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TOWN OF NEWTOWN

TOWN OF NEWTOWN LEGISLATIVE COUNCIL MEETING
MARCH 22, 2017
NEWTOWN MUNICIPAL CENTER, NEWTOWN, CT

PRESENT: George Ferguson, Phil Carroll, Chris Eide, Neil Chaudhary, Judit DeStefano, Ryan Knapp, Paul Lundquist, Mary Ann Jacob, Dan Amaral, Tony Filiato, Dan Wiedemann, Dan Honan.

ALSO PRESENT: First Selectman Pat Llodra, Finance Director Bob Tait, Police Captain Christopher Vanghele, Lieutenant Richard Robinson, District Director of Security Mark Pompano, Newtown School Superintendent Dr. Joseph Erardi, Newtown School Board Keith Alexander, Michelle Embree Ku, Andrew Clure, Newtown School District Director of Business Ron Bienkowski, Commission on Aging George Guidera, State Representative Mitch Bolinsky, 9 members of the public, 2 press.

CALL TO ORDER: Ms. Jacob called the meeting to order with the Pledge of Allegiance at 7:30 pm.

VOTER COMMENT: Kristen Alesevich, 16 Fieldstone Drive, Newtown – though there has been talk in committees about budget cuts, there is a lot of support from parents to pass the budget as it is now, she requested that the Council pass the budget.

EXECUTIVE SESSION: MS. DESTEFANO MOVED TO GO INTO EXECUTIVE SESSION. MR. CARROLL SECONDED. ALL IN FAVOR. Executive Session began at 7:33 pm and ended at 8:16 pm.

MINUTES: MS. DESTEFANO MOVED TO APPROVE THE MINUTES OF THE MARCH 8, 2017 AND MARCH 15, 2017 MEETINGS. SECOND BY MR. CARROL. Mr. Chaudhary clarified that he **voted no** to add the police facility design to the amendment on the table in the minutes of MARCH 8, 2017 and requested a correction for public record. APPROVE THE MINUTES OF THE MARCH 8, 2017 AND MARCH 15, 2017 WITH CORRECTION MADE TO THE MINUTES OF MARCH 8, 2017 THAT MR. CHAUDHARY VOTED NO TO SEND TO REFERENDUM THE HAWLEY SCHOOL ROOF REPLACEMENT PROJECT, THE CAPITAL ROAD PROGRAM, AND THE HIGH SCHOOL AUDITORIUM PHASE II PROJECT AND ADD THE POLICE FACILITY DESIGN – Motion to Amend Passes 5:3 (Opposed: Ms. Jacob, Mr. Ferguson, Mr. Chaudhary) ALL IN FAVOR. 11-0 (Mr. Honan abstained.)

COMMUNICATIONS: Ms. Jacob received communications regarding the budget. (ATTACHMENT A) Mr. Lundquist referred to a communication that came through empty. Ms. Jacob clarified that it has been received correctly. Ms. Llodra referred to a problem with attachments which is being looked into. The long term plans will include .gov.

COMMITTEE REPORTS:
The three budget committees are still meeting, further meetings already scheduled.

FIRST SELECTMAN'S REPORT:
Ms. Llodra referred to an article in the Connecticut Mirror:
"Some Momentum Builds For Challenges To Education Aid Formula"
Link: https://ctmirror.org/2017/03/20/some-momentum-builds-for-changes-to-education-aid-formula/

Ms. Llodra provided an update to the sand budget, at this point, each of the categories are less than what was budgeted from the 3 accounts (salt, sand, overtime) there is a $200,000 surplus in our for winter maintenance budget. Mr. Chaudhary asked if this includes labor and material. Ms. Llodra said that we have a good inventory and are building up an inventory, it is a real dollar value of material. Mr. Wiedemann asked if we could pre-order inventory since we have a surplus. Ms. Llodra said that we end the year fully stocked for next year.

NEW BUSINESS

Legal Opinion on what if's surrounding the impact of suggested state budget changes both before and after the April referendum:
Attorney David Grogins drafted a memorandum regarding the budget. (ATTACHMENT B) He said that there is more flexibility prior to the adoption of the budget than after. He discussed $400 million to be allocated by the state to the towns. The ECS provision could be substantially diminished. The ECS comes into the system as revenue. If cut, and the budget is already adopted, how it can be equitably divided is a subsequent issue. If there is a revenue reduction (ECS), there are several options such as spend less money as year progresses on the town side and/or try to raise more money under the new charter which requires a referendum. The capital improvement items will use up some of the authority you have without going to referendum. First there would need to be an appropriation, from there, you can decide how to proceed. Regarding going into municipal finance, to reduce fund balance, if you vary from the plan, it can be harmful at a later date.

Ms. Llodra asked to clarify that if we are confronted with a significant revenue reduction once the Board of Ed budget is passed, it can't be modified. Mr. Grogins said yes, but The Board of Ed can participate if they choose to do so.

Ms. Jacob asked Mr. Grogins to explain the legal opinion about expense related to pension, legality issues. He said that historically the state funded the teacher pension system, bonds, covenants to the bonds. The other sources include income from the pension plan, there is a very strict limitation as to how the state can fund the teacher pension system, if legislation stays as it is, it would be illegal to ask the towns to contribute to this system. He said that it may end up as a general levy against the towns.

Mr. Eide asked about difference in how we approach the ECS loss of revenue and pay for teacher pension costs. Mr. Grogins said that if you decrease revenue (ECS) the portion can be made up by a reduction in spending or if you want to spend it you would need to have a referendum. The steps to take depend on the source of funding.

Mr. Ferguson said that because we are a charter community, we would need referendum.

Mr. Knapp said the new charter gives the Council the ability to allow funds for specific capital improvement projects, if those CIP projects were moved to referendum, would that expand the Council's room under our cap to appropriate funds. Mr. Grogins said that he was not sure to which budget year the special appropriation applies. This will need to be looked into further.

Mr. Lundquist referred to some hesitancy to tap into the general fund. Mr. Tait referred to Newtown's AAA rating and noted that the reason we have a good rating is because of written good fiscal policies.

Mr. Filiato asked about litigation, Mr. Grogins said that at this time there are too many what ifs.

Ms. Jacob thanked Mr. Grogins for his input and for providing the legal background which will help the Council with budget decisions.

Ms. Jacob asked Mr. Tait to discuss Governor's Proposed 2017-18 Budget Effect on Newtown and Actions Taken in 2017-18 Budget Process to Date. (ATTACHMENT C) Mr. Tait reviewed the slides and pointed out the method of how, according to state statue, the Excess Cost Grant is applied. Per state statute, the balance of the grant can be placed in general fund revenues. Mr. Bienkowski joined the discussion and said that this is correct based on the way the excess cost grant works now. Mr. Knapp asked about adjusted state revenue estimates. Mr. Tait said that revenue stay in revenue accounts, cash is on the balance sheet, need the same amount of revenues as appropriations. Mr. Eide brought up the motor vehicle cap and mill rates. Ms. Jacob asked Ms. Llodra to speak on the what ifs, Ms. Llodra estimates a total of $3 million loss of revenue. Mr. Knapp expressed concern about other areas/opportunities that we could get blind-sided by that would hit municipalities harder than expected.

