEF") and students and parents of students in Connecticut public schools. A22-80.[1] Plaintiffs alleged that Defendants—the Governor, members of the Connecticut State Board of Education, the Commissioner of the State Board of Education, and the Treasurer and Comptroller of the State of Connecticut (together the "state") —were violating their state constitutional rights to suitable and substantially equal education opportunities. *Id.* The case was transferred to the Complex Litigation Docket, A81-82, and an amended complaint was filed on January 20, 2006.

On March 3, 2006, Defendants filed a Motion to Dismiss CCJEF's claims for lack of associational standing under *Conn. Ass'n of Health Care Facilities v. Worrell*, 199 Conn. 609, 616 (1986). *See* PA1-13 (Aug. 17, 2006 decision). Following briefing and oral argument, on August 17, 2006, Judge Shortall held that under *Worrell*, CCJEF did not satisfy the first requirement because "neither the allegation as to the coalition's membership in the amended complaint nor the affidavit of its counsel establishes that the parents who are now claimed to be members are parents of students in the public schools of Connecticut." *Id*. at PA5. The Court therefore dismissed CCJEF's claims without prejudice.

Plaintiffs sought leave to amend in order "to cure the defects" noted in the Court's decision by amending the complaint. A85-89. The motion was supported by an affidavit

---

[1] References to the Defendants' Appendix are denoted by the prefix "A." References to the Plaintiffs' Appendix are denoted by the prefix "PA." References to "MOD" are to the trial court's Memorandum of Decision, dated Sept. 7, 2016, A450-541. References to "FOF #" are to Appendix One: Fact Findings, accompanying the MOD, A542-698. References to "Sub MOD" are to Appendix Two: Subordinate Rulings, accompanying the MOD, A699-704. References to "RFA #" are to the Plaintiffs' Requests for Admission, PA21-325, submitted pursuant to the Trial Management Order Regarding Admissions entered September 16, 2015, PA19-20. References to "PTX" and "DTX" are to Plaintiffs' and Defendants' Trial Exhibits, respectively. References to "Defs.' Br." are to the brief of Defendants-Appellants/Cross-Appellees, dated Dec. 12, 2016.

from Dianne Kaplan deVries, a consultant for CCJEF, stating that the named parents were members in good standing of CCJEF. *Id.* Defendants objected that Plaintiffs should not be permitted to amend the complaint to "overcome the standing deficiency." PA14-15. Judge Shortall overruled Defendants' objection and granted Plaintiffs' request to amend. *See* PA16-18.

Defendants then moved to strike Counts 1, 3, and 4 of the Amended Complaint, contending that (1) no right to a suitable educational opportunity existed under the Connecticut Constitution, and (2) those claims were not justiciable. A90-130 (Sept. 17, 2007 decision). Judge Shortall found that Plaintiffs' claims were justiciable, A100, but struck Counts 1, 3, and 4 of the Amended Complaint, concluding that Plaintiffs' claimed violation of their right to suitable educational opportunities did not state a claim for relief. A130.

Following a grant of review of that decision pursuant to Conn. Gen. Stat. § 52-265a, on March 30, 2010 the Connecticut Supreme Court reversed the decision, holding that Plaintiffs' claims were justiciable and that there was a right under article eighth, § 1 of the state Constitution to suitable – or "adequate" – educational opportunities. *CCJEF v. Rell*, 295 Conn. 240 (2010) ("*CCJEF I*"). The Court remanded the case to the trial court for further proceedings to determine whether the state's educational resources and standards provided Plaintiffs with constitutionally suitable educational opportunities. *Id*. at 320.

Plaintiffs filed a second amended complaint on November 19, 2010, A131-94, and a third amended complaint on December 21, 2012, A225-274. The operative Corrected Third Amended Complaint ("CTAC") was filed on January 7, 2013. A275-332.

On January 9, 2013, Defendants filed a motion to dismiss, A19 (Doc. # 164), contending that Plaintiffs' claims were both unripe and moot, and again arguing that CCJEF lacked associational standing. A327 (Dec. 4, 2013 decision). After briefing and argument, Judge Dubay rejected Defendants' jurisdictional motion by deferring the issues of ripeness and mootness until trial. A356. He also denied Defendants' motion to dismiss CCJEF. *Id*.

After substantial discovery and additional motion practice, this case proceeded to trial before Judge Thomas Moukawsher, who received evidence from January 12 to June 3, 2016 and heard closing statements on August 8 through 10, 2016. The trial court was presented proof that (i) towns such as Bridgeport, Danbury, East Hartford, New Britain, New London and Windham[2] had significantly lower tax bases and fiscal resources available to fund their schools than wealthier communities in Connecticut; (ii) such towns had disproportionately higher populations of students with high educational needs, including relatively larger proportions of minority students, English language learners, special education students and students from impoverished environments; (iii) the cost of educating high needs students is significantly higher than educating non-high needs students; (iv) districts with greater populations of high needs students had significantly larger numbers of students who underperformed accepted educational standards, as measured by, *inter alia*, state-wide tests and graduation standards; and (v) districts with less local fiscal resources and greater proportions of underperforming students, like the municipalities identified above, lack specific tangible and general fiscal resources needed to educate their students, and provide comparatively lower levels of resources than do wealthier communities. *See generally infra* at §§ II-IV.

On September 7, 2016, the trial court found Connecticut's educational system unconstitutional by failing to provide suitable education opportunities in a number of respects, but not in others, and rejected Plaintiffs' claim under the equal protection provisions of the Connecticut Constitution. A450-541 (MOD). It also reaffirmed the prior rulings that CCJEF enjoyed associational standing. A701-02 (Sub MOD). The trial judge ordered the clerk to enter judgment partially favoring Plaintiffs, and retained jurisdiction

---

[2] Bridgeport is the largest city in Connecticut, and together these districts enroll more than 46,000 students. PA1252 (PTX 961), PA168-169 (RFA 719).

while ordering Defendants to submit plans within 180 days to correct the constitutional violations it had identified. A54 (MOD); *see also* A391 (Doc. # 361).

On September 15, 2016, Defendants sought permission to appeal the trial judge's decision directly to the Connecticut Supreme Court pursuant to Conn. Gen. Stat. § 52-265a. A705-716. Plaintiffs opposed the application, arguing that remedy proceedings should be completed before an appeal, but argued in the alternative that Plaintiffs be permitted to raise additional issues if an interlocutory appeal were allowed. A717-27. After the Chief Justice granted Defendants' Application, A728, Defendants filed their appeal, A730-56, and Plaintiffs filed a cross-appeal, A757-66.

ARGUMENT

During 60 days of testimony and submission of extensive documentary and statistical evidence, including hundreds of undisputed factual admissions, the trial court was presented with a powerful record that Connecticut school districts burdened with high need student populations do not have the financial resources, and the specific educational assets, they require to offer their students a minimally sound education. The evidence also showed that disparities in resources prevent students in those districts from receiving substantially equal educational opportunities. Those conclusions are corroborated by the dismal underperformance of disproportionately large numbers of their students, as measured by the state's own educational testing and quality criteria.

The trial court agreed in part. Faithful to the principles articulated in *CCJEF I*, the trial court thoughtfully reasoned that a constitutionally adequate education requires both sufficient resources as well as rational policies and standards that afford students access to the minimum attributes of an elementary and secondary education. A462-467 (MOD). In applying that standard, the court rightly found that Connecticut did not have a rational

approach for funding education in its public schools. A541.[3] Yet, despite clear evidence of substantial shortages of critical educational inputs within underperforming districts, it concluded that in the aggregate the state was providing a bare minimum of resources. That determination was incorrect, owing to the trial court taking a far more limited view of the evidence than contemplated by *CCJEF I* and the principles on which this Court grounded its recognition of the right to an adequate education under article eighth, § 1 of the state Constitution. The trial court also failed to apply the test mandated by this Court when it rejected Plaintiffs' equal protection claims.

I. The Trial Court Applied An Incorrect Standard In Assessing The Resources Provided By Connecticut To Comply With Its Constitutional Obligations Under Article Eighth, § 1.

Standard of Review

The scope of the constitutional right to education under § 1 of the Connecticut Constitution is a question of law over which this Court's review is plenary. *Schumann v. Dianon Sys., Inc.*, 304 Conn. 585, 598-99 (2012).

A. The Opinions in *CCJEF I* Guide The Determination Of This Appeal.

In its prior decision in this case, this Court held that article eighth, § 1 of the state's Constitution encompassed a qualitative standard of a minimally adequate education, and that the state is responsible to ensure that level of adequacy is met. *CCJEF I* at 244-45, 320 (Norcott, J., plurality), 320-21 (Palmer, J., concurring). Both opinions identified four broad categories of resources as "essential" to the state's fulfillment of its constitutional obligation. Those categories were adopted from the New York Court of Appeals' decision in *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307 (1995) ("*CFE I*"):

> (1) "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn"; (2) "minimally adequate instrumentalities of learning such

[3] The trial court also determined that certain other standards and policies lacked a rational foundation. *See infra* at § III.C-F.

> as desks, chairs, pencils, and reasonably current textbooks"; (3) "minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies"; and (4) "sufficient personnel adequately trained to teach those subject areas."

CCJEF I at 316 (plurality) (quoting *CFE I* at 317), 342 (Palmer, J.) (same).

Based on its reading of the plurality and concurring opinions in *CCJEF I,* the trial court concluded that, in evaluating whether the state was providing adequate resources, it was limited to considering the specific items listed in these four categories of resources. A467 (MOD). It further concluded that it was obligated to apply these categories narrowly in deference to the political branches' constitutional role in determining and implementing educational policy. A473. Both of these conclusions were flawed, and led the trial court to apply an inordinately circumscribed approach to the evidence before it.

B. The Trial Court Misinterpreted *CCJEF I* And Consequently Unduly Limited Its Review Of The Evidence.

As the trial court correctly observed, the plurality and Justice Palmer both endorsed the four categories of educational inputs in *CFE I* as listing "essential" resources for an adequate education. *See* A466 (MOD); *CCJEF I* at 316 (plurality), 342 (Palmer, J.). The trial court went on to state that "Justice Palmer appeared to view [the *CFE I* elements] as enough to consider about resources" and that they set forth "a fairly easy standard to meet." A467. It further concluded that it was bound by this understanding of Justice Palmer's opinion as "the narrowest ground a majority of the upper court can agree on concerning a minimum level of resources." A467. Neither of those assertions give full vigor to the right to education a majority of justices, including Justice Palmer, protected as fundamental in *CCJEF I.*

1. The Trial Court's Limited Review Is Inconsistent With The Concurring Opinion.

The trial court's minimalist approach to applying the *CFE I* categories is not consistent with the concurring opinion, even if regarded as containing the holding of *CCJEF*

I. Having rejected what he viewed as the plurality's expansive interpretation of the constitutional right, Justice Palmer "agree[d] generally" that the four categories of "essentials" set forth in *CFE I* are "necessary" to satisfy the requirement of a minimally adequate education. *CCJEF I* at 342. But unlike the trial court, Justice Palmer did not state that these categories alone literally defined "basic enough features from which to discern a school rationally." A467 (MOD). Instead, like the plurality, Justice Palmer acknowledged that these categories must be evaluated in light of current educational standards, which continue to evolve. *See CCJEF I* at 318 (plurality) ("The broad constitutional standard also reflects our recognition of the fact that the specific educational inputs or instrumentalities suitable to achieve this minimal level of education may well change over time, as a constitutionally adequate public education is not a static concept removed from the demands of an evolving world."); *id. at* 320-21 (Palmer, J.) (the Constitution requires the state to provide an educational opportunity that is "minimally adequate by modern educational standards."). To that end, both the plurality and the concurrence recognized that the specific elements within the four *CFE I* categories were not self-defining. Thus, the plurality stated adequacy "likely will be refined and developed further as it is applied to the facts eventually to be found at trial in this case," *CCJEF I* at 318. Similarly, Justice Palmer declared that "[a]lthough these basic, minimum requirements appear to be relatively straightforward, what level of resources or specific measures are necessary to satisfy them in practice is by no means self-evident." *Id*. at 343.

The trial court's corollary duty to evaluate diligently the factual record in enforcing the constitutional standard was made clear by Justice Palmer. After embracing the *CFE I* elements, Justice Palmer immediately clarified that, although not specified, "[i]t goes without saying that a safe and secure environment also is an essential element of a constitutionally adequate education." *Id.* at 342 n.15. In addition, having emphasized that the educational opportunity must be minimally adequate by "modern educational standards," *id.* at 320-21, he opined that "instrumentalities of learning also may include

modern technologies, such as computers, that are essential to a minimally adequate education." *Id.* at 342 n.16. Justice Palmer then significantly turned to various allegations of the complaint which he concluded, if proved, would establish inadequacy:

> The plaintiffs assert, for example, that, in some of their schools, the state is failing to provide a healthy and safe learning environment and adequate and appropriate textbooks, libraries and technology. They further allege significant disparities in "[education] input statistics" between the plaintiffs' schools and the state school average in categories such as library materials per pupil, class size, and language and computer instruction. The plaintiffs also maintain that (1) "many [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students," (2) the state has failed "to provide the resources necessary to intervene effectively on behalf of at-risk students," that is, students "who, because of [a] wide range of financial, familial, and social circumstances, [are] at greater risk of failing or experiencing other unwanted outcomes unless intervention occurs," and (3) the state's education funding system is "arbitrary and inadequate," and not related to the actual costs of providing an education that meets constitutional standards.

Id. at 347 n.20.

Justice Palmer's opinion clearly contemplated a searching examination of all the evidence to consider how and to what extent resources encompassed within the various *CFE I* categories met or fell below the requirements of a modern educational system for meeting the needs of its student population, particularly in schools with concentrations of "poorly performing" and "at-risk" students. *Id*.

Unfortunately, the trial court overlooked this portion of the concurrence. It erroneously concluded that these sort of probing inquiries were not within Justice Palmer's contemplation because he did not explicitly cite the subsequent decision in *Campaign for Fiscal Equity, Inc. v. New York,* 100 N.Y.2d 893 (2003) ("*CFE II"*), where the New York Court of Appeals applied its *CFE I* standard of adequacy to the evidence subsequently presented at trial. *See* A467 (MOD), discussed *infra* at § I.D. Of significance, two of the

constitutional violations found in *CFE II* echo the sort of proof which Justice Palmer identified as sufficient to show a violation of article eighth, § 1. *First*, the New York Court of Appeals affirmed the trial court's findings that New York City schools suffered from deficient teaching because of their "inability to attract and retain qualified teachers." *CFE II* at 911. The New York Court of Appeals recognized "a mismatch between student need in New York City and the quality of the teaching directed to that need," and found that "the record contains many more facts proving a serious shortfall in teacher quality in New York City schools, proving that this shortfall results from those schools' lack of competitiveness in bidding for and retaining personnel, and proving that better teachers produce better student performance." *Id.* at 910. These findings directly address the *CFE I* category of "sufficient personnel adequately trained" to teach the required curricula. *CFE I* at 317.*Second*, the New York Court of Appeals examined the plaintiffs' evidence about class sizes in New York City schools, finding credible proof that those schools had large class sizes, and that class size negatively affected learning. *CFE II* at 911-12; *cf. CCJEF I* at 346 n.20 (Palmer, J.) (allegations of significant disparities in class sizes between plaintiffs' schools and state school average suffices to plead claim).[4]

As described below, Plaintiffs presented substantial evidence of the very sort of deficiencies that Justice Palmer said should be considered in applying the standard he believed prescribed the minimum constitutional requirements. *See infra at* § II, IV. Falsely feeling constrained, the trial court considered none of it. Conducting a bottom line analysis, it summarized four months of evidence in four pages, and was satisfied because the state in the aggregate had spent more than minimal amounts of money to build and maintain

[4] While the New York Court of Appeals did not find sufficient evidence to "prove[] a measurable correlation between building disrepair and student performance," the court kept open the possibility that deficient school infrastructure could in other circumstances lead to a constitutional violation. *CFE II* at 911 & n.4; *cf. CCJEF I* at 346 n.20 (Palmer, J.) (allegations of failing to provide a healthy and safe learning environment suffice to prove a constitutional violation).

schools, purchase supplies and provide teachers, while directing some additional funding to poorer districts. A474-478 (MOD). This high-level analysis of state-wide financing hardly satisfied the robust analysis of a fundamental right envisioned in *CCJEF I,* and which the trial court itself had recognized was required. *See* A463 (MOD) ("It would hardly make sense to take words that gave birth in one context to the highest duty and use them in another context to impose the lowest duty.")