Possible uses in the 2017-2018 for the expected 2016-2017 BOE budget surplus:
Dr. Erardi, Mr. Alexander and Mr. Bienkowski joined the discussion. The fund balance is approximately $322,000 minus $55,000. Mr. Alexander said that they always look at fund balance as a way to help out Newtown. Ms. Jacob said the Board of Ed has that amount in their budget until the end of June. Mr. Tait said it can be attached to non-lapsing. Mr. Chaudhary clarified that to put money in non-lapsing instead of spending it, it would need to be approved by the Board of Ed, then Board of Finance and does not come to the Legislative Council for approval. Mr. Tait added that they are required to notify the Legislative Council.

Town and BOE planned Self Funded Medical Insurance costs for 2017-2018:
Mr. Tait led the discussion of the Town of Newtown Claims Analysis. (ATTACHMENT D) Mr. Tait explained the method he uses for determining claims projections. Mr. Bienkowski said that part of the reason we got into self funded medical insurance is to secure the increase, maintained an increase of 2%. Mr. Bienkowski discussed the impact of the HSA. Mr. Ferguson brought up that he would prefer that reductions not be made with the Board of Ed budget.

Planned Pension Contributions for 2017-2018 Budget:
Mr. Tait reviewed the actuarial report. (ATTACHMENT E)

Ms. Jacob concluded the discussions and asked the Council to consider the information presented tonight as the budget process moves forward. Ms. Jacob noticed a more broad discussion for the next week's meeting. Dr. Erardi encouraged continued trust between Board of Ed and Legislative Council.

VOTER COMMENT:

Lynn Edwards, 3 Sand Hill Road, Sandy Hook, - Ms. Edwards said that it is her understanding that the $1.5 million referenced are not really cuts to the budget, but corrections in revenue.

ANNOUNCEMENTS: None.

ADJOURNMENT: There being no further business the meeting adjourned at 10:23.

Respectfully Submitted,

June Sgobbo
Clerk

Attachments: Communications, Attorney Grogins Memos and Documents, Governor's Budget effect on Newtown, Pages from BOE Adopted 2-15-2017, Special Education, Monthly Claims Analysis, Self Ins Fund Analysis, Possible Budget Savings.

These are draft minutes and as such are subject to correction by the Legislative Council at the next regular meeting. All corrections will be determined in minutes of the meeting at which they were corrected.

A

From: Mary Ann Jacob <mjacob4404@charter.net>
Subject: Re: Form submission from: Contact the Legislative Council
Date: March 15, 2017 at 8:14:22 AM EDT
To: Kinga Walsh <kingawalsh@gmail.com>

Ok thank you, I can't reply to all as that would constitute a meeting. We have completed our review of items for referendum and voted.

Mary Ann

Sent from my iPhone

On Mar 15, 2017, at 7:54 AM, Kinga Walsh via Newtown CT <vtsdmailer@vt-s.net> wrote:

Submitted on Wednesday, March 15, 2017 - 7:54am
Submitted by user: Anonymous
Submitted values are:

Your name: Kinga Walsh
Your e-mail address: kingawalsh@gmail.com
Subject: # 2 Agenda Item: Senior Center Non-Advocacy Materials
Message:
Mary Ann
I am replying via the town's system as others may have the same confusion you did.

The issue is the resident confusion and connection to the community center. As I stated, I know you aren't creating these documents, but the LC (IMO) needs to be aware of what is happening locally and the decision to proceed, costs approved, etc., for example, could very likely be impacted by the situation. Perhaps more money is needed for materials to decrease confusion? Perhaps more departments should be involved and the LC recommending that would show leadership and town-wide concern? Perhaps a reconsideration of the situation overall needs to be discussed - is the vote inclusion still a good idea (note: do not know legal timetable for question submission)? There are many lingering questions and the top elected officials, one would hope, want/need to be aware and concerned.

Please let me know if you have any other questions.
Kinga

==Attachments:==
Attachment #1:
Attachment #2:
Attachment #3:

From: Mary Ann Jacob <mjacob4404@charter.net>
Subject: Re: Form submission from: Contact the Legislative Council
Date: March 15, 2017 at 7:32:09 AM EDT
To: Kinga Walsh <kingawalsh@gmail.com>

Kinga,

Thank you for your note. I'm unclear as to what exactly you are requesting. We have no authority in the actual creation of the materials at all. Our only role is in allowing them to be created by those charged with doing so in the charter. I trust they understand their responsibility and charge. Perhaps speaking at a Commission on Aging meeting and offering your expertise might be helpful to them in crafting that message for approval by the Town attorney and Town Clerk.

Mary Ann

On Mar 15, 2017, at 7:16 AM, Kinga Walsh via Newtown CT <vtsdmailer@vt-s.net> wrote:

Submitted on Wednesday, March 15, 2017 - 7:16am
Submitted by user: Anonymous
Submitted values are:

Your name: Kinga Walsh
Your e-mail address: kingawalsh@gmail.com
Subject: Agenda Item: Senior Center Non-Advocacy Materials
Message:
Dear Newtown's Legislative Council,

For the record, I will be voting yes for the senior center referendum line item; however, due to some concerns I and others have with the community center project overall, there is likely to be increased resident confusion if the "non-advocacy" message is not carefully planned.

Below is a copy of an email I sent to the BOS after last week's meeting that outlines two concerns regarding the community center. Although you are not actually creating the non-advocacy materials, in my opinion the concerns raised are relevant to the senior center line-item vote and any related communications on it. Please consider them in your discussion of the agenda item at the 3/15/17 Legislative Council meeting.

Thank you
Kinga Walsh
21 Horseshoe Ridge Rd
Sandy Hook, CT

COPY OF EMAIL SENT TO BOARD OF SELECTMEN on 3/8/17:

Dear Newtown Board of Selectmen,

Please accept the following as a reiteration of two of my public comment points made at Monday's meeting. Given the sensitivity and importance of the center project, please respond with how you will address these concerns, what your action next steps will be as well as the timetable.