In addition to its lack of analytic scrupulousness, the court did not focus on how and where those resources were actually deployed. *CCJEF I* recognized that the claim to be tried was that certain schools and districts were not receiving the resources and support needed to provide an adequate education to their students. *See, e.g., CCJEF I* at 345 n.19 (Palmer, J.) (constitutional obligation is based on what state reasonably attempts to make available to students "taking into account any special needs of a particular local school system"); *id.* at 347 n.20 (allegation that "many [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students" suffices to plead claim). But the trial court instead focused on whether the state was failing to provide sufficient resources to public schools in the aggregate. A474-478 (MOD). It thus did not analyze the extensive evidence of significant resource deficiencies within financially challenged districts that are responsible for educating thousands of students. That evidence, summarized below, exposes the school- and district-level inadequacies that the plurality and concurrence found constitutionally germane. Indeed, the findings the court made elsewhere clearly signal that a district-level review of the record would have led it to a different conclusion as to the adequacy of resources.

In sum, assuming that the concurring opinion in *CCJEF I* sets the standard for evaluating whether the state is meeting its obligation to provide an adequate education under article eighth, § 1, the trial court interpreted that standard far too narrowly and inconsistently with the views set forth by Justice Palmer and the plurality. Correctly applying the mandate of *CCJEF I*, the trial court should have examined the evidence of significant

deficiencies of crucial resources within Connecticut's poorest districts, and concluded that without doubt the state had failed to deliver on its constitutional obligation to provide an opportunity for an adequate education to students enrolled in those schools.

2. The Trial Court Erred In Determining The Scope of The Binding Effect Of The Concurrence.

As demonstrated by the foregoing discussion, a reasonable reading of the plurality and concurrence accommodates a fuller review of the evidence than the trial court undertook. However, the trial court actually concluded that Justice Palmer's opinion required a more limited application of the *CFE* factors because it believed Justice Palmer's purported view bound it as the "narrowest ground a majority of the upper court" could agree on in *CCJEF I.* A467 (MOD). For that conclusion, it relied on the rule described in *Marks v. United States*, 430 U.S. 188, 193 (1977), to which this Court referred in *State v. Ross*, 272 Conn. 577, 604 n.13 (2005). A467-68 (MOD). Even if Justice Palmer's views were properly read as limiting the *CFE* I factors to their literal terms, the rule in *Marks* did not preclude the court from applying a broader scope of adequacy than Justice Palmer may have approved.

In *Marks,* the U.S. Supreme Court stated that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 430 U.S. at 193. In *Marks,* the U.S. Supreme Court applied that rule in determining whether a prior decision defining obscenity was binding for purposes of applying the *ex post facto* clause in a criminal proceeding. 430 U.S. at 193-94.[5] It concluded that, because two justices had adopted a *broader* view of the First Amendment to protect materials that three other justices found protected under a narrower view, the narrower view became governing law as to whether the material at issue

[5] Plaintiffs note that because this Court in *Ross* determined that it did not need to address the issue in the prior case that was the subject of discussion, it did not have to apply the *Marks* rule. *Id.,* 272 Conn. at 602-04.

was obscene. *Id.* In other words, the narrowest ground of agreement set a minimum standard for First Amendment protection of allegedly obscene material. But because there was disagreement whether the protection should go further, there was no majority for a broader view; conversely, there also was no majority for only a narrower view.

The logical limits of the *Marks* rule comes into play here. The plurality and Justice Palmer agreed that the *CFE I* factors must be considered in determining whether the state was providing an opportunity to obtain an adequate education. *CCJEF I* at 316 (plurality), 342 (Palmer, J.). But three justices in the *CCJEF I* plurality argued for a broader reach of the constitutional right than Justice Palmer was ready to recognize, just as the concurring justices in *Marks* urged a more expansive view of the First Amendment. A proper application of *Marks*, therefore, should have led the trial court to conclude (i) that a majority of the Court in *CCJEF I* agreed that *at a minimum* the *CFE I* factors informed the scope of the constitutional right to an adequate education, but (ii) because only three of the four justices in that majority would have applied the right more broadly, the Court failed to reach majority agreement on whether the right should be applied more broadly.

Accordingly, the trial court should have treated the *CFE I* categories as a *minimum* standard of adequacy under the reasoning shared by the plurality and Justice Palmer, but also understood that a broader standard had neither been adopted nor precluded by a majority of the Court. In any event, while the lower court may have felt justified in pursuing a conservative approach in discerning the common grounds of the *CCJEF I* opinions, this Court is free to search for criteria that can secure the express assent of a majority.

C. The Trial Court Erred In Determining That A Circumscribed Review Was Mandated By Principles of Judicial Deference.

The trial court further announced that, even if it was not bound by its understanding of Justice Palmer's views, "this limited approach would still be right" because "[b]eyond a bare minimum, the judiciary is constitutionally unfit to set the total amount of money the state has to spend on schools." A468 (MOD). The trial court went on to explain that "any

constitutional standard the courts set for overall spending levels must be modest" because the court "can't sort out competing legislative spending priorities or even competing constitutional spending priorities." A468. Justice Palmer expressed similar misgivings (not shared by the plurality), and argued that defining the "precise parameters of the right established under article eighth, § 1," and not just the remedy, must take account of the political branches' prerogatives in determining educational policy. *CCJEF I* at 328-29. The trial court's independent determination that the right should be narrowly construed based on judicial deference was erroneous.

First, the suggestion that the scope of a fundamental constitutional right must be truncated because of concerns over what remedies may lie ahead is analytically misplaced. The plurality rightly took account of such separation of powers concerns as part of its justiciability determination. *See CCJEF I* at 265-66 & n.22. By contrast, separation of power concerns are not among the *Geisler* factors that guided the plurality's analysis of the substantive right afforded by article eighth, § 1. *See CCJEF I* at 269-315 (citing *State v. Geisler*, 222 Conn. 672, 684-86 (1992)). Once it is determined that there is judicial authority to determine the scope of the constitutional right, there is no basis for reintroducing such concerns to cabin the right. Rather, as the trial court itself recognized, A471 (MOD), this Court has held that deference to the political branches is duly considered in designing a remedy, after a court has determined the scope of that right and evidence of a violation. *CCJEF I* at 314 (prudential and functional concerns are "better addressed in consideration of potential remedies for any constitutional violations that may be found at a subsequent trial on the merits"); *see also Horton v. Meskill*, 172 Conn. 615, 652-53 (1977) ("*Horton I*"); *Sheff v. O'Neill*, 238 Conn. 1, 44-47 (1996).

Even more strikingly out of step with this Court's jurisprudence is the trial court's assertion that a court should trim the scope of a constitutional right because a remedy may compete for governmental resources stemming from other judicial mandates. A468-471 (MOD). No precedent is cited for that proposition, and it is refuted by the many cases

where courts have ordered relief without taking account of such external demands. *See Sheff*, 238 Conn. at 46-47 (emphasizing the urgency of finding a remedy by directing "the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas."); *Gaines v. Manson*, 194 Conn. 510, 529 n.18 (1984) ("It is to state the obvious to note that in the fashioning of a remedy for the violation of constitutional rights, fiscal consequences should not play the dominant role. Inadequate resources no longer can excuse the denial of constitutional rights."); *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995), *as clarified on denial of reh'g* (Dec. 6, 1995) ("Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system. All other financial considerations must yield until education is funded."); *DeRolph v. State*, 780 N.E.2d 529, 532 (Ohio 2002) ("[W]e reiterate that the constitutional mandate must be met. The Constitution protects us whether the state is flush or destitute."); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 397-98 (Tex. 1989) ("[E]qualizing educational opportunity cannot be relegated to an 'if funds are left over' basis. We recognize that there are and always will be strong public interests competing for available state funds. However, the legislature's responsibility to support public education is different because it is constitutionally imposed."); *Wyatt v. Aderholt*, 503 F.2d 1305, 1314-15 (5th Cir. 1974) ("It goes without saying that state legislatures are ordinarily free to choose among various social services competing for legislative attention and state funds. But that does not mean that a state legislature is free, for budgetary or any other reasons, to provide a social service in a manner which will result in the denial of individuals' constitutional rights.").

The trial court's approach would make the scope of a constitutional right vary depending on where it was in the queue of litigation, or what resources remained following choices the legislature made to fund other non-constitutional mandates and programs. While those considerations may counsel a court to "stay its hand" or tailor a remedy to take

account of pragmatic obstacles posed by limited state funds, it cannot and should not diminish the integrity of a constitutional right—especially a right declared by this Court to be fundamental. *See CCJEF I* at 314 ("concerns over complications with respect to remedies for violations will not lead us to misinterpret substantive provisions of the constitution.").

D. The Trial Court's Limited Review Is Contrary To The Jurisprudence That Informed This Court's Determinations in *CCJEF I.*

The pinched scope that the trial court gave to the constitutional right is at odds with the approach taken by the New York courts that created the very test it purported to apply. Under the "fairly easy standard" it found *CFE I* to set, A467 (MOD), the trial court surveyed the quantum of school facilities, supplies, teachers and other resources available from the state of Connecticut, without reference to any particular districts' needs and shortages. A474-478 (MOD). Predictably, the court concluded that the perceived low constitutional standard was met. A474 (MOD).

By contrast, the court that conceived the *CFE I* standard demanded a far more intensive examination of how New York state was providing those essential resources. In *CFE I,* the New York Court of Appeals did not "attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails." *CFE I* at 317. Rather, having created the generic template, it remanded the case for "[t]he trial court . . . to evaluate whether the children in plaintiffs' districts are in fact being provided the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them to function as civic participants capable of voting and serving as jurors." *Id.* at 317-18.

In contrast to the fleeting review of the record made below, the New York trial court embarked "on an examination of the massive factual record presented by the parties," and prepared over fifty pages of rigorous factual analysis. *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475, 478, 488-540 (N.Y. Sup. Ct. 2001). It conducted a systematic, layered analysis of each of the *CFE I* factors. With regard to teachers, the court found, *inter alia*, that "[u]ncertified teachers tend to be concentrated in New York City's lowest performing

schools," *id.* at 493, "New York City teachers are in general less qualified than those in the rest of the State," *id.* at 495, and "New York City public school teachers tend to have fewer years' experience than teachers in the remainder of the State," *id.* For school facilities and classrooms, the trial court devoted individual sections to the conditions of city public schools and the link between inadequate school facilities and student outcomes, overcrowding, and class size. *Id.* at 501-13. For the instrumentalities of learning, the trial court devoted individual sections to textbooks, library books, classroom supplies and equipment, and instructional technology. *Id.* at 513-15. And for outputs, the trial court looked at graduation/dropout rates and standardized test scores (including state and city tests). *Id.* at 515-20. The trial court also explored the connection between the state's public school funding system and educational opportunity. *Id.* 520-40. In doing so, the trial court made explicit credibility determinations of the evidence, analyzing particular studies and assessing which testimony it found authoritative and credible. *See, e.g.*, *id.* at 496 (evaluating testimony of state Department of Education personnel and superintendents); *id.* at 497-500, 524-25 (discussion of expert witnesses' testimony).

In *CFE II*, the Court of Appeals affirmed the trial court's thorough analysis of the evidence in finding that the constitutional standard was not met. *CFE II* at 906-07. That Court explained "[i]n keeping with this core constitutional purpose and our direction further to develop the template, the trial court took evidence on what the 'rising generation' needs in order to function productively as civic participants, concluding that this preparation should be measured with reference to the demands of modern society and include some preparation for employment." *CFE II* at 905. Examining the trial record, the Court of Appeals concluded that "teaching is inadequate" in New York City schools based on the evidence detailed by the trial court. *Id.* at 909-11. The Court of Appeals also credited "measurable proof" that New York City schools had excessive class sizes and that class size affects learning. *Id*. at 911-12. As the New York Court of Appeals made clear, this comprehensive and careful consideration of the evidence was the proper way for the

judiciary to effectuate the standard it had set forth in *CFE I.* "This organization of the facts follows naturally from our summary of the 'essentials' in *CFE . . . .* " *Id*. at 908.

Although comparable evidence had been compiled in the proceedings below on the same and other issues, the trial court undertook no such thorough review. Instead, believing its hands were tied to consider nothing more than the literal categories set forth in *CFE I,* it conducted a simplified review focused on the overall amount of tangible components and financial resources provided by the state, which it saw as producing something "recognizable under contemporary standards as schools." A474-478 (MOD).

It seems unlikely that a majority of this Court would endorse the conceptual terms of the *CFE I* standard for adjudicating adequacy, but then disavow how its creator applied it in practice. It is akin to acknowledging paternity, but disowning the child. The trial court's approach disregards the plurality's express expectation that the standard "likely will be refined and developed further as it is applied to the facts eventually to be found at trial," and Justice Palmer's observation that "what level of resources or specific measures are necessary to satisfy them in practice is by no means self-evident." *CCJEF I* at 318 (plurality), 343 (Palmer, J.). The minimal examination of the record is also at odds with the heightened standard of scrutiny that the trial court properly noted is due a fundamental right. A463 (MOD). Having failed to engage the trial record with the proper degree of scrutiny, the lower court's determination that adequate resources are provided by the state to its education system must be reversed.

II. An Appropriate Review of the Evidence Demonstrates That Connecticut Is Not Providing The Resources Needed To Afford An Opportunity for An Adequate Education to Large Numbers of Students.

A full consideration of the record below reveals that Plaintiffs proved beyond a reasonable doubt that numerous students are not afforded the opportunity for an adequate education in the schools they attend. Had the trial court not limited its analysis to the literal

bounds of the *CFE I* template, a full consideration of the issues and evidence compiled below should have led it to the same conclusion.

Standard of Review

The question of whether Plaintiffs' constitutional right to adequate educational opportunities under § 1 of the Connecticut Constitution has been violated is a question of law that is subject to plenary review by this Court. *In re Cassandra C.*, 316 Conn. 476, 496 (2015). A trial court's factual findings, by contrast, are subject to review only for clear error. *Id*. Contrary to Defendants' claims, the trial court's finding that the resources provided by Connecticut schools meet a minimal standard of constitutional adequacy is not a "factual finding" but is a mixed question of law and fact over which this court exercises plenary review. *Scholastic Book Clubs, Inc. v. Commission of Revenue Services*, 304 Conn. 204, 225 (2012). This finding is distinct from the trial court's findings with respect to the quantity and quality of resources provided by Connecticut schools, which are factual and subject to review only for clear error.

A. The Trial Court Failed To Consider Key Metrics For Evaluating The Adequacy of Educational Resources.

The appropriate standard of adequacy necessarily depends on answering the question – adequate for what? As Justice Schaller stated in his concurring opinion in *CCJEF I*,

> That determination [that the Constitution guarantees the right to an adequate education] merely gives rise to the inevitable question as to adequacy "for what purposes?" Two general principles guide my inquiry as to the contours of the right. First, the question "for what purposes" suggests that the direction of the inquiry should be goal directed; that is, the inquiry seeks to determine the goals to be served by the adequate education. Second, in answering the question, it is necessary to examine why education has been elevated to the status of a fundamental right protected by our state constitution. In other words, only by understanding what we as a society so value in education, may we discern "for what purposes" such an education should be adequate.

CCJEF I at 368 (Schaller, J.); *see also* Merriam-Webster, "Adequate," *available at* http://www.merriam-webster.com/dictionary/adequate) (defining "adequate" as "sufficient for a specific requirement"; PA1049 (PTX 236).

The plurality answered this question by concluding that the Constitution

> . . . entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting. A constitutionally adequate education also will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy. To satisfy this standard, the state, through the local school districts, must provide students with an objectively 'meaningful opportunity' to receive the benefits of this constitutional right.

CCJEF I at 314-15. Justice Palmer emphasized his agreement with the plurality that the key focus in examining the adequacy of education is on the *opportunities* made available to students, not necessarily their *achievement* of a specific outcome. *Id.* at 344-45 & n.19 (quoting Justice Borden's statement in his *Sheff* dissent that the "obligation to provide a minimally adequate education must be based. . . on what the state reasonably attempts to make available to [students], taking into account any special needs of a particular local school system.").[6] But he was aligned with the plurality as to the objectives of those educational opportunities. *See id.* at 344 (Palmer, J.) ("[Education] is the very foundation of

---

[6] Justice Palmer caveated that "because student achievement may be affected by so many factors outside the state's control," he could not agree with the "plurality's assertion that '[a] constitutionally adequate education . . . *will leave* Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy.'" *Id.* at 345 n.19 (emphasis added). Thus, while Justice Palmer made clear that he did not believe that an adequate education would necessarily *result* in students being prepared for higher education or productive employment, nothing in his opinion suggested that he disagreed that the *goal* of an adequate education must be to provide students with an opportunity to be prepared higher education or productive employment, as the next sentence of the plurality opinion states the goal to be.

good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)).

As the trial court recognized, a substantively meaningful elementary and secondary education is more than simply attending school through the prescribed grades. A495, 504 (MOD). It is common sense that an elementary education should be reasonably designed and sufficiently implemented to allow a student the chance to progress to a secondary school. No less intuitive is that a secondary education should be reasonably designed and sufficiently implemented to enable a student the chance to participate in the normal expectations of post-secondary school life: to engage in our society as a full citizen, and to either enter a vocation or continue on to higher education—in Justice Palmer's adopted words, the opportunity "to succeed in life." *CCJEF I* at 344. Whether one uses the widely-embraced concept of "college and career ready," as Connecticut does, or some other equivalent terminology, the notion of an elementary and secondary school being implemented to promote such a societal end is logically inherent in the right affirmatively afforded by article eighth, § 1. *See* PA93-94 (RFA 389-396).

Both the plurality and Justice Palmer also agreed that measures of student performance and student achievement are relevant indicators as to whether those opportunities are being made available. *CCJEF I* at 313 n.57 (plurality), 345 n.19 (Palmer, J.). Measures of student achievement thus serve as evidence of whether the educational system is meeting the adequacy requirements for providing students a meaningful opportunity to be prepared for post-secondary education or employment.

The proper standard for an adequate education under the state Constitution therefore requires that elementary and secondary schools be able to address the educational needs of their student populations through sufficient resources that allow a meaningful opportunity for all students – whatever their circumstances – to become responsible citizens able to participate fully in democratic institutions (such as jury service

and voting), to be prepared to progress to institutions of higher education or attain productive employment, and thereby contribute to the life of the community. The "meaningful opportunity" to reach these educational system goals requires the state to deploy the necessary resources that can enable students to reach those goals.

The specific educational resources that are required will vary depending on the particular student needs within a classroom, school or district. But a constitutionally adequate education must be one that provides those necessary resources at a level sufficient to enable *all* students the opportunity to reach the goals of citizenship and productivity identified by the Supreme Court. When schools and districts do not provide the educational opportunities guaranteed to their students, the state fails its constitutional obligation.

B. The Evidence Establishes Beyond A Reasonable Doubt That The State Has Failed To Provide Sufficient Resources To Afford Numerous Students An Opportunity For An Adequate Education.

Viewed under the proper standard for evaluating adequacy, the evidence presented at trial clearly establishes that substantial numbers of Connecticut students are not receiving adequate educational opportunities. The trial court recognized that the constitutional guarantee of an adequate education for all students requires a system that delivers adequate educational resources targeted to meet student need. A482 (MOD) ("Against the harsh realities of our poorest communities, it is inconceivable that we adopted a constitutional guarantee blind to the effort required to deliver adequate public schools across a broad spectrum of need."). As Justice Palmer recognized, a constitutional violation would exist when "the state has failed 'to provide the resources necessary to intervene effectively on behalf of at-risk students,' that is, students 'who, because of [a] wide range of financial, familial, and social circumstances, [are] at greater risk of failing or experiencing other unwanted outcomes unless intervention occurs.'" *CCJEF I* at 346 n.20 (Palmer, J.).

Plaintiffs' and Defendants' experts as well as Connecticut State Department of Education ("SDE") personnel agree that, with few exceptions, all students, including low-income or otherwise high-needs, students are capable of learning and achieving good educational outcomes. PA499-504, PA526 (Rabinowitz testimony); PA638 (Pascarella testimony); PA883-884 (Villanova testimony); PA860 (Hanushek testimony); A893-894 (Podgursky testimony); PA925-927 (Cohn testimony). The parties' evidence also is unified in showing that students in poverty and other high-needs students face unique educational challenges that must be addressed with added and specialized educational resources. PA1047, PA1085-1086 (PTX 236); PA554-555, PA559-560 (Baker testimony); PA390-392 (Quesnel testimony); PA663-664 (Hakuta testimony); A980 (Villanova testimony); PA833-834 (Seder testimony). Defendant's expert on education policy, Robert Villanova, exhorted, "[e]very district has challenges, but poverty amplifies in dramatic ways the challenges educators face." A980 (Villanova testimony). What the trial court's findings and the evidence show is that, far from receiving educational resources necessary to meet their needs, the students and districts that are most in need are persistently hampered by less experienced teachers; shortages of specialist teachers, interventionists and counselors; larger classes; inadequate classroom facilities; and insufficient quantities of educational technologies and instructional resources. Unsurprisingly, given those resource deficiencies, students educated amid these deprived circumstances fail to perform at academic levels necessary to progress to higher education or obtain productive employment.

As noted, test scores and other measures of student performance are undeniably key indicators of whether the system is fulfilling its constitutional duty to provide an adequate education to all students. That data glaringly spotlight deep deficiencies in the state's most-hard-pressed communities. As the trial court stated, "[g]aps in school resources are grappled to gaps in school results." A483 (MOD). The trial court's extensive findings leave little doubt that "the state of education in some towns is alarming," A485 (MOD), and that unacceptably large numbers of students in poverty and students in high-

needs districts are not achieving anywhere near appropriate educational outcomes. A485-A488, A500-503 (MOD); A554-573 (FOF 72-102) (Connecticut Academic Performance Test (CAPT) and Connecticut Mastery Test (CMT) scores), A574-576, 585-587 (FOF 105-107, 123-126) (Smarter Balanced Assessment Consortium (SBAC) scores), A576-578, 589-591, 593-594 (FOF 108-111, 136-141, 143-149) (National Assessment of Educational Progress (NAEP) scores), A578-582, 598-600 (FOF 112-117, 173-174) (SAT & AP scores), A583-585 (FOF 119-122) (college attendance), A601 (FOF 185-189) (need for college remediation courses). In Bridgeport, 90.9% of students did not meet state standards on the SBAC in Mathematics, and 76.2% did not meet it for English Language Arts. A575 (FOF 106). In wealthier districts, nearly all had single digit percentages of students who scored at level 1 (the lowest score a student can achieve on the SBAC); in stark contrast, 49% of Bridgeport students scored at level 1 in English Language Arts, and 67% scored at level 1 for math. A575-576 (FOF107). Other high-needs districts had similarly high percentages of students who scored at this lowest level. *Id*. The court succinctly summarized what the numbers make plain: "The facts are incontestable. Test scores show that high schools in impoverished cities are graduating high percentages of their students without the basic literacy and numeracy skills the schools promise." A500 (MOD). Notably, poverty is not the sole factor driving these outcomes. Test data show that students in poverty (represented by students receiving free and reduced price lunch) in wealthier, better-resourced districts consistently outperform students in poverty from lower wealth districts. A586-587 (FOF 124, 126), PA247, PA249-251 (RFA 891, 901-903). These appalling deficiencies send a strong signal that critical needs are not being addressed in these schools.

The evidence, which unfortunately the trial court failed to analyze thoroughly, clearly shows a pattern of deficits of key resources in districts with large numbers of high needs students.[7] The court itself made numerous findings regarding shortages of key personnel in

[7] The evidence at trial focused on six districts in particular—Bridgeport, Danbury, East Hartford, New Britain, New London, and Windham—which have large populations of

these districts, which it then disregarded. *See, e.g.* A636, 644-646, 653-655, 663-664, 670-672, 679-680, 686-687, 691-692 (FOF 468, 470-472, 517-522, 524, 590-599, 611, 691, 694-97, 699-700, 702-703, 760-761, 764-766, 768-770, 773, 789-790, 862, 879, 938-939, 948-950, 996-998.).

The trial court found that that "[t]he quality of teachers is the single most important school-related factor affecting student achievement." A626 (FOF 391). But far from being in a position to offer additional resources to counter the educational challenges presented by their student populations, high-needs districts have less capacity to attract and retain quality experienced teachers, and consequently field less experienced teachers.[8] A588 (FOF 129) ("Poorer school districts tend to have more inexperienced teachers and principals than rich ones."); A588 (FOF 131) ("Schools that have higher concentrations of poverty have a more difficult time recruiting and retaining teachers."); *see also* A550-554, 588 (FOF 59-71, 132-134); PA1554, PA1556, PA1560-1561, PA1566-1569 (DTX 3888); PA1231-1233 (PTX 904). The Defendants' own documents demonstrate the challenges in attracting and retaining teachers in high-needs districts. The "Equitable Access to Excellent Educators Plan," prepared by SDE in 2015, examined metrics such as the percentage of teachers with four or less years of experience and teacher mobility, and revealed "an equity gap. . . . for every metric we included in our analyses for both high-poverty and high-minority schools." PA1574 (DTX 3888). The significant gaps identified included teacher and principal inexperience, teacher and principal retention, and specific designated shortage

---

low-income, minority, special education and English learner students. A653 (FOF 584-587); A662 (FOF 678-681); A669 (FOF 748-753); PA168-169, PA172-176 (RFA 719, 730-735).

[8] As the trial court recognized, teacher experience within the first five years of teaching has a significant impact on the quality of education provided. A519 (MOD); *see also* PA736-737 (Rice testimony); PA856-857 (Hanushek testimony); PA817 (Podgursky testimony). High teacher turnover similarly has a negative effect in that experienced teachers are often replaced by more inexperienced teachers. PA741-742 (Rice testimony).

areas (particularly mathematics, science, and bilingual education). *Id.* at PA1574-1575; *see also* PA1510 (DTX 2484) (presentation given by SDE's Chief Talent Officer stating that "there is an inadequate supply of effective teachers and an inequitable distribution of that talent.").

As an example, over 200 teachers leave Bridgeport each year, based in large part on working conditions and salary levels. A653 (FOF 588). Superintendent Rabinowitz explained that this turnover hurts the quality of education, given the need for teachers to develop the skills and knowledge that come with experience. PA508 (Rabinowitz testimony). Finding qualified teachers in subject shortage areas – special education, world language, math, and science – is particularly difficult, resulting in several positions in these important areas being filled by permanent substitutes instead of certified teachers in Bridgeport. A653 (FOF 588). New London High School likewise had positions that it could not fill with qualified teachers, and also used substitute teachers not qualified to teach the subjects for which they were assigned, including one hired to teach a Spanish world language class who could not speak or read Spanish. A687 (FOF 949). In Windham, the low salary scale for teachers poses a barrier in attracting qualified teaching staff and contributes to loss of experienced teachers through turnover. A680 (FOF 879).

The evidence demonstrates particularly acute deficiencies in resources targeted to the needs of at-risk students. The trial court itself identified many of these shortfalls. *See* A663-664 (FOF 696-697) (because there is only a single teacher for the reading intervention class at East Hartford High School, "many students, including those far below grade level, can't receive" reading interventions; similarly, "limited staffing prevents some students eligible for math interventions from getting them."); A672 (FOF 790) ("Smalley Academy in New Britain does not have any math interventionists and as a result cannot follow with the state's recommended interventions from the SRBI framework."); *see also* A653-654, 670 (FOF 590, 604, 762). Jackie Simmons, a Bridgeport elementary school principal, explained that due to limited staffing and significant student needs, her school

was unable to provide academic support to all students who needed it, instead triaging to focus their efforts on the students most in need. PA607-613 (Simmons testimony). Those students who were not able to receive sufficient academic support were unable to keep up academically as they progressed through the grades. *Id*. Educators in other schools in low-wealth districts told a similar story – too many students in need of intensive academic support in schools with too few staff and too little time in the day, even with all available staff contributing whatever support they are able to provide. *See, e.g.*, PA946-948 (Quesnel testimony) (additional staff and time are needed to provide appropriate academic interventions for struggling students); PA657 (Briganti testimony) ("The largest challenge is being able to meet their needs. We can easily identify them. We know who they are and what they need, but it's getting to them. It's the time. It's the number of people that we need ..."); PA670-674 (Furlong testimony) (many students who are identified as needing additional support in fluency and comprehension do not receive support because of a lack of resources).

The record is replete with evidence proving that in every one of the districts as to which evidence was submitted, significant numbers of experienced, specialized teachers, interventionists, and other professionals were missing from schools where they were pressingly needed. Given how critical teachers are to the fulfillment of the obligation to provide suitable educational opportunities, these pervasive deficiencies alone prove a failure of constitutional dimension. The crying need for specializing interventionists is dramatically revealed in Bridgeport, where data reveal broad underperformance among its students.[9] Understandably, the court found that "[s]econdary students in Bridgeport require

[9] Three-quarters of Bridgeport students did not meet the benchmark achievement level for English Language Arts on the 2014-15 SBAC. A575 (FOF 106]. SAT scores show 90% of its students were not college and career ready, and PSAT scores show just 1.9% of Bridgeport students were on track to be college and career ready. A500 (MOD).

interventions in literacy." A654 (FOF 595). However, the court confirmed "there are no reading teachers or reading interventionists in the comprehensive high schools." *Id*.

The record is flush with evidence of other troubling inadequacies. Students in high-needs districts are often taught in classrooms that contain significantly more students in classes compared to better-off schools, even though the concentration of needs students would call for reducing class sizes.[10] PA1166 (PTX 611); PA1364 (DTX 6444). For instance, as the trial court found, recent cuts in state funding are increasing some class sizes in Bridgeport (possibly Connecticut's neediest district) to 29 students. A491 (MOD) ("Class sizes are increasing in many places to 29 children per room - rooms where teachers might have a class with one third requiring special education, many of them speaking limited English, and almost all of them working considerably below grade level."); *see also* PA512-513 (Rabinowitz testimony); PA603-606, PA621-622 (Simmons testimony); *see also* A671 (FOF 776) (Lincoln Elementary School in New Britain "has EL classes that pose overcrowding and safety concerns," including a first-grade class with 28 students and up to 34 students in the past); A672 (FOF 782). Additionally, the evidence at trial established that class sizes are an important part of working conditions in terms of attracting and retaining teachers. Districts with higher class sizes may need to offer higher wages or other incentives to offset challenging working conditions such as larger class sizes. But these districts generally cannot do so (and in fact often have lower wages),

---

[10] As a general proposition, the trial court concluded that the evidence regarding class size and achievement is mixed and mostly inconclusive. A537-A538 (MOD); A631 (FOF 433). But the undisputed evidence presented at trial is that smaller class sizes do have a positive effect on education, particularly in the lower grades and for students in poverty. PA554-555, PA575-581, PA586 (Baker testimony); PA683-685 (Levin testimony); PA740, PA742-743 (Rice testimony); PA1031, PA1033, PA1035 (PTX 189); PA1098-1099 (PTX 236); PA1288-1289 (PTX 966); PA1330-1332 (PTX 1124); PA857-859 (Hanushek testimony); PA837-838 (Seder testimony). The lack of disagreement that smaller classes are beneficial at least during the critical early grades and for low-income students clearly establishes that larger class sizes in high needs districts are a materially important problem reflective of inadequate resources.

thereby amplifying their inability to attract and retain experienced teachers. PA362-364, PA367-368 (Locke testimony); PA371-372 (Locke testimony); PA508-511 (Rabinowitz testimony), PA586-588 (Baker testimony); PA738-739, PA744-747 (Rice testimony).