Our community received a very generous gift because of a very horrible tragedy. Many have worked tirelessly over the past four years to try to do what is right for the community regarding the building of a community center. At the Monday, March 6th, Board of Selectmen's meeting, some community center schematic design options were presented and a general discussion ensued on the overall design with the objective of giving the architects the "green light" to continue forward. The architects are working to meet deadlines and incorporate needs/wants/desires communicated to them; however, a couple of concerns have arisen that are important for you, as our elected officials, to address:

o The spending and cost per square foot for the community center has increased $150/sf since December 2015 (see appendix). The initial estimates provided to the Commission by the Town hired consultants were at $308/sf. The current estimate presented Monday, per the architects, stands at $459/sf. This discrepancy needs to be understood and rectified.

o There is apparent continued resident confusion on what is really being planned for inclusion in the community center versus what was voted on and approved in April 2016. Despite repeated requests from multiple Advisory Committee members that the downsizing of the 50-meter aquatics component option (in the summer of 2016) be clarified to residents, no clear, concise information has been communicated yet. This confusion is being further exacerbated with the discussion/ballot initiative to add a Senior Center component to the community center. Clear messaging needs to be sent to residents to avoid further misconceptions.

Please let me know if you have any questions. The center planning and development needs to continue moving forward for a multitude of reasons; however, it should be done in a transparent manner with actions that reflect respect for the residents and the community as a whole.

Looking forward to hearing your response. Thank you for your time and all you do for the community.

Regards,
Kinga Walsh
21 Horseshoe Ridge Rd, Sandy Hook

PS -- Despite having prepared these discussion points in direct response to email and verbal invites to Advisory Committee members to participate in Monday evening's discussion, I was unable to do so as an invite to talk

never happened. Therefore, the only communication option I had where I could publicly make my points, with the intent of transparency, was during the public comment section at the end of the evening.

APPENDIX

• Why has the cost per square foot increased/changed so much from NCCC time frame?
• 12/10/15 estimate: $308/sf
o Bottom line total = $14,982,545/48,500sf
o Includes 50-meter pool, separate zero entry pool as well as "dry" community space
o Pg. 42 of Feb 2016 NCCC Final Report
• 1/22/16 estimate: $344/sf
o Bottom line total = $15,000,000/43,500sf
o Includes 50-meter pool, separate zero entry pool as well as "dry" community space
o Pg. 36 of Feb 2016 NCCC Final Report
• 3/6/17 detail: $459/sf
o Bottom line total = $15,000,000/32,625sf
o Includes aquatic options of 4-6 lane 25-yard pool and separate zero-entry pool as well as "dry" community space
o 3/6/17 Quisenberry Arcari Architects presentation to BOS

==Attachments:==
Attachment #1:
Attachment #2:
Attachment #3:

February 15, 2017

Dear Anthony Filiato,

I have my home, 14 Bryan Lane, on the real estate market for sale.

I have had two buyers tell me they liked the home but were worried about the property on Bryan Lane that has posted orange signs on trees which state the following:

PRIVATE SHOOTING AREA

AUTHORIZED UNDER THE REGULATION
OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

I am sure you are aware of this situation on the Nagy Construction property across from Middlegate School that also borders on Bryan Lane.

My question is with Middlegate School across the road from the property It would seem to me that shooting would not be allowed. I am not an expert on where shooting areas can be but I always thought they could not be near a building which people use if the building is visible or within a ½ mile. I also do not understand the Department of Environmental Protection authorizing. I would think the town would be the one to authorize a shooting area not an agency that sounds like it is a State or Federal agency.

One buyer said she liked my home but did not want her daughter to get shot walking to school.

I appreciate your thoughts.

Regards,

Bob Maurer
14 Bryan Lane
Newtown

From: "Mary Ann Jacob"
To: "Steve Hinden"
Cc: "June Sgobbo"
Sent: 18-Mar-2017 18:55:37 +0000
Subject: Re: Form submission from: Contact the Legislative Council

Hi Steve,

Thank you for your email. As a fellow resident and taxpayer I share some of the same concerns. This year is particularly challenging as the state is attempting to shift almost $5million in costs to us directly. As their budget will not be final until June, we are left in the difficult position of trying to guess what will stick and what won't.

We had a meeting Wednesday with the state budget director and talked in depth about these issues. I've attached a link here if you'd like to learn more. There are two primary drivers to this issue. First, the state has underfunded teacher pensions since the 1970s, spending that money on operating expenses. Second, they have been funding our education cost sharing at the same amount despite our declining enrollment. That will change this year, and since our spending comes mutinies to rise that has a severe impact.

Best,

Mary Ann Jacob
Chairman, Legislative Council

PS. I've copied our clerk so your comments will be part of the council record.

http://www.newtown-ct.gov/minutes-and-agendas

Sent from my iPhone

On Mar 18, 2017, at 10:55 AM, Steve Hinden via Newtown CT <vtsdmailer@vt-s.net> wrote:

Submitted on Saturday, March 18, 2017 - 10:55am
Submitted by user: Anonymous
Submitted values are:

Your name: Steve Hinden
Your e-mail address: steve.hinden@gmail.com
Subject: Education Budget
Message: I am a resident of Newtown and the father of an eighth grader. I urge you as a group to pass the education budget and not make any reductions to the proposal. The value and prestige of our town as well as the property values depend directly on the quality of education that is provided to our children. It is also the right thing to do. Thank you for your time and service.
==Attachments:==
Attachment #1:
Attachment #2:
Attachment #3:

From: "Mary Ann Jacob"
To: "Henry Turco"
Cc: "Keith Alexander", "June Sgobbo"
Sent: 18-Mar-2017 18:59:37 +0000
Subject: Re: Form submission from: Contact the Legislative Council

Hi Henry,

Thank you for your email. I have copied the Chairman of the Board of Education here as well as our clerk so your comments are part of the public record.

Certainly, one of the challenges we are facing is a reduction in funding from the state, tied to our decrease in enrollment.

However, the decision to close a school, or not, lies solely with the BOE per state statutes. Our role on the council at this point will be to attempt to put together a reasonable budget request, given the circumstances as they are today, that the voters can weigh in on.

Best,

Mary Ann Jacob
Chairman, Legislative Council

Sent from my iPhone

> On Mar 18, 2017, at 7:11 AM, Henry Turco via Newtown CT <vtsdmailer@vt-s.net> wrote:
>
> Submitted on Saturday, March 18, 2017 - 7:11am
> Submitted by user: Anonymous
> Submitted values are:
>
> Your name: Henry Turco
> Your e-mail address: henry@turcofamily.net
> Subject: Newtown Middle School
> Message:
> Dear Legislative Council,
>
> I know we looked into closing NMS earlier this year to save money. Given
> what the state plans to do we need to look at this again. I have a child
> attending there so I understand the consequences and I still don't understand
> why people were so upset. At the very least this should be put up as a town
> vote and let the community decide.
>
> Thanks for your time,
> Henry
> ==Attachments:==
> Attachment #1:
> Attachment #2:
> Attachment #3:
>

March 20, 2017

Dear Members of the Legislative Council:

I would first like to take this opportunity to thank you all for the time and effort each of you gives to help the citizens of this fine community.

I am writing this letter in an effort that the members of this council deliver a zero (0) percent increase in both the town and the school budget. Having lived in Newtown since 2003, I have seen increases in the budget each and every year since I established my residence. I can't see me being able to stay in this town for much longer due to these increases. All I see in this town is "For Sale" signs. These signs stay on these houses for months or longer. I have done some research and noted the population of this community has dropped as has our school enrollment.

I also understand that the state is now going to push millions of their debt upon the citizens of this town. I can't believe the state government is doing this to each town because they cannot control the spending. I am sure the state government all will be getting raises as they lay off or demand give backs from the unions.

I closing I would just like to say that the town and school budget is something that both you and I can do something about. We need to work together to solve these challenges.

Sincerely

John A. Murphy

From: "Mary Ann Jacob"
To: "Daniel Cruson"
Cc: "June Sgobbo"
Sent: 22-Mar-2017 19:22:21 +0000
Subject: Re: Town and Schools Budget

Thanks Dan, your comments are a part of the public record, as are mine, so all members of the council and the public can review them. The numbers from the state are downright scary, no doubt and how we deal with them will not be easy. I don't see any political posturing at all honestly, I see many people who care about the community with different opinions on the best way to move forward. The council has regular, ongoing updates and discussions about increasing commercial development so we welcome your participation as they go forward.

Best,

Mary Ann

Sent from my iPhone

On Mar 22, 2017, at 2:37 PM, Daniel Cruson <dcruson@gmail.com> wrote:

Hello Mary Ann,

Thank you for your email back. It's good to hear that there has been growth on the commercial side of the grand list, although it is still well below where it should be.

I wish I shared your confidence, but some of the numbers that I am hearing thrown around (especially after last nights subcommittee meeting) leave me cause for concern. There seems to be a lot of hurt feelings and political posturing occurring on all sides (I don't think the Board of Ed is completely innocent in any of this) that I wish we could all get beyond because the potential result scares me. And I am concerned for all aspects of the town budget, when I said I urge you to pass both along I really meant it. It isn't just education that I worry about but the overall town's infrastructure and services. While I think there is room for collaboration and compromise, there isn't a lot and most of the numbers mentioned would result in a cut in programs and services that would hurt and potentially begin the downward spiral we all want to avoid. Again I recognize and understand the thin line that we are all treading on at the moment and just like you want to make sure we end up on the correct side instead of the harmful one. I don't envy your job at all being the last line before the public gets the chance to vote.

Unfortunately I really wanted to be able to come in person to say what I had to write because it doesn't all apply to you, there is some responsibility which rests on the shoulders of all residents of town and I wanted them to hear it as well (I'm pretty sure you are going to have a crowd tonight). In addition, they need to be part of the solution if we are going to bring business into town because a chunk of the "Newtown is unfriendly to business" perception is due to the long years of residents fighting against businesses that want to open in town. While I'm not in favor of opening the flood gates to any business that wants to come in, I think that residents need to realize that if they don't want to shoulder the tax burden they need to compromise as well. So

what I am hoping to do is put this out there now when we can all see the direct correlation so that the discussion can be opened on the other side of budget season about how we can all work together to try and further bolster commercial entities in Newtown. I could go on at length about my thoughts on this subject so I will cut myself off there.

Thanks again for listening.

Daniel Cruson

On Wed, Mar 22, 2017 at 7:48 AM, Mary Ann Jacob <mjacob4404@charter.net> wrote:
Thank you Dan,

Interestingly, our revenue from our grand list, mostly from commercial growth this year has increased $900,000. Unfortunately that will be swallowed up by the deficit created by the state's poor fiscal management over many, many years. We all share your desire to keep our education system in top shape as parents and residents too. Personally, I have complete confidence we will remain that way.

I expect you'll continue to see a collaborative effort to meet these potential obligations as we move through the budget process.

Best,

Mary Ann

Sent from my iPhone

> On Mar 22, 2017, at 7:41 AM, Daniel Cruson <dcruson@gmail.com> wrote:
>
> Hello,
>
> I am writing you today not as a member of the Board of Education but as a parent of two, business owner and resident of the town of Newtown. I unfortunately am not able to attend tonight's public hearing due to a last minute conflict so I wanted to write today to urge you to pass both the proposed town and Board of Education budgets on to the town without further cuts. Further cuts will be detrimental to the town as a whole and potentially start us on a downhill trend.
>
> When my wife and I decided to move back to Newtown 2 years ago we made the decision for two main reasons, to get our children away from the mediocre school district that we were about to go into and into a successful one, as well as to be in a town that provided a great community that had retained it's small town feeling (through plentiful town activities and such). Both of these items would be in jeopardy if we push ourselves to keep the budget completely flat, or worst start to decrease, because programming would need to be eliminated to support contractual obligations for pay increases and rising costs. I have talked to several families that have recently come into town who moved here for similar reasons. This is growth that we as a town need and

will only stagnate or even reverse if services start to fall off.
>
> I understand the pressure that we are all under due to the potential news coming from the state level, and I appreciate you trying to plan for the unforeseen. I also share the feelings of other residents who feel that the burden on home owners to bear the brunt of the town budget. However, the solution is not going to be found in budget cuts, instead we need to look to other options. One of the biggest problems the town as a whole has is the extremely low percentage of our grand list that is carried by businesses. When Pat Llodra told us the number at the January Chamber of Commerce meeting many of us were mildly surprised although we also knew exactly why, Newtown is perceived by businesses as unfriendly, even hostile, toward business. This is a perception that has been perpetuated by years of fights caused by the residents that became extremely public, as well as unreasonable rents being asked by the landlords within town.
>
> So in addition to writing today in support of the budgets as they stand, I also want to put forward that I would like to see more of a push taken to try and correct the deficiency in the business side of the grand list. I also feel that the school district can continue to develop revenue opportunities by utilizing the extra space during the current decline, something which I know has started but feel there is further room to accomplish. Through both of these methods of raising revenue I believe we can decrease the burden on home owners but continue to be the great town that we have always been.
>
> Thank you for your time,
> Daniel Cruson IV

From: "Mary Ann Jacob"
To: "Deborah DeBlasi"
Cc: "June Sgobbo"
Sent: 22-Mar-2017 21:54:13 +0000
Subject: Re: Form submission from: Contact the Legislative Council

Thank you for your email Debbie.