Non-personnel supports are similarly lacking in low-wealth districts. The court found that schools in low-wealth districts lack media centers with sufficient materials and sufficient certified staff that can instruct and assist students, as well as sufficient access to modern technology. A654, 663, 691-692 (FOF 605, 685-686, 996-1004). East Hartford has no money in its budget for library books, and in order to save costs most of its media centers are staffed by paraprofessionals who can maintain the centers, but are not able to assist students with research techniques and other modern academic skills. A663 (FOF 685-686). Danbury High School likewise has no money in its budget for library books. A692 (FOF 1003). Danbury High School has just media specialists and no assistants working in its media center, serving approximately 2,900 students. A691-692 (FOF 996-997). Nearby Greenwich High School, by contrast, has 4-5 media specialists, two media assistants, and a staff of technological assistants for its approximately 2,700 students. A998 (FOF 998).

Many educators testified to the importance of socio-emotional support services that assist in clearing barriers that prevent students from accessing their academic programs. These services are essential for students to be in a position where they can learn and have the opportunity to be successful. *See, e.g.*, PA521-523 (Rabinowitz testimony) (“[I]f you don't meet those social emotional needs of students so that they are in a frame of mind to learn, it's difficult to teach them. . . . being unable to fill those social-emotional needs results in acting-out behavior, it results in suspensions of students, it results in referrals to special ed, and it results in lower academic achievement, which then leads to frustration. Bottom line: It leads to less-than-successful citizens that we are able to graduate.”); PA675-680 (Furlong testimony) (“[F]or a lot of my students, academics are -- I don't want to say they're secondary. You know, they're tertiary. They're fourth on the list of things they care about.

Their priorities are to feel safe or feel loved or, you know, feel well-fed, things of that nature."); *see also* PA390-392 (Quesnel testimony); PA614-620 (Simmons testimony).

As with academic support services, the court found that low-wealth districts are unable to provide sufficient socio-emotional and related support services for their students given the limited resources available. *See* A588-589 (FOF 135) (table showing that "schools in low-income, high-poverty districts – despite demonstrably greater needs – have significantly fewer guidance counselors per student."); A663 (FOF 694) ("East Hartford High School has one social worker for the 400 ninth grade students, which is insufficient to meet the varied socio-emotional needs of the students."); A664 (FOF 702) ("East Hartford High School has one school psychologist for its 1700 students working 70-90 hours a week, including service at other schools, and cannot meet student need."); *see also* A653-654, 663-664, 670-672, 679 (FOF 591-594, 599, 686, 703, 759-760, 764-766, 769-770, 789, 862-867). Once again, Bridgeport illustrates the issue. Even as its student population grew, Bridgeport was forced to cut 73.5 certified staff such as certified teachers, social workers, psychologists, and special education teachers. A653 (FOF 589). Due to the recent cuts in its state educational aid, the district is forced to make still further cuts to essential services, as the trial court described:

> Administrators, clerks, guidance counselors and technicians are being shed. Kindergarten and special education paraprofessionals are being let go. Some schools have no extras like music and athletics left to cut. The school year is to be shortened. Class sizes are increasing in many places to 29 children per room - rooms where teachers might have a class with one third requiring special education, many of them speaking limited English, and almost all of them working considerably below grade level. Many of these children get their only meals at school. They don't have two parents at home. Sometimes they have no homes at all. They bounce from place-to-place and from school-to-school as the system struggles to find some way to teach them.

A491 (MOD).

Despite these findings, the trial court determined that "[j]udged against a low minimum and judged as a system" Connecticut has minimally adequate teachers, noting that "[n]o one suggests that teaching in Connecticut is broadly incompetent." A476 (MOD). But to simply judge whether, in aggregate, teaching is "broadly incompetent" is not a substitute for a rigorous examination of the evidence regarding the deficiencies and disparities in teacher experience, suitability for assignments, vacancies and shortages, significantly larger class sizes, and gaps in academic support in the form of specialists and technology—conditions which the evidence shows deprive students of the chance to obtain an adequate educational experience. These are exactly the specific resources that the New York court considered in applying the standard it developed in *CFE I,* and are materially pertinent to a fair evaluation of what "at-risk" and "underperforming" students require for an opportunity to receive a suitable education. If fairly considered here, these widespread deficits demonstrate pervasive inadequacy. *CFE I* at 317; *CCJEF I* at 346 n.20.

While that evidence suffices, it would be a mistake also to ignore the importance of pre-school education as a missing ingredient of the resources critical to providing an adequate education to high-needs students. As the trial court noted, "[a]ll of [the experts who testified] and every teacher, administrator, and professor who testified agreed that if children are going to have a chance they must learn to read, write, and do basic math in elementary school." A509 (MOD). "Witnesses for both sides agreed that high-quality preschool would be the best weapon to get ahead of the literacy and numeracy problems plaguing schools in impoverished cities." A538 (MOD); *see also* A608-610 (FOF 239-251). Early educational experiences "set the foundation for learning through the rest of a child's life," A607 (FOF 225), and early childhood education "is an important component of providing adequate and equitable educational opportunities." A607 (FOF 224).

Against the backdrop of these conclusions, the trial court found that educational deprivations for students in high-needs districts begins at an early age, with such students having less access to high-quality preschool and early educational opportunities. A613,

615-616, 655, 671 (FOF 279-286, 306-308, 614-617, 771). For instance, despite the fact that "Bridgeport has enormous needs that it struggles to meet," A482 (MOD), the court found that "[o]nly two-thirds of all students in Bridgeport attend preschool" while in "surrounding wealthier communities, the numbers are closer to 95% of students or more who have attended preschool." A655 (FOF 614). A significant number of the high-needs students of Bridgeport do not have the opportunity to attend preschool because of a lack of funding and accessibility. A655 (FOF 615). The court found that "[t]he lack of preschool for Bridgeport students has a significant effect on education in Bridgeport, in that students do not have basic academic, socio-emotional, and developmental skills when they begin kindergarten." A655 (FOF 617). The trial court correctly found that the "opportunity gap" in access to early educational opportunities that exists in Bridgeport and other low-wealth districts is a leading cause of achievement gaps in educational outcomes throughout the educational process. A607-608 (FOF 226-238).

Although the court found that this evidence of shortages in quality preschool "cries out for attention," A538 (MOD), it did not consider high-quality preschool to be part of its "constitutional" assessment of the adequacy of education. *Id*. That there is no independent constitutional guarantee of a pre-school education does not mean that its limited availability should not be considered in evaluating whether, in specific circumstances, a system is failing to provide important resources for an adequate elementary and secondary education. There is overwhelming and undisputed evidence in the record about the benefits of preschool and its unique role in closing the opportunity gap for low-income students. Faced with that evidence, the judiciary can and should consider the state's failure to make preschool opportunities available for large numbers of low-income students as an aspect of its evaluation of whether the state is providing adequate educational opportunities in its elementary and secondary schools. The state may choose to more broadly implement pre-school, or seek other avenues to overcome the inadequacies to which its limited access contributes. That legislative freedom, however, does not refute that its unavailability to large

numbers of students stands as a missing resource contributing to the inadequacies in Connecticut schools.

Conducting a probing analysis of the trial court's factual findings and other evidence presented at trial unquestionably proves that the students most in need are too often not receiving the educational services required to meet those needs. The trial court's view of the appropriate standard of adequacy was incorrectly limited, and therefore the court erred in concluding that minimal adequacy was met. Applying the appropriate standard of adequacy to the court's findings and evidence shows clearly that the constitutional promise to all students has not been met. The court's opinion strongly hints what a proper analysis would have yielded:

> It's the same in other poor towns. Too little money is chasing too many needs. . . . These schools might be recognizable as schools for constitutional purposes, but they face systemic problems that require consistent and rational solutions.

A492 (MOD). Its determination as to the adequacy of educational resources must therefore be reversed.

III. The Trial Court Correctly Determined That Rationality Is A Necessary Component Of An Adequate Education System.

Standard of Review

The question of whether rationality is a component of an adequate education system is a question of law over which this Court's review is plenary. *Schumann*, 304 Conn. at 598-99. The application of the rationality standard, which is a rule of constitutional law, to the facts presented at trial is a mixed question of law and fact over which this court exercises plenary review. *Scholastic Book Clubs*, 304 Conn. at 225. The trial court's factual findings with respect to Connecticut's system for funding education, graduation and elementary standards, teacher compensation and teacher evaluation, and special education, however, are only subject to review for clear error. *In re Cassandra C.*, 316 Conn. at 496.

A. An Adequate Education Must Be Rational.

While the trial court was far too grudging in holding that the state need expend just a "bare minimum" on its schools overall, it did more fully vindicate the constitutional right recognized in article eighth, § 1 by holding that the state must deploy resources and standards "that are rationally, substantially, and verifiably connected to teaching children." A452 (MOD). That conclusion is a logical outgrowth of the concept of adequacy: a system that allocated an otherwise sufficient quantum of resources in a manner that was arbitrary and not reasonably designed to deliver an education cannot, by definition, be adequate or suitable, as it would be neither "proper", "able" nor "adapted to [the] use or purpose" of providing an elementary and secondary education. *See CCJEF I* at 315 n.58.

The intuitive notion that a system of schooling must be based on a reasoned approach to fulfilling the constitutional objective is repeatedly reflected throughout the *CCJEF I* opinions. The trial court readily detected agreement among those in the plurality and the concurrence that "irrational public school resources and standards are unconstitutional." A462 (MOD). The opinions affirm that the educational system which the state is obligated to operate rests on a foundation built with reasoned judgments. The plurality, in explaining that students be provided with "an objectively 'meaningful opportunity' to receive the benefits of this constitutional right," quoted other decisions in which the standard of reasonableness was embedded. See *CCJEF I* at 315-316 (citing *Neeley v. West Orange-Cove Consolidated Indep. Sch. Dist.*, 176 S.W.3d 746, 787 (Tex. 2005) (education system "is adequate if districts are *reasonably* able to provide" access and opportunity to education) (emphasis in original); *Sheff v. O'Neill*, 238 Conn. at 143 (Borden, J. dissenting) (adequacy determined by what state "reasonably" attempts to make available to students, taking account of special needs of a particular local school system). Indeed, in the plurality's view, a rational system was required for the courts to abate judicial action. *CCJEF I* at 317 n.59 ("So long as [the political branches of state and local government] prescribe and implement a program of instruction rationally calculated to

enforce the constitutional right to a minimally adequate education as set forth herein, then the judiciary should stay its hand."). Justice Palmer agreed that a rational education system was necessary to fulfill the state's constitutional obligation. Even affording the political branches "considerable deference," Justice Palmer opined that legislative determinations on education were subject to "reasonable limits" and that the system could not constitutionally be so lacking as to be "unreasonable by any fair or objective standard." *CCJEF I* at 321. Justice Palmer reiterated that his view of deference presumed the "reasoned judgment" of the political branches, *id.* at 335 and 336, and that legislative actions were subject to "the limits of rationality." *Id.* at 336. *See also id.* at 344 n.18 (distinguishing the court's duty "to determine whether the legislature has acted rationally" in fulfilling its obligation, from choosing between positions on specific parameters of a minimally adequate education).

Nearly four hundred years ago, Sir Edward Coke sagely stated: "Reason is the life of the law." The Constitution of the State of Connecticut, like all law, is the product of the reasoned judgment of its people. Arbitrary and capricious action has long been the enemy of the due process of law. Declaring that the state must execute is obligation in a manner that is rational, substantial and verifiable merely articulates the long presumed pillar of reasoned judgment on which our laws are erected.[11]

Although it would seem uncontroversial to insist that a state-created system of education be defensibly rational, Defendants urge the Court to abjure any such test. They attack the trial court for relying on this Court's assertion in *Horton v. Meskill*, 195 Conn. 24, 35 (1985) ("*Horton III*") that education cases are "sui generis" and not subject to analysis "by accepted conventional tests," claiming that the Court was talking only about education

[11] Rationality is the essence of the trial court's requirement for judging the constitutional integrity of state-created educational policies and standards. The court's corollary concepts of "substantial and verifiable" can be understood as metrics to ensure that the rational basis for any state program is capable of judicial scrutiny.

equalization cases. While *Horton III* was predicated on equal protection analysis, what motivated the Court to adopt a more demanding analysis was its holding that "the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized." *Id*. at 35. Defendants likewise ignore this Court's acknowledgement that article eighth, § 1 is unique in that it affirmatively extends a right that the state must actively implement, rather than proscribing state interference with rights deemed to reside with individual citizens. *CCJEF I* at 278 (quoting *Moore v. Ganim,* 233 Conn. 557, 595-96 (1995)). The special status that the right to education enjoys as fundamental justifies assessing the rational capacity of the state's actions to fulfill its weighty responsibility.

Defendants further contend that, as long as the state is providing adequate and equitable education opportunities, the state is not prohibited from pursuing other policies unrelated to education. Defs.' Br. at 24. But that argument sidesteps the trial court's reasoned conclusion—that an adequate opportunity to access an elementary and secondary education demands both sufficient resources and rational policies designed to enable those resources to accomplish the purpose for which they were marshaled. A system that provides a minimum quantum of resources, but does not have a rational method for directing them to meet the various needs of students—especially the large numbers of underperforming and at-risk students—cannot be defended as adequate. The trial court correctly determined, therefore, that the adequacy of a system must be evaluated both by the sufficiency of its resources and the rationality of its policies.

The trial court's dual focus on standards as well as resources conforms to the directives embedded in *CCJEF I.* In the plurality opinion's final passage, it called for further proceedings to determine whether "the state's educational resources and standards" have provided students with suitable education opportunities. *CCJEF I* at 320. Justice Palmer even more explicitly confirmed the trial court's ruling, as he expressly sanctioned the trial court to determine whether "the state's education funding system is 'arbitrary and inadequate,' and not related to the actual costs of providing an education that meets

constitutional standards." *CCJEF I* at 346 n.20. This, of course, was the first assessment the trial court made in considering the state's educational policies for their rational integrity.

Accordingly, there was no error in the trial court's determination to assess the rationality of standards and policies material to the education system.

B. Connecticut's Educational Funding System Is Not A Rational Means For Meeting The State's Constitutional Obligation.

As Justice Palmer suggested, a system for funding education cannot be "arbitrary and inadequate" and "not related to the actual costs of providing an education that meets constitutional standards." *CCJEF I* at 346 n.20. The trial court agreed, holding that "the state cannot meet its educational duties under the constitution without adhering to a reasoned and discernible formula for distributing state education aid" that "appl[ies] educationally-based principles to allocate funds in light of the special circumstances of the state's poorest communities." A492 (MOD). The trial court concluded that Connecticut's funding system fails this requirement of being rationally related to providing an opportunity for an adequate education. A494 (MOD). There is more than ample evidence to support that determination beyond a reasonable doubt.

The state's financing of education lacks this rationality in two major respects. First, whatever the merits of the primary device for state educational funding—the ECS formula—it is not the basis for state funding of education, having only been partially funded and now entirely jettisoned. Second, the formula itself is not rationally designed, being based on factors and weightings that were arbitrarily incorporated without any connection to the actual cost of educating Connecticut students.

1. Connecticut's System for Funding Education.

As the trial court determined—and the Defendants do not dispute in their brief—the state has a non-delegable constitutional duty to maintain the education system. A454-460 (MOD). Historically, the state has relied on a mixed source of funding for its schools, with localities funding the major share and the state providing the balance (together with federal

funds). *See* PA105 (RFA 455-57) (according to SDE data, localities provide 51.9% of educational funding); PA105-106 (RFA 458-60) (57.4% according to federal government calculations). According to the federal government, only two states are more reliant than Connecticut on local funding to pay for education. PA106 (RFA 459). Local and state funding for education is especially important due to the relatively small size of federal funding, which constitutes about 5% of the total. PA105 (RFA 456, 458).