Sent from my iPhone

> On Mar 22, 2017, at 5:02 PM, Deborah DeBlasi via Newtown CT <vtsdmailer@vt-s.net> wrote:
>
> Submitted on Wednesday, March 22, 2017 - 5:02pm
> Submitted by user: Anonymous
> Submitted values are:
>
> Your name: Deborah DeBlasi
> Your e-mail address: deborahadeblasi@gmail.com
> Subject: BOE Budget
> Message:
> To The Legislative Council,
> I am writing as I cannot be at tonight's meeting. I am concerned about the
> BOE budget. I am writing this as a parent who has the perspective of a PTA
> President, not officially as PTA President. What is happening due to budget
> cuts that is changing the face of what the PTA is supposed to be.
> The PTA fundraising we do is not to fill items we lose to budget cuts.
> However, I see more and more where this is becoming a necessity. If we
> don't purchase certain items/improvements the students do without. There
> are certain things that are necessary as supplements to a smooth educational
> experience. Computer equipment, basic classroom necessities like book
> shelves. We have had to purchase books in the past because there was no
> budget. The ability to purchase books/shelves/computers is out of the budget?
> That should never happen.
> We have computer rooms that need to have air conditioning and do not. At this
> time of the year they are stifling when filled with a room of children. In
> the early fall and spring, it is unbearable in there. We have children
> testing and so much is now being placed on the test results. I could not take
> a test and hold a thought together in a room that warm. That is not even
> considering the fact that it is not good for the children or the computers to
> be in a room that hot. These are things that are becoming considered
> "extras". I don't think things like this are extras when it comes to
> education. I understand the need to be fiscally responsible and I am all

> for that. However, not at the expense of the health and success of our
> children.
> The buildings they are in are a huge part of their day. I have been in the
> office in the fall and spring and the line of students coming in and out to
> visit the nurse is staggering. They have cool clothes on their eyes because
> of the heat and pollen all creating a very uncomfortable environment where
> the children are expected to learn. When they are needing to go to the nurse
> constantly, learning is not happening. We need to make improvements to their
> environment so they can excel.
> It makes me sad that teachers cannot order the basic classroom items they
> need. Like heavy duty pencil sharpeners. This year we gave each classroom a
> welcome back present of a heavy duty pencil sharpener. I can't even tell
> you how excited the teachers were. In elementary school, can you imagine how
> many pencils are sharpened every day. Why is it that this has become a luxury
> and not a necessity? We need to make the environment that our children are in
> for all these hours a day a place where they have the tools they need. Where
> the environment is healthy and conducive to learning.
> I do not want to see this budget cut for the reasons mentioned above. I
> understand there is much that is unknown due to Governor Malloy's cuts so
> this year is very different than years past. However, even if there may be
> extra money in the BOE budget this year when all is said and done, it is
> still needed. We are already not adding in many of the items considered
> "improvements" that are actually necessary for our students to succeed
> and to be healthy in their school environment. Please, pass the budget as
> submitted by Dr. Erardi without any further cuts. Thank you.
>
> Sincerely,
> Debbie DeBlasi
> PTA President, Middle Gate Elementary School
>
> ==Attachments:==
> Attachment #1:
> Attachment #2:
> Attachment #3:
>

Thank you for your email Jamie.

Sent from my iPhone

> On Mar 22, 2017, at 5:29 PM, Jamie Peterson via Newtown CT <vtsdmailer@vt-s.net> wrote:
>
> Submitted on Wednesday, March 22, 2017 - 5:29pm
> Submitted by user: Anonymous
> Submitted values are:
>
> Your name: Jamie Peterson
> Your e-mail address: jfpete@att.net
> Subject: Education Budget
> Message: I would like to voice my strong support of the education budget. Our
> children are our future and we need to support them now. I urge you to
> support the education budget as well.
> ==Attachments:==
> Attachment #1:
> Attachment #2:
> Attachment #3:
>

From: "Mary Ann Jacob"
To: "Karen Roszman"
Cc: "June Sgobbo"
Sent: 22-Mar-2017 21:56:25 +0000
Subject: Re: Education budget

Thank you for your email Karen.
Sent from my iPhone

On Mar 22, 2017, at 5:32 PM, Karen Roszman <kroszman@hotmail.com> wrote:

Hello Legislative Council board members,

First of all, I would like to thank each of you for the countless hours of service you have dedicated to the people and town of Newtown. I am writing because I am unable to make the public hearing tonight, but would like to express my thoughts on the budget, specifically the education budget. Cutting to the chase, I am in favor of keeping the ed budget in tact as it came to you from the BoF. Understanding that the ed budget has already been adjusted from the initial proposed 1.81% increase from Dr. Erardi to the 1.98% increase by the BoE and then finally to 1.58% increase by the BoF, I would like to see that 1.58% increase to be passed on to referendum—let the voters decide.

Reading through very meticulous notes taken from an Education Committee meeting, I am bothered at the perception that some members feel that any increase in the ed budget will not pass at referendum and that only a 0% budget will pass. I truly feel that this is a huge misconception. I know that you don't have droves of parents packing the room for crucial budget meetings, but that should not be perceived as parents don't care. Many parents simply can't make it to the meetings. The parents do care. More and more parents are taking note and following the process more closely. I feel that parents will come out to vote to pass a reasonable, slight increase in the education budget and thus, the ed budget should be put forth as is with no further cuts.

Dr. Erardi is our educational expert and he has proven to act reasonably and responsibly when asking for the slight increases in the ed budget. As a taxpayer, I feel I have a responsibility to make sure our schools are properly funded and not de-funded by those who I do not view as educational experts. I want to have high caliber schools and we all know that it takes money to continue to maintain a high standard of education. I do not buy the overused argument that declining enrollment means a declining budget. Everything costs more today in comparison to even a few years ago. People are not even having as many children as they used to because it is expensive to raise children. Just because enrollment numbers have dropped does not mean the budget will follow suit—contractual obligations, an exponential increase in technology needs and use in instruction over the years and an increase in the variety of programming and classes offered to students especially at the high school level to keep up with our ever-changing more global world are only a few aspects which prevent a direct correlation between our budget and the declining enrollment.

And the issues at the state level—ugh, don't even get me started. There is no way I want Newtown's education budget to be compromised just because the clowns running this state don't know how to be fiscally responsible in the slightest. Do I think we should drop our ed budget to 0% to prepare for the ball that may be dropped on the surrounding small towns to make up for major mismanagement of funds at the state level? Nope. There are other solutions to that "ball".

To wrap up, I truly hope you are not looking to aim for a 0% increase as the "magic number" and , that while questioning the ed budget, you put a bit of trust in Dr. Erardi as our educational expert and note that more people may be in favor of this slight increase than you think. Put the education budget out to the vote without any further reductions.

Thank you for your time,
Karen Roszman

From: "Mary Ann Jacob"
To: "Joanna Rosen"
Cc: "June Sgobbo"
Sent: 22-Mar-2017 22:20:13 +0000
Subject: Re: Form submission from: Contact the Legislative Council

Hi Joanna,

Thank you for your note. I haven't met anybody in town who does not support our schools. And yes, all voices DO matter. Thank you for sharing your thoughts. As a fellow resident, parent and taxpayer i don't agree though that we should automatically send a budget forward without review or potential changes. That is how our town government works and the purpose of our council is to review and approve spending as appropriate. We do our best to do that fairly.

Best,

Mary Ann

Sent from my iPhone

> On Mar 22, 2017, at 6:00 PM, Joanna Rosen via Newtown CT <vtsdmailer@vt-s.net> wrote:
>
> Submitted on Wednesday, March 22, 2017 - 6:00pm
> Submitted by user: Anonymous
> Submitted values are:
>
> Your name: Joanna Rosen
> Your e-mail address: joanna.rosen@charter.net
> Subject: I support the BOE budget
> Message:
> As elected member of this town you are obligated to consider the voices of
> ALL of our community members, even those of us who support our schools.
>
> I believe that when the time comes for the Budget Referendum, we have the
> right to vote "yes" or "no" for a budget that has been vetted and approved by
> those we elect to run our schools and those we elect to run our finances.
>
> I support the BOE budget put forth by the BOF and do not want any further
> cuts made UNLESS the members of our town vote it down. No speculation on
> your end about how we will vote should be made. The votes should be tallied
> and only then should changes be made, if indicated by the outcome.
>
> Thank you.
>

From: "Mary Ann Jacob"
To: "Joan Plouffe"
Cc: "June Sgobbo"
Sent: 22-Mar-2017 22:20:35 +0000
Subject: Re: Form submission from: Contact the Legislative Council

Thank you Joan.

Sent from my iPhone

> On Mar 22, 2017, at 6:15 PM, Joan Plouffe via Newtown CT <vtsdmailer@vt-s.net> wrote:
>
> Submitted on Wednesday, March 22, 2017 - 6:15pm
> Submitted by user: Anonymous
> Submitted values are:
>
> Your name: Joan Plouffe
> Your e-mail address: jplouffe@earthlink.net
> Subject: Budget
> Message:
> Please pass the BOE budget to the voters as approved by the BOF. It is
> responsible and well vetted.
>
> Thank you,
> Joan Plouffe
> 9 Sturges Rd
> Newtown
> ==Attachments:==
> Attachment #1:
> Attachment #2:
> Attachment #3:
>

From: "Mary Ann Jacob"
To: "Allyson Story"
Cc: "June Sgobbo"
Sent: 24-Mar-2017 01:56:43 +0000
Subject: Re: Form submission from: Contact the Legislative Council
Thank you for your email Allyson.
> On Mar 22, 2017, at 6:51 PM, Allyson Story via Newtown CT <vtsdmailer@vt-s.net> wrote:
> > Submitted on Wednesday, March 22, 2017 - 6:51pm
> Submitted by user: Anonymous
> Submitted values are:
> > Your name: Allyson Story
> Your e-mail address: astory18@gmail.com
> Subject: BOE Budget
> Message:
> Dear Council Members,
> Thank you for all that you do for Newtown. I know that you are not tasked
> with an easy job. However, you are elected officials who are to represent the
> voice of the community and I want my voice to be heard loud and clear. It is
> important that you NOT reduce the BOE budget. We have no idea the
> implications of the state funding at this time and if you cut and they cut
> Newtown will NOT be able to maintain the quality of education we want for our
> children in this town.
>
> I am a teacher in another town and I am constantly amazed and disappointed at
> the lack of resources and support that our students in Newtown have in
> comparison to our surrounding neighbors. Every time we cut the budget we cut
> opportunity for our students. You may think that you are doing what is right
> for our pockets but you are actually causing our pockets harm.
> People with families (I have had this conversation with several potential
> buyers) don't want to move to this town because we get NOTHING for our tax
> dollars and. We spend a fortune on taxes and have little to show. We can't
> sell our home in Sandy Hook to buy a larger home in Sandy Hook to support the
> size of our family because the value of our homes is still down.
>
> Rather than cut the BOE budget I suggest you look closely at where the town
> money is actually going. We don't have paid fire or EMS in this town, we
> don't have trash pick-up, or any other benefit that many towns do. We need to
> really look at where our money goes and taking it away from our future, our
> students, is NOT the right place.
>
> Do what is right for education and SUPPORT IT!!!!!
>
> Thank you,
> Allyson Story
>

From: "Mary Ann Jacob"
To: "Kristin Christensen"
Cc: "June Sgobbo"
Sent: 23-Mar-2017 11:30:40 +0000
Subject: Re: Board of Ed. Budget

Thank you for your email Kristin.

Sent from my iPhone

On Mar 22, 2017, at 10:28 PM, Kristin Christensen <sewkris@gmail.com> wrote:

Hi there, I had a sick child at home tonight and was unable to attend the meeting but I wanted to make my voice heard that I support the Board of Education budget that the Board of Finance created and do not support any further reductions.
I have 2 children at Head O Meadow and another that will attend in a few years.
Thank you!
Sincerely,
Kris Christensen

B

MEMORANDUM

TO: Mary Ann Jacob, Patricia Llodra

FROM: David L. Grogins

RE: Option by the State of Connecticut to fund any assessment levied by the State of Connecticut against the Town to fund a portion of the underfunding by the State of the Teacher Retirement Pension Fund, and dealing with other cuts to state funding

DATE: March 21, 2017

You have requested that I outline the alternatives available to the Town to provide the necessary funds to pay for any assessment by the State of Connecticut to pay for a portion of employer's share of the actuarial cost of the 2017 - 2018 Teachers Retirement System ("TRS"), together with other cuts in state funding. The answer depends to some degree upon the timing of any action by the State. If the assessment or cut is made prior to the completion of the Town Budgetary Process, certain options are available to the Town. On the other hand, if the assessment is made after the conclusion of the Town Budgetary Process and the mil rate is set, the options are more limited.

I. Assuming a demand by the State, coupled with a reduction in the Equitable Cost Sharing ("ECS") reimbursement or other reimbursements prior to the close of the Budgetary Process.

The most important point in this discussion is that normal budgetary processes pursuant to the Newtown Charter ("Charter") and State statutes apply. If the Town is billed by the State for a portion of the TRS pension contribution for fiscal 2017 – 2018 attributable to the Town of Newtown, coupled with reduction in ECS money or other funds, prior to the completion of the normal budgetary process pursuant to Article 6 of the Charter, the Town and Board of Education budgets could be reduced by the Legislative Council (Charter Sections 6-20(b), 6-20(f)). Budget reductions have the benefit of being allocable to both the Town and Board of Education sides of the Budget, thereby spreading the "pain" equitably.

If additional funds are subsequently needed (subsequent to the adoption of a Budget by vote of a referendum), they can be raised by the special appropriation process. Of course, this will require a referendum, assuming the Charter threshold is met ($1,500,000 or 1 mil depending upon prior special appropriation in the fiscal year in question).
A further item of consideration is the source of the cuts or the

assessments. Bob Tait has laid out some thoughts on this subject, and I will essentially defer to him on the topic, except to say that some items are considered revenue sources (i.e. ECS money), others are considered reimbursement money (special education grants), while a direct assessment of a portion of the TRS deficit would be considered additional expenses. Each have different characteristics which will need to be considered as to how they affect the Town's finances. Also, reductions in expected revenue can be dealt with by reductions in spending during the fiscal year (this is discussed below).