The property tax is the primary means by which towns in Connecticut generate revenue to pay for education. PA441-446, PA492-494 (Finley testimony); PA1268 (PTX 961). As this Court knows from the *Horton* litigation, Connecticut towns have vast differences in their ability to tax property wealth, as measured by equalized net grand list per capita ("ENGLPC") and median household income ("MHI"). PA165-168 (RFA 714, 718); PA1240, PA1259-1260, PA1271 (PTX 961); PA441-451 (Finley testimony). Because extremely low property values and low household incomes make it difficult to generate local revenue, property tax rates in Connecticut's poorest communities are typically among the highest in the state. *See* PA445-453 (Finley testimony); PA165-166 (RFA 714) (Bridgeport, East Hartford, New Britain, New London, and Windham are among the 13 poorest towns by ENGLPC); PA167-168 (RFA 718) (Bridgeport, East Hartford, New Britain, New London, and Windham are among the 11 poorest towns by MHI); PA167 (RFA 717) (Bridgeport, East Hartford, New Britain, and Windham are among the 10 towns with the highest property tax rates); PA1259-1260, PA1269, PA1271 (PTX 961). Meanwhile, the state has designated Bridgeport, East Hartford, New Britain, New London, and Windham as among Connecticut's 25 most distressed municipalities based on factors such as high unemployment and poverty. PA1314-1316 (PTX 1114-1116). These economic realities impair these communities' ability to provide funds for their schools even as their costs increase. PA933-937 (Quesnel testimony); *see also, e.g.,* PA1237-1238 (PTX 951)*;* PA750-752 (Garcia testimony); PA497-498 (Rabinowitz testimony); PA384-389, PA396-402 (Quesnel testimony); PA375-377 (Salina testimony). Thus, for example, East Hartford's

school budget has shown virtually no increase from local sources during this decade. PA1237-1238 (PTX 951); PA931-932 (Quesnel testimony); PA406-410 (Quesnel testimony). As demonstrated elsewhere, the trial record reveals significant educational resource deficiencies in these communities that desperately need additional funding. *See supra* at § II.

2. The ECS Grant Is Not Rationally Connected To Providing An Adequate or Equitable Educational Opportunity.

Connecticut's ECS grant is the state's principal means for delivering supplemental financial resources to localities. At more than $2 billion, the ECS grant is the largest single source of state funding for education. PA106 (RFA 462); PA1014 (PTX 125); PA1765 (Public Acts, Spec. Sess., May, 2016, No. 16-2 ("P.A. 16-2"), § 1); *see also* PA104 (RFA 454); PA454 (Finley testimony). However, both in design and application, the ECS grant formula has no rational connection to fulfilling the state's obligation to provide for an adequate education, particularly for students in Connecticut's poorest communities.

a. Because The State Has Completely Abandoned Use Of The ECS Formula, Connecticut Has No Rational System For Funding Schools.

Whether the ECS formula is rational in design is legally moot, since the state has consistently failed to distribute educational funding according to it, to the point of utterly disregarding it today. In the trial judge's words, the "virtues and vices" of the ECS formula "don't matter anymore because the state stopped using the formula in 2013-14" and "has simply adopted set dollar amounts of aid for each town" without any discernible plan. A480-481; *see also id.* at 525 ("[T]he state has now entirely given up any pretense of having a formula."). That finding is incontestable.

In Fiscal Year 2014-15, town-by-town ECS grants were written into the appropriation statute at levels that did not match the statutory amounts calculated by SDE. *Compare* PA1179 (PTX 692) (SDE calculations based on then-current law), *with* PA1751 (Public Acts 2014, No. 14-47, § 18) (writing different town-by-town ECS grants into law); *see also*

PA1423, PA1460-1461, PA1463-1464 (PTX 1143). The town-by-town ECS grants for Fiscal Years 2015-16 and 2016-17 likewise do not follow any ascertainable formula or logic, as they have simply been written into statute without any reference to the ECS formula. PA1759 (Public Acts 2015, No. 15-244 ("P.A. 15-244"), § 33); PA1770 (P.A.16-2, § 20); PA1787 (Conn. Gen. Stat. § 10-262h). In fact, the aggregate ECS grant will actually decrease in Fiscal Year 2016-17 to $2,027,587,120 from $2,062,299,984. *Compare* PA1626 (DTX 5681), *with* PA1765 (P.A. 16-2, § 1). On top of that, as the trial court noted, the state amended the town-by-town ECS grants that were written in statute for 2016-17 for reasons that do not appear to be at all educationally-based. A489-490 (MOD); *compare also* PA1759 (P.A. 15-244, § 33) (original 2016-17 ECS grants), *with* PA1770 (P.A. 16-2, § 20) (amended 2016-17 ECS grants). In sum, today there is no basis for the bulk of educational funding by the state other than legislative fiat, untethered to any cost analysis or reasoned approach for allocating funds.

The current state of affairs is the result of a steady trend of disregarding the formula and whatever rational basis it may have had in the distant past. The formula calculates grants to be distributed by the state to Connecticut towns. According to an official SDE publication, the "fully funded grant" is "the basic aid that a town is entitled to under the [ECS] formula irrespective of the phase-in of the entitlement or statutory minimum grants." PA1016 (PTX 125); *see also* PA1783 (Conn. Gen. Stats. § 10-262f(33)) (defining "fully funded grant"); PA477-478 (Finley testimony) (ECS formula is a "here-and-now formula that uses present-day statistics enshrined in statute to deliver a total number that is called the fully funded ECS grant amount for each community" that represents a "snapshot of today what the formula says that municipalities should be entitled to" or "minimum need as identified through this formula"). According to the individual at SDE who performs the ECS formula calculations, "[t]he fully funded [grant] is the formula." PA1435 (PTX 1143); *see generally* PA774-775 (Demsey testimony); PA1380 (PTX 1142); PA1428-1432 (PTX 1143). Full funding under the ECS grant program was the intent from inception. The 1988 ECS

legislation provided that the ECS grant was to be fully phased-in over four years, such that in Fiscal Year 1992-93 each town would receive the full amount of what is today defined in statute as the "fully funded grant." *Compare* PA1666 (Public Acts 1988, No. 88-358 ("P.A. 88-358"), § 2(4)), *with* PA1783 (Conn. Gen. Stats. § 10-262f(33)).

But the ECS formula has never been fully funded, and thus never could have accomplished its funding goals. In past years, the SDE would calculate the amount that the ECS grant formula calculated should be appropriated under the formula. But as the trial court noted, the last time the state actually referenced the formula to determine funding was in FY 2013-14. A479-480 (MOD); *see also*, *e.g.*, PA783-786 (Demsey testimony); PA1465-1467 (PTX 1143). At that time, those computations revealed that the ECS formula's "fully funded grant" totaled $2,657,193,394, but the appropriated amount of ECS grants totaled only $1,990,341,602 – a shortfall of $666,851,792. PA110 (RFA 479-80). After that, as the court noted, the legislature "simply adopted set dollar amounts of aid for each town," without reference to the formula. A480 (MOD).[12]

The evidence demonstrates that the burden of underfunding the ECS formula—and now ignoring it entirely—falls hardest on the poor urban communities that have large high needs student populations. For example, in Fiscal Year 2013-14, ECS grants for the seven urban communities in District Reference Group ("DRG") I (Bridgeport, Hartford, New Britain, New Haven, New London, Waterbury and Windham)[13] were $200,174,981 short of

---

[12] SDE did not calculate what the amount of full funding of the formulaic grant would have been in Fiscal Year 2016-17. However, comparing Fiscal Year 2016-17's actual appropriations to SDE's last calculation of Fiscal Year 2013-14 fully funded grants shows significant shortfalls in Bridgeport ($29,949,723); Danbury ($27,260,665); East Hartford ($16,093,328); New Britain ($27,172,107); New London ($6,746,759); and Windham ($6,284,264). PA113-114 (RFA 494); PA1770 (P.A. 16-2, § 20).

[13] A DRG is a group of school districts that SDE has judged to have similar socio-economic status and need. PA988 (PTX 37). The DRGs range from A to I, with DRG A representing very affluent, low-need suburban districts and DRG I representing high-need, low socio-economic status urban districts. *Id.* at PA989.

full funding. *See* PA114 (RFA 495). Similarly, Plaintiffs' six focus districts (Bridgeport, Danbury, East Hartford, New Britain, New London, and Windham) were $135,946,231 short of full funding, receiving only 46 to 82% of their fully funded grants. *See* PA113-114 (RFA 494). In contrast, some very wealthy towns, including all of the DRG A communities and Greenwich, received ECS grants that exceeded their fully funded grants. *See, e.g.*, PA113-114 (RFA 494-95). If the ECS formula has any integrity for assuring that adequate and equitable educational opportunities are available to all students, overfunding wealthy districts with less challenging student populations, while underfunding property-poor districts with large numbers of poorly performing students, cannot be rationally justified.

Yet even among towns with similar socio-economic demographics, ECS funding is arbitrary and random, with some towns receiving vastly greater percentages of their fully funded grants than others. For example, in DRG I for Fiscal Year 2013-14, Hartford received 87% of its fully funded grant, New Haven 83%, Bridgeport 82%, New Britain 71% and Waterbury 70%. PA1165 (PTX 516) (Column 23 / Column 18). Meanwhile, in DRG H, Norwich received 78% of its fully funded grant, while East Hartford received 70% and Danbury received only 46%; and in DRG G, Groton received 113% of its fully funded grant while Hamden received 57%. *Id.* The state is unable to offer any explanation for these substantial disparities in funding among groups of districts that SDE has judged to be similar.

The presence of substantial unmet educational needs in the state's poorest communities, juxtaposed against a funding system that has no rational basis for meeting those needs with state financial resources, simply cannot be considered constitutionally adequate. To conclude otherwise would render article eighth, § 1 a hollow right. For that reason, the trial court correctly ruled that the state's system for funding education in Connecticut did not meet the constitutional standard to which it is subject.

b. The ECS Formula Is Arbitrary And Irrational In Design.

Since its institution in 1989-90, the ECS grant has been governed by a formula that has remained relatively constant. *See* PA1666 (P.A. 88-358, § 2(4)); PA1014 (PTX 125); PA456, PA474 (Finley testimony). The amount of funding that each town is to receive from the state—provided the ECS formula is fully funded—is represented formulaically as follows:

Fully Funded Grant = Foundation x Total Need Students x Base Aid Ratio[14]

PA1783 (Conn. Gen. Stats. § 10-262f(33)). In return for an ECS grant, the original 1988 legislation required that beginning in 1992-93 each town spend at least the full amount of the foundation times its total need students. PA1666 (P.A. 88-358, § 4(d)). The legislative history of the 1988 act reveals that this system was viewed as a "partnership" between local communities and the state. *See* PA345-350 (Legislative History of GTB and ECS Formulas, July 18, 2016) ("ECS Legislative History"). The state would contribute a portion (based on the base aid ratio) of the foundation times total need students, while requiring the town to expend at least the full amount of the foundation times total need students (thus making up the balance). *See id.;* PA1666 (P.A. 88-358, §§ 2(a)(4) & 4(d)); PA976, PA982-983 (PTX 12). As the Connecticut Supreme Court acknowledged in a contemporaneous case, the intent of the localities' "minimum expenditure requirement" was to ensure that students received "a minimally adequate education." *New Haven v. State Bd. of Educ.*, 228 Conn. 699, 709 (1994).

As the primary funding tool for providing state resources to Connecticut schools, the ECS formula suffers a fatal constitutional defect: a wholly arbitrary design. While a foundation aid formula such as the ECS can constitute a rational way to ensure adequate funding for education, *see* PA1051-1057 (PTX 236); PA547-548, PA553-567 (Baker

---

[14] A small regional bonus is also added for a limited number of mostly rural towns that participate in regional school districts. PA1781 (Conn. Gen. Stat. § 10-262f(19)); PA1383-1384 (PTX 1142); PA1435 (PTX 1143).

testimony), the ECS formula is irrational because none of its specific components are based on any ascertainable analysis of what it costs to educate students in Connecticut.

i. Foundation

In a rational aid formula, the foundation represents the minimum amount of money necessary to provide an adequate education to an average student on a per-pupil basis. PA1053, PA1064-1065 (PTX 236); PA972, PA982 (PTX 12); PA548, PA553-554 (Baker testimony). The legislative history of the 1988 formula supports the view that the foundation was intended to reflect the "actual education cost" of schooling Connecticut students. PA342-343 (ECS Legislative History). There is no evidence, however, that the foundation was "related to the actual costs of providing an education that meets constitutional standards" *CCJEF I* at 346 n.20 (Palmer, J.). Instead, the foundation was originally set to increase over four years to $4,800, then to adjust annually starting in Fiscal Year 1993-94 based on the per pupil expenditures of the town with the eightieth percentile total need student, when all towns were ranked from lowest to highest by per pupil expenditures three years prior. PA1664 (P.A. 88-358, § 1(7)). Absent evidence that the originally targeted foundation level suffices to meet educational needs, using it as a barometer for adequate spending is highly suspect at best. *See* PA1065-1067 (PTX 236); *cf.* PA342-343 (ECS Legislative History) ("no magic" to $4,800 number, which could have been higher).

In any event, changes in the foundation amount over the intervening decades have completely unhinged it from whatever rational basis it may have originally enjoyed. Rather than being regularly updated according to a methodology that accounts for evolving educational needs and costs, the foundation has simply been written into the funding statute as a specific number for every year of the ECS formula's existence. *See, e.g.*, PA1780 (Conn. Gen. Stat. § 10-262f(9)). In fact, it has been frozen for long periods of time – such as at $5,891 from 1995-96 through 2006-07. *Id.*; PA1398-1401 (PTX 1142); PA479-485 (Finley testimony); PA1065-1066 (PTX 236). The effect of freezing the foundation for

years is to reduce the amount of towns' fully funded grants even as costs for school districts rise. PA482-485 (Finley testimony); *see also* PA1065-1067 (PTX 236).

In making these randomly episodic adjustments, Connecticut never followed any documented process for revising or updating the ECS foundation. PA1063, PA1069 (PTX 236); PA553-556 (Baker testimony). The record shows that no state agency has evaluated the actual cost of adequately educating students. PA792-793, PA868 (Wentzell testimony); PA770-773 (Demsey testimony); *see also* PA1414-1415, PA1421 (PTX 1142). In particular, SDE has not performed any "rigorous analysis" of the ECS foundation, has "no idea" how the current foundation of $11,525 was set, and is not aware of any analysis regarding whether the current $11,525 foundation is appropriate. PA1404, PA1418-1419 (PTX 1142); *see also* PA1394-1397, PA1402-1405, PA1418-1420 (PTX 1142); PA775, PA776 (Demsey testimony). As a result, the foundation has no obvious connection to any adequacy standard. *See* PA1064-1065, PA1067 (PTX 236). While a recent task force recommended that Connecticut conduct a comprehensive cost study in order to set an appropriate foundation, that work has not been done. *See* PA1143 (PTX 470); PA1414-1415, PA1421 (PTX 1142).

The utter arbitrariness of the foundation is borne out by the present state of affairs. The current $11,525 foundation is below the per pupil expenditure level of *every* school district in Connecticut. *See* PA1290 (PTX 979) (Fiscal Year 2013-14 data). Thus, even if the original, never-implemented method for updating the foundation annually were a valid device for estimating what it costs to provide adequate and equitable educational opportunities to students, today's ECS foundation formula cannot be justified as reflecting those actual costs. *See* PA1064-1067 (PTX 236); *cf.* PA973 (PTX 12) ("Committee staff believes as the gap between the state foundation level and the actual spending by school districts widens the credibility of the entire formula is threatened.").

ii. Needs Weight

Similarly, in a rational aid formula, the weight assigned to high needs students would reflect a reasoned determination of the additional amount of money necessary to provide an adequate education for the average student in the classification being weighted. PA975-976 (PTX 12); PA1064, PA1067-1071 (PTX 236); PA546-548, PA554-555 (Baker testimony). But as with the $11,525 foundation, the single need weighting now used – a 30% weighting for poverty – is arbitrary. Again, no basis has been identified for how the 30% weight for poverty was determined, or for that matter how the formula was devised to consider only poverty as an added cost consideration. According to Dr. Baker, the research evidence calls for a higher weighting of at least 60% for poverty—double what Connecticut uses. PA1069-1070 (PTX 236); PA557-560 (Baker testimony). A separate weighting for non-English speaking students is also called for, as those students also cost more to educate. PA557-558 (Baker testimony). In fact, Connecticut utilized a 10-15% weighting for Limited English Proficient ("LEP") students from 1995 through the end of the 2005-06 school year, but dropped the LEP weight in 2013 without explanation. *See* PA1782 (Conn. Gen. Stat. § 10-262f(25)); PA1015 (PTX 125); *cf.* PA1003, PA1011(PTX 64) (recommendation of Governor Rell's Commission on Education Finance to raise LEP weight to 20%). Added weighting is also required for special education students who, as discussed below, consume an extraordinary amount of a district's budget. *See infra* at § III.F; PA1068 (PTX 236).

These are critical financial factors that the state has failed to consider or evaluate. SDE does not understand how the weights in the ECS formula were developed or on what they were based. PA755, PA776 (Demsey testimony). Nor is SDE aware of any analysis to support the most recent changes in 2013 to the student needs weightings – the decrease of the poverty weighting from 33% to 30% and the elimination of the prior 15% weighting for LEP students. PA1406-1409 (PTX 1142). What SDE does know is that it has not itself

performed any substantial analysis of the 30% need weighting for poverty. PA1418-1420 (PTX 1142). Nor is there any evidence of anyone else having done so.

iii. Base Aid Ratio

Like the foundation and the poverty need weighting, the base aid ratio has no reasoned basis. The base aid ratio contains a multiplier in its denominator that plays a crucial role in determining the amount of the state grant that a district would be entitled to receive if the legislature fully funded the amount called for by the formula. *See* PA486-489 (Finley testimony). The ECS formula originally employed a multiplier of 2.0. PA1663, PA1665 (P.A. 88-358, § 1(2), (22)); PA1017 (PTX 125). However, the current multiplier is now reduced to a historically low 1.50. PA1779, PA1782, PA1785 (Conn. Gen. Stat. § 10-262f(2), (24), (42) - (44)). The result of using a lower multiplier of 1.50 is to reduce the amount of aid that the state will provide to districts, thereby shifting more of the financial burden on localities at a time of increasing costs. PA489 (Finley testimony); *see also* PA977 (PTX 12) ("In the opinion of the program committee the changes [to reduce the multiplier from 2.0] have been used by the state to control its funding obligations to towns."); PA1017 (PTX 125). According to its corporate representative, SDE is not aware of any reason that the General Assembly would change the multiplier in the base aid ratio other than to control its funding obligation to towns. PA1416-1417 (PTX 1142). As true of the other components, the SDE has not performed any detailed analysis of the base aid ratio. PA1418-1420 (PTX 1142).

As is clear, Connecticut's ECS formula – even if it were fully funded – contains arbitrary components that have no logical connection to educational costs. Because Connecticut has no articulable process that justifies in any respect the foundation, need weightings or base aid ratio in the ECS formula, the state's educational funding system cannot possibly pass muster under any standard of rationality, as the trial court concluded. A494-495 (MOD).

C. Connecticut's Arbitrary Funding For School Construction Is Also Constitutionally Inadequate And Inequitable.

Examining the evidence of the state's billion dollar school construction grant program, the trial judge correctly held that the state's funding program is unrelated to students' needs. A492-493 (MOD). As the court found, the state spends $1 billion per year on school construction, without following any reasoned criteria for what should be built, thus ignoring the disparate facility needs of districts*. Id*. According to Defendants' school construction witness Michelle Dixon, legislators with political clout frequently swoop in to change school construction spending priorities to favor their districts at the expense of others in a legislative free-for-all for funding. A493 (MOD). The result, as summarized by the trial court, is a system for funding school construction that is "without rhyme or reason." *Id*. The clear conclusion of the trial judge's findings is that Connecticut is wasting substantial funds on unnecessary school construction, even while it stubbornly underfunds its primary method of state aid in the teeth of clear deficiencies of resources in the least wealthy communities throughout Connecticut. Such arbitrary and irrational diversion of needed resources simply does not square with a system that must function to provide an opportunity for an adequate and equitable education for all its students.

D. Graduation And Promotion Standards.

At trial, Plaintiffs presented undisputed evidence that many students were advancing through the school system without actually having achieved the level of knowledge which the system expected, corroborating the need for resources in schools attended by substantial numbers of underperforming students. *See, e.g.*, PA267-268 (RFA 949) (84.6% of Free Lunch students, 73.6% of Reduced Lunch students, 93.0% of English Learners, and 91.8% of special education students did not reach a level 3 or 4 on the 2014-15 SBAC for Mathematics, which are the levels the state defines as on track to be college and career ready); *id.* (70% of Free Lunch students, 54.4% of Reduced Lunch students, 89.9% of English Learners, and 85.4% of special education did not reach the college and career

ready standard in English Language Arts); PA268 (RFA 950) (in every focus district, a majority of students failed to reach the standard in either subject; in 5 of the 6 focus districts over 80% of students failed to reach grade level in math; and in 3 of the 6 focus districts, over 70% of students failed to reach grade level in English Language Arts). In its opinion and findings of fact, the trial court cited the testimony of the state's Chief Performance Officer, Ajit Gopalakrishnan, who agreed that the state is graduating students who are unprepared for higher education. A601 (FOF 186). Commissioner Wentzell admitted that the need for post-secondary school remediation classes also indicates that some students are not ready for higher education. A601 (FOF 185).

The court also made additional findings that documented significant underperformance in student achievement in poorer districts that cast doubt on the integrity of graduation standards. For example, only 10% of Bridgeport high school students met the SAT college and career ready benchmark despite a 71.5% graduation rate, A598-599 (FOF 173), compared to Darien, where 96.7% of students graduate and 86% of students tested college and career ready. A599-600 (FOF 174).

The trial court appropriately held that the state must reasonably define standards for promotion from elementary and high schools. Without reliable standards, deficiencies in opportunities for obtaining an adequate education cannot be intelligently identified or addressed. A507, 510-511 (MOD). The trial court's findings as to the irrationality of graduation standards—and the consequent over-reporting of academic achievement—should have led it to view those unreliable standards as further evidence of a significant shortfall of educational opportunities in the focus districts, and of substantial inequities among districts in Connecticut. Disappointingly, it did not. The creation of appropriate promotion and graduation standards, as the trial court ordered, is a rational means to help ensure that educational opportunities are actually made available. But that alone will not address the underlying fundamental problem: that the districts lack the needed resources to adequately educate their students. In fact, better designed standards would only

demonstrate greater underperformance, and thus further manifest the need for added educational resources.

E. Teacher Compensation And Teacher Evaluation.

As the trial court found, "good teachers are the key to a good school system." A513 (MOD). During trial, Plaintiffs presented evidence that showed the difficulties that poorer school districts face in attracting and retaining quality teachers, as well as specialist teachers and interventionists, as to whom there are statewide shortages and pressing needs in the most challenged school districts. A588-589 (FOF 129-135); A626-27 (FOF 397-398); A644-45 (FOF 517-518). Both sides agreed that quality teaching is essential to providing an opportunity for an adequate education—and improved teaching is key to closing the dramatic achievement gaps persistently seen among minorities, English language learning and special education students (who are disproportionately concentrated in poorer communities). A513 (MOD); PA527-529 (Rabinowitz testimony); PA578, PA580-581, PA584-585 (Baker testimony); PA854 (Hanushek testimony). This evidence was a core part of the Plaintiffs' demonstration of the need for more resources to be made available on an equitable basis to schools in Connecticut in order for the state to meet its constitutional obligations.

In evaluating the rationality of the essential features of the Connecticut educational system, the trial court drew additional conclusions from the evidence it had reviewed. A513-522 (MOD). It determined that the way teachers were evaluated, and the manner in which their compensation was determined, was not rationally connected to effective teaching of students. *Id*. While suggesting, without dictating, potential elements of a rational evaluation and compensation system, the court ordered the state to submit a plan for addressing the flaws it had identified. *Id*.

As the record reveals, an important contributor to the relative inability of poorer districts to attract and retain experienced and qualified teachers is the disparity in pay and

benefits that exists between poorer districts and nearby wealthier districts. A626-628 (FOF 395-399, 401-408). There are other resource-related contributors as well, such as inadequate teaching environments and larger class sizes. A626 (FOF 395). Plaintiffs did not single out any particular solution for solving the uneven distribution of needed teachers, other than to overcome the disincentives created by disparate compensation between districts and to increase hiring of educators and professionals as needed. While Plaintiffs submitted evidence that teacher evaluations masked the disadvantages poor districts face in retaining suitable and experienced teachers, that evidence did not identify any particular aspect of the evaluation system tied to the deficiencies they had documented.

Plaintiffs do agree with the trial court that irrational policies cannot withstand constitutional scrutiny. As that concept applies to the evidence that Plaintiffs proffered at trial pertaining to educators, the state's tolerance of an irrational funding system that creates, rather than removes, obstacles faced by poor districts in attracting and retaining teachers cannot be justified as advancing the constitutional duty to provide an opportunity for an adequate education. How the state may choose to eliminate that irrationality is, as the court envisioned, a matter for the state to consider and address in the first instance.

F. Given The Substantial Mandates Imposed By Federal And State Law, The Trial Court Correctly Determined That Connecticut Does Not Have A Rational System For Funding Special Education.

The trial court recognized that Connecticut's system for funding special education does not meet the requirement of rationality it found inherent in the constitutional right to an opportunity for an adequate education. Overwhelming evidence was presented at trial showing that the cost of providing special education services imposes an enormous financial burden on Connecticut's educational system, and particularly impacts low-wealth, high poverty districts. Given that special education is a lightly funded mandate with enormous implications for school funding, the trial court correctly determined that it was not

rational to force districts “to bear immense financial burdens” without providing adequate state aid. A522-523 (MOD).

The record reflects that special education expenditures in Connecticut for the 2013-14 school year amounted to approximately $1.82 billion, PA128 (RFA 550), and make up a substantial and increasing portion of education dollars – up to 22.2% in 2014. A639 (FOF 491). While federal and state law mandates that school districts provide extensive services, the vast majority of spending for those services must come from local school budgets. A524-525 (MOD). The court found that federal and state aid for special education covers only 15-20% of special education expenses, leaving districts to cover the remainder of this high cost expenditure. *Id*. at A524.

The only state grant specifically targeted to special education is the Excess Cost Grant. PA129 (RFA 556). That grant is intended to reimburse towns for per-student special education “excess” costs – which are only those costs on a per-student basis that exceed 4.5 times a district’s net current expenditures per pupil. *See* PA129-130 (RFA 557-559). The excess cost grant is of limited value to districts: it applies to only a small minority of special education students (6.3% in FY 2014), A642 (FOF 508), and accounts for a small portion of special education spending, A642 (FOF 509). Like much of state education spending, it is not clear how the 4.5 times threshold was selected. And just like the ECS grant, the Excess Cost Grant is not fully funded. A639-642 (FOF 492-507). Moreover, because the appropriation for the Excess Cost Grant is capped below actual excess costs, SDE prorates these grants downward without regard to district wealth. PA130, PA134-137 (RFA 561, 582, 584-86). In other words, the Excess Cost grant at best applies to only a small portion of special education costs, and in reality applies to an even smaller portion because the appropriation is capped and the grant is reduced.

Burdening localities with up to 85% of expensive special education costs has a profound effect on the education of all students within a district, particularly those enrolled in districts which struggle mightily to raise funds for education. Based on the evidence

presented by both sides, the court found that mandated spending for special education crowds out spending for the student population as a whole, and limits districts' ability to provide necessary services in the general education setting, especially in low-wealth high-poverty districts. A525 (MOD); *see also* A635-636 (FOF 462, 473); PA1155-1159 (PTX 470). Both Superintendents Rabinowitz and Quesnel explained how mandated spending for special education had material adverse impacts on the school budgets in Bridgeport and East Hartford, and left their schools unable to provide essential educational resources, such as academic supports and similar services to their students—services that could reduce the need for high-cost special education services in the first instance. PA542 (Rabinowitz testimony); PA939-943 (Quesnel testimony).

The irrational burdening of local districts with the bulk of mandated special education spending is exacerbated by challenges inherent in designating special education students. As the trial court concluded, identification of students with disabilities in Connecticut school districts is varies greatly across multiple disability categories, suggesting that students are being variously over- and under-identified. Defendants' special education expert agreed that misidentification occurs. A637-638 (FOF 478); PA1501-1504 (DTX 2428), PA1628-1631 (DTX 6397). The fact that special education services are by law individualized, however, does not mean that the state has no responsibility to implement a rational system of identification. As the court suggested, the state could take steps to assist districts to more accurately identify and monitor students who require special education resources. A535-536 (MOD). It could, for example, implement recommendations from the ECS Task Force, such as to perform regular examinations of "outlier" districts. See PA1158-1159 (PTX 470). Thus, in anticipating potential remedies, the trial court properly directed the state to submit a plan "which rationally, substantially, and verifiably link[s] special education *spending* with elementary and secondary education." A537 (MOD) (emphasis added).[15]

[15] The state and several amici express concern with portions of the court's opinion that they read as calling for the denial of appropriate services to some students, in conflict

IV. The Trial Court Erroneously Failed To Consider Plaintiffs' Equal Protection Claim Under The Governing Standard.

Standard of Review

The trial court's erroneous conclusion of law with respect to Plaintiffs' equal protection claim is a question of law over which this Court's review is plenary. *Schumann*, 304 Conn. at 598-99. The trial court's factual findings with respect to the disparities that exist among the various school districts in Connecticut, by contrast, are only subject to review for clear error*. In re Cassandra C.*, 316 Conn. at 496.

A. The Trial Court Failed To Consider Plaintiffs' Equal Protection Claim Under The Governing Standard.

In addition to their constitutional duty to make available an opportunity for an adequate education, Defendants have an independent constitutional duty to provide a "substantially equal educational opportunity" to all of the state's school children. *Horton I* at 649. That right was recognized more than 30 years before this Court acknowledged in *CCJEF I* that the Constitution "also guarantees students" the right to suitable educational opportunities. *CCJEF I* at 243. While these rights overlap, they derive from two separate concepts in the state Constitution as it relates to education: equality of opportunity, and quality of education. *See id*. at 331 (Palmer, J.) ("Put another way, our conclusion in *Horton I* that the plaintiffs [in that case] had a right to substantially equal educational funding is based on the right to an education of substantially equal *quality*."). Each of these rights must be given their full, unique value as constitutional guarantees.

---

with federal law. Defs.' Br. at 36-37. Plaintiffs do not understand the court to have ordered the state to take any steps that conflict with federal or state law. In any event, surely compliance with federal mandates would be a component of any rational system that the state would propose in response to the court's order. Yet, Plaintiffs do agree with amici that the court should have addressed the problems caused by placing the lion's share of special education funding on localities by requiring the state to bear more of the cost of educating students with disabilities. *See* Brief of Amici Curiae National Disability Rights Network, et al., at 3-4 (Dec. 30, 2016).

In addition to their adequacy claim, Plaintiffs claim that the Defendants violated the equal rights provisions of the state Constitution by failing their affirmative duty to maintain a public school system that provides all students with substantially equal educational opportunities. A319 (CTAC at ¶¶173-75). The trial court found "egregious gaps between rich and poor districts" in Connecticut, that "[g]aps in school resources are grappled to gaps in school results[,]"and that these differences reveal a state of education in some of Connecticut's poorer towns that is "alarming." A483, 485, 488 (MOD). These trial court findings, as well as other evidence, demonstrate substantially disparate quality and breadth of educational opportunities being provided in Connecticut's poorer districts when compared to those in wealthier districts. Under the strict scrutiny rubric this Court adopted in *Horton III*, these findings should have led the trial court to find a violation of the right to a substantially equal educational opportunity.