II. Assuming the above actions on the part of the State come after the mil rate is set.

My sources indicated that the State of Connecticut will, in all likelihood, not have a fixed plan on this issue prior to June 8, 2017. The affect of this is that the Town will have to provide for the loss of funds by means of either a special appropriation (loss of revenue), a budget adjustment or a mil rate reset pursuant to C.G.S. § 12-123.

If the Town decides to pass an appropriation pursuant to Section 6-35 of the Charter, this requires the Legislative Council receive a request from the Board of Finance (Section 6-35d) and make a decision on whether to approve it. Assuming a request of $1,500,000, taking into account other special appropriations during the year, this will require a referendum. Any special appropriation will require a method of funding: i.e. budget reduction, deduction from the general fund, or borrowing.

The Town could choose to address loss of revenue by a budget adjustment (questions of how this can impact the Board of Education subsequent to the Budget referendum need to be discussed). This can be monitored during the fiscal year and gives the Town limited flexibility to deal with the loss of revenue. However, it does not address the question of a need for additional revenue as discussed above (that requires a special appropriation).

Finally, there has been some discussion of the concept of a mil rate reset in the event there is a need for additional funds to cover a state demand for a portion of the TRS deficit. Section 12-123 C.G.S. has been cited as authority for this.

Section 12-123 C.G.S provides that the town can reset the mil rate by action of the Board of Selectmen ". . . where estimated yearly income of the town is [not] sufficient to pay current expenses . . .". It is my opinion

that under the Connecticut Home Rule Act (See C.G.S. § 7-188(a)) the provisions of the Charter take precedence over the provisions of §12-123, supra. In the case of Board of Education of the Town and Borough of Naugatuck v. Town and Borough of Naugatuck, et al, 268 Conn. 295, the Connecticut Supreme Court ruled that whether or not a state statute (C.G.S. § 12-123) takes precedence over the provisions of the town charter relating to the budgetary process depends upon whether the state statute relates to a matter of ". . . statewide interest such that it supersedes those charter provisions . . .", id at 612. The court went on to state ". . . the predicate conclusion [is] that matters concerning a town budget are of local rather than statewide concern . . .", id at 613. That being the case, C.G.S. § 12-123 would not obviate the need for a referendum on the underlying question of whether or not to appropriate the required sums.

I have attached several backup documents for your review:

1. Memo of Cohen and Wolf, PC on the subject of the legality of an assessment by the state under existing law.
2. A memo by Attorney Les Pinter on the origins of the ECS.
3. The Naugatuck case referred to above.
4. Connecticut Coalition for Justice in Education, Inc. v. Rell, et al, discussing the constitutionality of the ECS.

B9
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TO: PCS, DLG

FROM: JLS

DATE: 3/6/2017

RE: STATE-REQUESTED MUNICIPAL CONTRIBUTIONS TO TEACHERS' RETIREMENT FUND

MEMORANDUM

Question Presented

Whether the State of Connecticut (the "State") may require municipalities to contribute to the State's Teacher Retirement System Fund (the "TRS Fund") through the State's budgetary process.

Brief Answer

Under the current state of the law, the State may not compel municipalities to contribute to the TRS Fund.

Background

In a Press Release dated February 3, 2017, Governor Dannel P. Malloy announced a State budget proposal requiring that municipalities contribute one-third of the employer share of the actuarial cost of the TRS Fund.[1] This proposal is a departure from the historical role of the State as the primary contributor to the TRS Fund, along with educators themselves. In a Fact Sheet published in conjunction with the press release, entitled "Asking Towns to Partner in Supporting and Fully Funding the Teachers' Retirement System," the office of the Governor states that the proposal is driven by the need "[t]o build a better partnership between the state and local

[1] "Gov. Malloy Asks Towns to Partner in Supporting and Fully Funding the Teachers' Retirement System," Office of State of Connecticut Governor Dannel P. Malloy, February 3, 2017 (http://portal.ct.gov/Office-of-the-Governor/Press-Room/Press-Releases/2017/02-2017/Gov-Malloy-Asks-Towns-to-Partner-in-Supporting-and-Fully-Funding-the-Teachers-Retirement-System)

governments in making good on promises made to educators."[2] Various municipal clients have asked us to assess the State's authority to require municipal contribution to the TRS Fund.

Analysis

I. The State Statutes Dictating the Source of Funding for the TRS does not Provide for Municipal Contributions to the TRS Fund.

The Connecticut General Statutes set forth the specific sources of funding for the TRS Fund, and the statutes do not allow for municipal contributions as a source of funding. The State of Connecticut has administered the TRS Fund since at least 1939.[3] The TRS Fund and the State's role in administering the fund are governed by Chapter 167a of the Connecticut General Statutes (the "Statute"). The TRS Fund provides "retirement and other benefits for teachers, their survivors, and beneficiaries."[4] Section 10-183r discusses the means by which the TRS Fund must be funded, stating that:

> [t]he cost of all benefits payable from the system shall be paid out of the retirement fund which *shall consist of contributions paid by members, appropriations by the General Assembly based upon certifications and recommendations submitted by the board, the proceeds of bonds held by the system under section 10-183m, the proceeds of bonds issued pursuant to section 10-183qq and earnings of the system.* (emphasis added).[5]

Thus, Section 10-183 limits the sources of funding for the TRS Fund to (i) contributions by members of the education system, (ii) appropriations by the State General Assembly based on recommendations by the Teachers' Retirement Board regarding the valuation of the fund, (iii) the proceeds of bonds, or (iv) earnings from TRS Fund investments. In addition to setting forth the sources of funding for the TRS Fund, the duties of the State in administering the TRS Fund,

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[2] "Asking Towns to Partner in Supporting and Fully Funding the Teachers' Retirement System," Fact Sheet, Office of State of Connecticut Governor Dannel P. Malloy, February 3, 2017.
[3] Jean-Pierre Aubry, Alicia H. Munnell, Final Report on Connecticut's State Employees Retirement System and Teachers' Retirement System, Center for Retirement Research at Boston College, November, 2015 (http://crr.bc.edu/wp-content/uploads/2015/11/Final-Report-on-CT-SERS-and-TRS_November-2015.pdf), 30.
[4] C.G.S.A. 10-183c
[5] C.G.S.A. 10-183r(2).

and the process by which fund requirements are calculated, the Statute makes clear that the benefits accrued by members of the education system are contractual in nature, "and no public or special act of the General Assembly shall diminish such benefit."[6]

In addition to the required sources of funding set forth in the Statute, the statutory provisions discussing the procedure by which the TRS Fund is funded indicate that the State is solely responsible for supplying all necessary funds. Section 10-183z of the Statute requires that the TRS Fund be funded on an actuarial basis, and the State retirement board is required on an annual basis to certify the amount needed to maintain the TRS fund.[7] Upon receiving the recommendation of the State retirement board, the Statute states that "[*t*]*he General Assembly* shall review the board's recommendations and certification and *shall appropriate to the retirement fund the amount* certified by the retirement board as necessary" (emphasis added).