The trial court short-changed Plaintiffs in applying that three-part, burden-shifting test. In a single paragraph, it concluded that, because the targeted education spending by the state "favors" poorer communities, those communities "get[] more money" and have no basis for an equal protection claim. A478 (MOD). This reasoning is incorrect, and failed to afford the strict scrutiny required of Plaintiffs' evidence. *See Horton I* at 646.

In *Horton I*, this Court concluded that the then-existing state system of financing education failed to afford equal enjoyment of the fundamental right to an education. *Id.* at 648-49. It based that conclusion on findings establishing that the state financing system relied "primarily on the local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program and with no significant equalizing state support." *Id.*at 649. That system had "given rise to a consequent significant disparity in the quality of education available to the youth of the state," as evidenced when Canton (the town that was the focus in *Horton I*) was compared with municipalities that had greater financial capabilities. *Id.* at 648. Notably, this Court did not simply look at funding amounts; rather, what it deemed important was the greater educational resources that "property-rich

towns" were able to provide. Among the specific educational inputs this Court found relevant were course offerings, library resources, class sizes, ratios of specialist teachers and guidance counselors to students, and relative experience of teachers. *Id.* at 633-34. The Court observed that "there is a direct relationship between per pupil school expenditures and the breadth and quality of educational programs." *Id.* at 635.

Having remanded the case for further proceedings as to an appropriate remedy, this Court in *Horton III* later reviewed the trial court's assessment of the legislative response to the constitutional violations that had been found. This Court refined its strict scrutiny analysis to develop a three-step process: (i) plaintiffs must make a prima facie showing that disparities in educational expenditures are more than *de minimis* in that the disparities continue to jeopardize the plaintiffs' fundamental right to education; (ii) if met, the burden shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy; and (iii) if the state makes that showing, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional. *Horton III* at 38. The Court specifically elaborated that the school financing plan "as a whole" must further the policy of providing "significant equalizing state support" to local education, but that no plan would pass muster where "the remaining level of disparity continues 'to emasculate the goal of substantial equality." *Id*.

Applying each step shows that Plaintiffs have met their burden on the first step, while Defendants have failed to meet their burden on the second and third steps.

1. First Prong

The trial court believed that evidence of a "tilt" in state funding toward poorer districts ended the equal protection inquiry. A478 (MOD). That overly abridged discussion fundamentally mischaracterized the first of the strict scrutiny criteria prescribed in *Horton III*. Despite elsewhere concluding that the state's non-delegable duty to provide educational opportunities meant that the educational funding system had to be viewed as an integrated

"whole"—as *Horton III* commanded—the trial court considered only the state component of education funding in determining that the state funding disparities "favored" poorer districts. *Id.* The trial court thus failed to recognize that first prong of the *Horton III* analysis focuses explicitly on whether "disparities in educational *expenditures* are more than de minimis" – not on whether the state contributes more funding in the aggregate to poor districts than rich ones. *Horton III* at 38 (emphasis added).

The propriety of focusing on the totality of district resources is readily confirmed by the evidence found to satisfy the first prong in *Horton III*. There, the trial court relied on evidence demonstrating disparities in the "net current expenditures per pupil" ("NCEP") – looking at overall town public elementary and secondary educational expenditures per pupil from all sources. *Horton III* at 39 n.15; *see also* Conn. Gen. Stat. § 10-261(a)(3) (defining "net current expenditures" as "total current expenditures," less certain categories of expenditures such as transportation and capital expenditures). This Court found that the evidence presented of NCEP disparities between districts was sufficient to shift the burden to the state to justify the disparities. *Id*. at 39. Over the years examined in *Horton III*, disparity ratios of expenditures for the highest spending towns to the lowest spending ranged from 2.14 to 2.45, and ratios comparing "the expenditures of the ninety-fifth percentile town with those of the fifth percentile town when the towns are ranked by wealth" ranged from 1.87 to 1.70. *Id*. at 39 n.15.

Here, evidence presented to the trial court in this case demonstrates that the ratio between the highest spending town and lowest spending town is 2.30—squarely in the middle of the range the *Horton III* court determined was non-*de minimis*. PA1265 (PTX 961) (highest to lowest NCEP ratio ($25,718/$11,180 = 2.30). Moreover, in this case, the 95th/5th percentile town ratio, which the *Horton III* Court determined was the appropriate reference for measuring disparities in town expenditures, was 2.12—much worse than for any of the years reviewed in *Horton III*. *Id*. (95:5 NCEP ratio comparing 5th percentile town by property wealth, Cornwall ($25,718)/95th percentile town, West Haven ($12,157) = 2.12 ratio);

Horton III at 39-40 nn. 15-16. It is thus clear that under *Horton III* the evidence here of comparable or higher disparity ratios was sufficient to shift the burden to the Defendants on the equal protection claim. But because the trial court focused solely on the fact that additional state aid was directed to poorer communities—without considering the extent of funding or other resource disparities that nevertheless existed—it reached the wrong conclusion in summarily dismissing Plaintiffs' equal protection claim.

Of course, as recognized by the trial court's discussion and findings, Plaintiffs presented numerous other metrics that establish non-*de minimis* disparities in town expenditures. *See* PA1650-1651 (Pls.' Post Trial Br., July 15, 2016, at 93-94) (citing PA183 (RFA 747); PA1506-1507 (DTX 2434)); PA1265, PA1271 (PTX 961); PA1182-1196 (PTX 731); PA1088-1095 (PTX 236); PA567-573, PA594-595 (Baker testimony). The record was also replete with significant evidence of less availability of the specific inputs that the *Horton I* Court found relevant to assessing differences in the quality of education. *See supra* at § II. In short, there was overwhelming evidence of disparate financial and other resources, far more than needed to shift the burden to the state under the strict scrutiny test imposed in *Horton III.*

2. Second Prong

Given the trial court's well-supported findings that the state's educational funding system is irrational, A479-495 (MOD), on this record Defendants cannot meet their burden of establishing that the non-*de minimis* funding disparities "advance a reasonable state policy" and are "free from any taint of arbitrariness," as required by part two of the *Horton III* test. *Horton III* at 38. In *Horton III*, this Court deferred to the lower court's reasoning that the education funding system, if adequately funded and implemented, would "assure[] an efficient use of educational resources, and that its design would provide equity in distribution of educational funds." *Id*. at 39. But here the record refutes those premises. The trial court found that the "egregious gaps between rich and poor districts" in Connecticut

"cry out for coherently calibrated state spending." A488 (MOD). Yet the court concluded that the state lacked "a defensible and discernible plan" for marshaling educational aid, and thus sends a message that the state "does not feel bound to a principled division of education aid." A480, 490 (MOD). As discussed above, the trial court's analysis on the irrationality of the state's funding of education was eminently sound.

No explanation converts this irrationality to something that advances a reasonable state policy. The only notion advanced by the state in the proceedings below was that the state has an interest in ensuring local control of education. But that argument has been flatly rejected by this Court and the trial court as inconsistent with the state's non-delegable constitutional duty with respect to education. *Horton I* at 638; A458 (MOD). Further, given the trial court's finding beyond a reasonable doubt that Connecticut has no rational plan to distribute money for school education aid and "arbitrarily allows rich towns to raid money from poor towns," it would be impossible for Defendants to establish that the system in place is "free from any taint of arbitrariness" as required by *Horton III*. *Horton III* at 38; A492, 494 (MOD).

3. Third Prong

Finally, even if the third step were reached, the Defendants have failed to prove that disparities are not so great as to infringe upon the constitutional right to a substantially equal educational opportunity. *Sheff*, 238 Conn. at 42.

The trial court findings of fact establish that there are substantial differences between poor and wealthy towns judged by the very indicators of educational quality that concerned the Court in *Horton I*. The evidence below (although not considered by the trial court because of its abbreviated analysis of the *Horton III* factors) showed that students in poorer districts have less experienced teachers and principals and are taught by teachers who perform worse on the state certification tests than teachers in wealthier districts. A588 (FOF 129-130). Poorer districts were also shown to struggle to attract and retain teachers

given uncompetitive wages and working conditions. A626-628 (FOF 397, 398, 403-406). The retention rate for teachers in high poverty schools was also proved to be less than half that in low poverty schools. A553 (FOF 67). Evidence of the impact of funding disparities on personnel, interventionists, guidance counselors, other support staff, class size, media center materials, computers, and myriad other everyday resources reveal a consistent pattern of relative deficiencies in those schools with the most challenging student populations. *See supra* at § II.

The trial court noted "how hard it is for poor cities to fill any [funding] gaps" and particularly detailed the financial struggles Bridgeport faces given its low property value and high property tax burden. A483 (MOD). Consistent with the conclusion reached in *Horton I* that there is a "direct relationship between per pupil school expenditures and the breadth and quality of educational programs," *Horton I* at 635, the trial court heard a wealth of evidence indicating that additional financial resources do make a difference. *See, e.g.*, PA1099-1011, PA1105-1106, PA1109-1110 (PTX 236); PA1211-1215 (PTX 731); PA1272-1289 (PTX 966); PA1317-1371 (PTX 1124); PA1471-1484 (PTX 1188); PA1485-1490 (PTX 1189); PA987 (PTX 17) (admission of State Board of Education that "the resources we invest in education directly affect the degree to which students succeed in school, higher education, careers and the community"); PA1633 (DTX 6415) (admission of Defendants' expert Eric Hanushek that there is now "substantial evidence" that preschool can be beneficial to disadvantaged students and can close achievement gaps); PA574-586, PA593-594 (Baker testimony); PA851, PA860-861, PA865 (Hanushek testimony); PA842-845 (Seder testimony); PA821(Podgursky testimony); PA810 (Reschly testimony). Indeed, that is the fundamental premise of the state's reform initiatives, including its hallmark Alliance District and Commissioner Network programs. *See, e.g.*, PA794-800 (Wentzell testimony); PA844-845 (Seder testimony); PA1495, PA1497-1498 (DTX 2346) (detailing substantial additional staff and extended learning time at Stanton Elementary, a

Commissioner's Network school);[16] PA1620-1621 (DTX 5515) (same); PA667 (Stewart-Curley testimony) (discussing Stanton Elementary's after-school program for parents and students).[17]

Evidence accepted by the trial court shows that the disparities are strongly associated with failures of delivering a quality education. The findings on testing establish substantial disparities, and the trial court noted that the post-reform testing gap between poor and wealthy districts is "still so great." A485 (MOD). A554-575, 578-579, 586-587 (FOF 72-102, 106, 112-113, 124, 126). Every expert at trial agreed that acquiring reading skills by the end of third grade is essential; but while 70% of students in wealthy districts met their goal, 70% of students in the least affluent communities did not. A486 (MOD). The "contrast is equally stark in high school." *Id*. This evidence applies not only to testing, but also to graduation rates, rates of graduating students that have not met college and career ready standards, and rates of students entering and staying in college. A582-583 (FOF 118); A598-600 (FOF 173-174); A583-585 (FOF 119-122). While outputs themselves are not the test of quality, they are clear signals of material deficiencies in the educational system—and they correlate closely to the relative lack of financial resources found in those underperforming districts, also well-documented throughout the record. *See supra* at § II.

In sum, under each of the *Horton III* prongs, the evidence beyond any doubt demonstrates a failure of the state to meet its constitutional duty to provide its students

---

[16] Defendants' witnesses provided Stanton School as an example of a particularly successful Commissioner's Network school. *See* PA789 (Wentzell testimony); PA918-919 (Cohn testimony).

[17] The most basic resource of all, time in school to learn under the tutelage of a qualified instructor, is indisputably both a resource that costs money and a resource that can be extended with increased funding. *See, e.g.*, PA985, PA987 (PTX 17); PA944-948 (Quesnel testimony); PA911, PA915 (Cohn testimony); PA535-539 (Rabinowitz testimony); PA639-642 (Pascarella testimony); PA413-424, PA427-430 (Quesnel testimony); PA871 (Frassinelli testimony); PA688-695, PA725-729 (Ryan testimony); PA843-844 (Seder testimony).

substantially equal educational opportunities. Consequently, the trial court erred in rejecting Plaintiffs' claims of an equal protection violation.

While likewise ignoring *Horton III*, the Defendants advance an alternative theory they ardently pressed below to little reception: that the equal protection claim necessarily fails if the adequacy claim is not proved. This approach fallaciously collapses the analysis of equal protection wholly into the separate constitutional analysis of adequacy. Accepting the state's theory, the right to equal protection of the laws retains no independent vitality—a result expressly rejected by this Court in its prior decisions.

Contrary to the reasoning of the state, the provision of educational opportunities of a certain level of adequacy does not automatically satisfy the requirement that students are provided constitutionally equal opportunities. In *Horton I*, this Court approvingly quoted Justice Thurgood Marshall that it has "never been suggested that simply because some 'adequate' level of benefits is provided to all, discrimination in the provision of services is constitutionally excusable." *Horton I* at 645 (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 89 (1973) (Marshall, J. dissenting)). As the trial court here found, *Horton I* rejected the notion that adequacy be considered as part of its equal protection analysis. A472 (MOD). Correspondingly in *CCJEF I*, this Court declared that an adequate educational opportunity is one that meets a minimum level of quality and breadth "without considerations of inequality." *CCJEF I* at 290. The concern of equal protection is not whether educational opportunities are minimally sufficient – it is instead whether such opportunities are substantially equal in quality and breadth. *Horton I* at 633-34; *see also Gannon v. State*, 319 P.3d 1196, 1245 (2014) ("[E]ven if the legislature has met the adequacy requirement contained in Article 6, it may still violate the constitution by failing to meet the article's equity requirement. The two requirements are separate.").

Accordingly, the (erroneous) finding by the trial court that the state had met its obligation to provide enough resources to afford an opportunity to students for an adequate education did not refute the Plaintiffs' equal protection claim. Under *Horton III*, proof that

more than *de minimis* disparities "jeopardize" plaintiffs' fundamental right to education means that not insignificant disparities exist which interfere with students' ability to obtain the provided educational benefits on an equal basis. As the *Horton I* Court resolutely stated, "the right to education is so basic that *any* infringement of that right must be strictly scrutinized." *Horton I* at 646 (emphasis added). If education cannot be provided in separate but equal schools, certainly the fundamental right to education cannot met by providing an education in separate but unequally resourced districts. Thus, while sufficient resources might satisfy the requirement of adequacy, inequities in distributing those resources clearly jeopardize the equitable access to education which the equal protection clauses of the state Constitution is intended to protect.

V. All Plaintiffs Have Standing.

Contrary to Defendants' claims, the trial court (twice) correctly found that Plaintiffs fully satisfied the burden of establishing Plaintiffs' standing. A699-702 (Sub MOD). The individual Plaintiffs have made a colorable claim of injury, and CCJEF has met all three requirements for associational standing as articulated in *Worrell*, 199 Conn. at 616.

Standard of Review

The trial court's finding that Plaintiffs have standing implicates subject matter jurisdiction and is a conclusion of law subject to plenary review on appeal. *See* Defs.' Br. at 37; A699–702 (Sub MOD). As part of their argument here, Defendants challenge the trial court's 2006 decision to grant Plaintiff's motion to file an amended complaint that included allegations that CCJEF had members who were parents of students in the Connecticut public school system. *See* Defs.' Br. at 49. That ruling is reviewed for abuse of discretion. *Adler v. Rosenthal*, 163 Conn. App. 663, 697–98 (2016).

A. All Plaintiffs Have Made A Colorable Claim of Injury.

Defendants contend that the individual Plaintiffs and CCJEF lack standing because there is no evidence of any specific harm to specific individual Plaintiffs. *See* Defs.' Br. at 38–39. The trial court properly rejected that contention.

As the trial court found, standing merely requires a plaintiff to establish "a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity." *Kortner v. Martise*, 312 Conn. 1, 10 (2014); A699–700 (Sub MOD). Defendants' claim that standing requires a showing of individualized harm to each Plaintiff is wrong as a matter of law and inappropriately raises the bar which aggrieved parties would have to meet in order to have meritorious claims heard.

As this court held in *Gay & Lesbian Law Students Ass'n at Univ. of Conn. Sch. of Law v. Bd. of Tr., Univ. of Conn.*, "standing exists to attempt to vindicate 'arguably' protected interests" and "a plaintiff ordinarily establishes his standing by *allegations* of injury." 236 Conn. 453, 466 (1996) (emphasis in original). Thus, a plaintiff merely needs to show that "he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." *Id*.; *Kortner*, 312 Conn. at 10. Defendants' insistence on more overstates the legal standard but also mistakes the nature of this case. As Defendants agree, the constitutional injury is the deprivation of the *opportunity* to receive an adequate education on an equal basis. The injury arises from being students in a system in which those opportunities are not made available because resources and standards are not sufficiently provided or rationally implemented.

The individual Plaintiffs come from "[s]chools serving the poorest in Connecticut [and] are concentrated in just 30 out of its 169 municipalities"—communities in which the trial court found the state of education "alarming." A485 (MOD). Like the plaintiffs in *Gay & Lesbian Law Students Ass'n*, Plaintiffs seek to vindicate their protected interests, based on

claims that they have been denied adequate and equal access to education opportunities as a result of the state's funding system and educational policies.

Defendants' reliance on *Andross v. Town of W. Hartford,* 285 Conn. 309, 322 (2008) and *Gannon,* 319 P.3d at 1210–12, is of no help to their position. Defs'. Br. at 38. In *Andross*, this Court found that the plaintiffs lacked standing because they did not allege any injury different from that suffered by the public at large and therefore failed to establish any "colorable claim of direct injury." 285 Conn. at 324–326. In contrast to the plaintiffs in *Andross*, Plaintiffs' claims arise out of their status as students (or parents of students) in districts that allegedly were specifically harmed by the state's inadequate and inequitable funding and related educational policies. *Gannon* actually supports Plaintiffs' standing. Although the Supreme Court of Kansas found that the individual plaintiffs lacked standing because they were not even identified at the trial (as they were here), it also found that the school district plaintiffs had standing on the basis of the alleged injury—reduced education funding levels which led to fewer educational opportunities and lower student achievement levels. *Id*. at 1210, 1213. Like the plaintiffs in *Gannon*, the Plaintiffs in this case have been harmed because they were, and continue to be, denied adequate and equal educational opportunities by the state.

Thus, the parent and student Plaintiffs in this case have established a colorable claim of injury sufficient to have standing.

B. CCJEF Has Associational Standing Because It Satisfies All Three *Worrell* Requirements.

The trial court found that CCJEF met the three requirements for associational standing set forth in *Worrell*: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." A701-702 (Sub MOD); *Worrell*, 199 Conn. at 616. That finding is well-founded on the record.

1. CCJEF Members Have Standing To Sue In Their Own Right.

CCJEF has satisfied the first *Worrell* requirement because at least one member has standing to sue in her own right. *See United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555 (1996). This Court has "implicitly rejected the notion that aggrievement must be universal among the membership of an association before it may have representative standing." *Timber Trails Corp. v. Planning & Zoning Comm'n of Town of Sherman*, 222 Conn. 380, 395 (1992). Consequently, the trial court correctly found that "[a]s long as at least one member has standing, an organization has standing." A345 (Dec. 4, 2013 decision). The evidence is undisputed that Mary Gallucci is a parent of Connecticut public school students, has been a CCJEF member since at least 2009, and has standing in her own right. A701 (Sub MOD); PA703-705 (Gallucci testimony).

Nevertheless, Defendants claim that CCJEF members do not have standing to sue in their own right for two reasons: (*i*) jurisdiction cannot be cured retrospectively by an amended complaint; and (*ii*) even if CCJEF had any members with standing, they do not have sufficient indicia of membership because they lack the control over litigation-related decisions. Defs.' Br. at 45–49. Neither argument withstands appellate scrutiny.

First, the trial court correctly affirmed its earlier decision permitting CCJEF to file an amended complaint that alleged membership of parents, after dismissing a prior pleading that did not. A701 (Sub MOD); A348 (Dec. 4, 2013 decision). As previously discussed, the trial court's decision to grant a motion to amend a complaint can only be overturned on a showing of a clear abuse of discretion. *See Adler*, 163 Conn. App. at 697–98. Defendants have made no such showing. There exists no case law supporting Defendants' argument that a plaintiff in a multi-plaintiff case may not be granted leave to amend the complaint in order to properly set forth allegations for jurisdictional purposes. All of the cases on which Defendants rely involve single plaintiffs and are procedurally distinguishable.[18] Moreover,

[18] *See Fairchild Heights Residents Ass'n, Inc. v. Fairchild Heights, Inc.*, 131 Conn. App. 567, 575 (2011), *rev'd*, 310 Conn. 797 (2014) (single plaintiff case in which plaintiff's amended complaint set forth an additional claim but no additional allegations regarding

even if such a rule did exist, the evidence presented at trial clearly establishes that CCJEF had standing at the time of filing the operative complaint and at the time of trial. *See* A701 (Sub MOD); PA703-705 (Gallucci testimony).

Second, contrary to Defendants' claims, CCJEF's parent members have sufficient "indicia of membership" required for associational standing under *Worrell*. *See Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 344 (1977). There is ample evidence in the record that CCJEF members possess substantial attributes of membership. Although parent members do not have the right to vote on certain issues laid out in Article II, Section 5 of the CCJEF by-laws, the by-laws expressly authorize their participation in determining how the organization achieves its intended purposes of promoting adequate funding of education. As the trial court found, under the CCJEF by-laws, parent members are considered "Corporate Members" that have the power to initiate and pursue the very sort of litigation now before this Court, as well as to hire experts and staff and make spending decisions. A701–702 (Sub MOD); A1105 (PTX 1087). CCJEF is free to adopt rules to govern how such decisions are made, and the charter gives parents the right to participate in that decision-making process. For example, CCJEF was shown to have a Steering Committee that oversees its operations, including the progress of this litigation, which includes a parent member. PA700-701 (Gay testimony). Thus, Defendants are simply wrong that the CCJEF by-laws give "the power to initiate and pursue litigation to a Board over which the parent members had no voice whatsoever." Defs.' Br. at 46-47.

---

jurisdiction); *Serrani v. Board of Ethics of City of Stamford*, 225 Conn. 305, 309 (1993) (single plaintiff case in which no amended complaint was filed before trial); *Connecticut Associated Builders & Contractors v. City of Hartford*, 251 Conn. 169, 185 (1999) (single plaintiff in which no amended complaint was filed); *Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149, 160 (2d Cir. 2012) (single plaintiff sought to cure jurisdiction defect by an intervention of another party under federal procedures).

Parents have a role as members, and have exercised their given membership rights in fulfilling that role.

2. The Interests CCJEF Seeks To Protect In This Lawsuit Are Germane To CCJEF's Purpose.

The second prong, which asks whether the interests CCJEF seeks to protect are germane to CCJEF's purpose, requires that there be "a mere pertinence between litigation subject and organizational purpose." A350 (Dec. 4, 2013 decision). CCJEF's purpose is to engage in activities that promote the adequate funding of education in Connecticut and that relieve the burdens of Connecticut municipalities in funding education. A1104 (PTX 1087). Thus, as the trial court easily discerned, the "declaratory judgment and injunctive relief sought are germane to [CCJEF's] purposes because the relief requested will address the deficiencies in the current education system and possibly improve the quality of educational opportunities." A351 (Dec. 4, 2013 decision).

Nevertheless, in an attempt to raise the bar of the second prong of the *Worrell* test, Defendants try to import a requirement that there be "no obvious and direct conflict" among the members of an organization. This argument has no basis in the law. Defs.' Br. at 41–44. Defendants fail to point to any appellate Connecticut or Second Circuit authority that supports this proposition, and rely only on a single Superior Court case from 2008, *Fairfield Cty. Med. Assn. v. CIGNA Corp.* which has never been cited in any other decisions since its publication. 2008 WL 4150210, at *1 (Conn. Super. Ct. Aug. 19, 2008), PA1812. The Defendants' constricted reading of *Fairfield* has been elsewhere rejected,[19] while the only decision in the Second Circuit opining on this issue supports Plaintiffs' position. In

[19] *See Associated Gen. Contractors of Cal. Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1409 (9th Cir.1991) (finding that "[t]o insist that there be neither conflict nor potential for conflict on any issue litigated would, in effect, lead to the eradication of associational standing in most suits"); *Retail Indus. Leaders Ass' v. Fielder*, 475 F.3d 180, 188 (4th Cir. 2007) (distinguishing *Md. Highways Contractors Ass'n, Inc. v. Maryland,* 933 F.2d 1246, 1252–53 (4th Cir.1991) and finding that this case presents no hint that RILA's board authorized this suit without the knowledge or support of any RILA member).

Laflamme v. New Horizons, Inc, the District Court of Connecticut held that "the mere fact of conflicting interests among members of an association does not of itself defeat the association's standing to urge the interests of some members in litigation, even though success may harm the legal interests of other members." 605 F. Supp. 2d 378, 396–97 (D. Conn. 2009).

Yet, as even the *Fairfield* court observed, "associational standing should not be predicated on unanimity among a group's members or the nonexistence of internal conflicts," and having members "merely disagree about a particular litigation goal" is not sufficient to create an "obvious or direct conflict." 2008 WL 4150210 at *5, PA1815. Not surprisingly, therefore, in an earlier ruling the trial court here readily distinguished *Fairfield*. A351–A352 (Dec. 4, 2013 decision). It recognized that the *Fairfield* court found a direct conflict because the litigation goal there—preventing an insurance company from providing financial incentives to certain members—was "plainly and directly at odds with the pecuniary interests of part of the membership who would otherwise receive those same benefits." *Id*. By contrast, the goal of the CCJEF litigation—to obtain declaratory and injunctive relief from an inadequate and inequitable educational system—is a goal that unites its members, regardless of what other aims they may pursue outside CCJEF. A320 (CTAC at ¶ 180). There simply are no "overwhelming inherent" conflicts that are "impossibly disqualifying," a high barrier that Defendants fail to surmount.

Under well-reasoned law and the record, Plaintiffs satisfied the second prong of *Worrell.*

3. CCJEF's Claims Do Not Require The Participation Of Individual Members In The Lawsuit.

CCJEF meets the third *Worrell* requirement because its claims for injunctive and declaratory relief, by their very nature, do not require the individual participation of CCJEF's members. 199 Conn. at 616. As in *Worrell*, "money damages [we]re not sought for alleged injuries to the individual members" and the "relief sought by the declaratory judgment

actions will 'inure to the benefit of all members" of CCJEF in this case. *Id*. at 617. As the trial court previously concluded, this distinction has been consistently accepted by Connecticut courts. A354 (Dec. 4, 2013 decision).

Defendants nevertheless insist that CCJEF fails to meet the third *Worrell* prong because its claims "must rise or fall on the adequacy of opportunities offered to individual students." Defs'. Br. at 40–41. Defendants support this argument by analogy to a single Superior Court case, *Disabled Americans for Firearm Rights, LLC v. Malloy*, 2014 WL 1012285 (Feb. 6, 2014) ("*DAFR*"), PA1806. But the type of harm alleged in *DAFR* was substantively different from that claimed in this case. In *DAFR*, the court found that individual participation of its members was necessary to prove the plaintiffs' allegation that the challenged legislation prohibited certain features of firearms that were necessary for some disabled persons to exercise their constitutional right to carry firearms. *Id*. at *5, PA1810. Given that these features might–or might not–prohibit DAFR's members from carrying firearms, DAFR's case did depend on the specific circumstances of its members. In this case, however, individual participation of CCJEF's members is not necessary to prove CCJEF's claim that the entire public education system in Connecticut is unconstitutional and inadequate. CCJEF's claims rise and fall with the condition of the education system, not the attributes of individual students.

This Court should therefore affirm the trial court's conclusion that Plaintiffs have standing to bring the claims heard below.

CONCLUSION

For the reasons set forth above, this Court should (i) reverse the trial court's determination that Plaintiffs failed to establish that the state is not providing sufficient resources to afford an opportunity of an adequate education to all students in Connecticut, as required by article eighth, § 1 of the Connecticut Constitution; (ii) affirm the trial court's ruling insofar as it held that the state must have rational policies and standards in providing

an opportunity of an adequate education to all students in Connecticut under article eighth, § 1 of the Connecticut Constitution; (iii) affirm the trial court's rulings that the state's policies for funding education in Connecticut are not rational under article eighth, § 1 of the Connecticut Constitution; (iv) reverse the trial court's determination that Plaintiffs failed to establish that the State is not providing substantially equal educational opportunities to all students in Connecticut under article 1, §§ 1 and 20 of the Connecticut Constitution; (v) remand for further proceedings as necessary to implement the rulings of this Court; and (vi) grant such other and further relief as it may deem just and proper.

Respectfully submitted,
Plaintiffs-Appellees/Cross-Appellants

By: /s/ Cara A. Moore

John S. Kiernan, Esq. (pending)
jskiernan@debevoise.com

Joseph P. Moodhe, Esq. (426749)
jpmoodhe@debevoise.com

Megan K. Bannigan, Esq. (433614)
mkbannigan@debevoise.com

Gregory P. Copeland, Esq. (436417)
gpcopeland@debevoise.com

David B. Noland, Esq. (434837)
dbnoland@debevoise.com

Dustin N. Nofziger, Esq. (434836)
dnofziger@debevoise.com

Emily A. Johnson, Esq. (435982)
eajohnson@debevoise.com

Olivia Cheng, Esq. (435983)
ocheng@debevoise.com

Alexandra S. Thompson, Esq. (435672)
athomps1@debevoise.com

Christel Y. Tham, Esq. (436709)
cytham@debevoise.com

Edward Bradley, Esq. (413896)
ebbradle@debevoise.com

Cara A. Moore, Esq. (428027)
camoore@debevoise.com
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000
(212) 909-6836 Fax

David N. Rosen, Esq. (51235)
drosen@davidrosenlaw.com
David Rosen & Associates, P.C.
400 Orange Street
New Haven CT 06511
(203) 787-3513
(203) 789-1605 Fax

CERTIFICATION

Pursuant to Connecticut Rule of Appellate Procedure § 62-7, I hereby certify that on January 25, 2017:

(1) a copy of the foregoing brief and appendix were electronically filed and that a copy was electronically sent to all counsel of record as set forth below; and

(2) the electronically submitted brief and appendix and the filed paper brief and accompanying CD of native Excel files contained in the appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(4) the brief complies with all applicable rules of appellate procedure; and

(5) a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with § 62-7 at the following addresses:

The Honorable Thomas G. Moukawsher
Superior Court, Judicial District of Hartford
95 Washington Street, Hartford, CT 06106

Joseph Rubin, Esq., Joseph.Rubin@ct.gov
Beth Z. Margulies. Esq., Beth.Margulies@ct.gov
Eleanor May Mullen, Esq., Eleanor.Mullen@ct.gov
Darren P. Cunningham, Esq., Darren.Cunningham@ct.gov
John DiManno, Esq., John.DiManno@ct.gov
Cynthia Courtney, Esq., Cynthia.courtney@ct.gov
State of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120

David N. Rosen, Esq., drosen@davidrosenlaw.com
David Rosen & Associates, PC
400 Orange Street
New Haven, CT 06511

Amicus Curiae: Connecticut Commission on Human Rights and Opportunities
450 Columbus Boulevard, Suite 2, Hartford, CT 06103
David Kent, Esq., David.Kent@ct.gov

Office of Protection and Advocacy for Persons with Disabilities
60B Weston Street, Hartford, CT 06120
Nancy B. Alisberg, Esq., nancy.alisberg@ct.gov

The Arc of the United States
James P. Sexton, Esq., jsexton@taylorsexton.com
Taylor & Sexton, LLC
363 Main Street, Third Floor, Hartford, CT 06106

/s/ Cara A. Moore
Cara A. Moore
Juris No.: 428027