A review of various municipal Annual Financial Reports supports the proposition that Section 10-183z requires the State alone to provide all monies necessary to fund the TRS Fund. Under the Municipal Auditing Act, all Connecticut municipalities are required to commission an audit of municipal financial statements on an at-least annual basis.[8] Reports are prepared in accordance with generally accepted accounting principles and auditing standards, which include a full assessment of a municipality's liabilities and obligations.[9] An analysis of various Reports from a number of municipalities across the State highlights that Section 10-183z exempts municipalities from contribution to the TRS Fund. See e.g. Comprehensive Annual Financial Report of the Town of Fairfield, Year Ended June 30, 2016 ("[p]er Connecticut General Statutes Section 10-18z [...], contribution requirements of active employees and the State of Connecticut

[6] C.G.S.A. Sec 10-183c
[7] C.G.S.A. 10-183z.
[8] C.G.S.A. Sec. 7-392
[9] C.G.S.A. Sec. 7-394a (GAAP Principles).

are amended and certified by the State Teachers' Retirement Board and appropriated by the General Assembly [...] [s]chool district employers are not required to make contributions to the plan")[10]; see also Town of West Hartford Comprehensive Annual Financial Report for the Fiscal Year July 1, 2015- June 30, 2015 (citing Section 10-183z and stating that "[s]chool [d]istrict employers are not required to make contributions to the plan. The statutes require the State of Connecticut to contribute 100% of each school districts' required contributions")[11]; see also City of Danbury, Connecticut, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2016 ("[t]he pension contributions made by the State to the [TRS Fund] are determined on an actuarial reserve basis as described in CGS Sections 10-1831 and 10-183z [...] [t]he School District is not required to make contributions to the plan")[12]; see also Town of Brookfield, Connecticut, Comprehensive Annual Financial Report for the Year ended June 30, 2012 ("[t]he Town does not and is not legally responsible to contribute to the plan") [13]; see also Town of Old Saybrook, Connecticut, Basic Financial Statements, Supplementary Information and Independent Auditor's Report, June 30, 2015 ("[i]n accordance with Section 10-183z of the General Statutes, the Town does not and is not legally responsible to contribute to the plan as a special funding situation exists that requires the State to contribute one hundred percent of employer's contributions on-behalf of its participating municipalities at an actuarially determined rate").[14]

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[10] CohnReznick LLP, Finance Department, Town of Fairfield, Caitlin T. Bosse, Controller, and Robert Mayer, CPA, Comprehensive Annual Financial Report of the Town of Fairfield, Year Ended June 30, 2016, December 19, 2016, p. 72.

[11] Blum Shapiro & Company, P.C., Town of West Hartford Department of Financial Services, Town of West Hartford Comprehensive Annual Financial Report for the Fiscal Year July 1, 2015- June 30, 2015, December 23, 2016, p. 59.

[12] RSM US LLP, David W. St. Hilaire, Director, City of Danbury Department of Finance, City of Danbury, Connecticut, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2016, 98.

[13] Grant Thorton LLP, Department of Finance, Town of Brookfield, Town of Brookfield, Connecticut, Comprehensive Annual Financial Report for the Year ended June 30, 2012, February 26, 2013, p.55.

[14] Mahoney Sabol, Town of Old Saybrook, Town of Old Saybrook, Connecticut, Basic Financial Statements, Supplementary Information and Independent Auditor's Report, June 30, 2015, December 30, 2015, p. 50.

The State of Connecticut Comprehensive Annual Financial Report (the "CAFR") for the fiscal year ending June 30, 2016, further highlights that the State is wholly-responsible for contributing to the TRS Fund. Prepared on an annual basis by the Office of the State Comptroller, the CAFR summarizes the State teacher pension system and the status of the fund. The most recent iteration of the CAFR describes the TRS Fund as a "special funding situation," and states that "[t]he employer contributions for the Teachers' Retirement System (TRS) are funded by the State *on behalf of the participating municipal employers*" (emphasis added).[15] In a section of the CAFR entitled "Funding Policy," the State Comptroller notes that "[t]he contribution requirements of plan members and the State are established and may be amended by the State legislature subject to the contractual rights established by collective bargaining [...] [*t*]*he State* is required to contribute at an actuarially determined rate" (emphasis added)[16]

The Governor's proposal likely violates Section 10-183r of the TRS Fund statutes, and directly conflicts with the annual financial reports published by both municipalities and the State Comptroller. The Statute sets forth the specific sources of funding for the TRS Fund, none of which includes municipal contributions. Any budgetary requests purporting to require municipal participation in the funding of the TRS fund is outside the scope of the statute. A review of municipal annual financial reports supports the proposition that the Statute requires the State alone to provide all funds necessary to maintain the TRS Fund. Finally, the State Comptroller's clear explanation of the State's statutory obligation to provide monies to the TRS Fund highlights the inability of the Governor under the current statutes to require municipalities to contribute to the TRS Fund.

[15] Office of the State Comptroller, Kevin Lembo, State Comptroller, State of Connecticut Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2016, December 30, 2016, p. 77.
[16] Id.

II. In the Event that the State's Obligations Pursuant to the TRS Fund Remain Unfunded, the Statute Provides Specific Protocols and Procedures to Address Unfunded Liabilities, which Protocols and Procedures do not Include Municipal Contributions to the TRS Fund.

If the State cannot meet its TRS Fund obligations, the Statute requires the State to follow specific procedures in addressing its unfunded liabilities. It has been widely known for some time that a portion of the Connecticut teacher pension fund is presently unfunded. In 2014, the Board of Directors of the Connecticut State Teachers' Retirement System Actuarial Valuation from Cavanaugh Macdonald Consulting, LLC, examined the liabilities of the TRS Fund.[17] The valuation, titled "Connecticut State Teachers' Retirement System Actuarial Valuation," compared the accrued liabilities of the TRS Fund to the fund's assets. The study concluded that the accrued liabilities of the fund exceeded the fund's asset by over $10 billion.[18] Similarly, other studies indicate that Connecticut's unfunded pension costs per-teacher exceed $14,000.00.[19] These costs are expected to rise over the next 18 years if the State continues with its current pension plan for educators.[20] Each of these indicators highlight that a portion of the TRS Fund remains unfunded. In the event that any portion of the TRS Fund is unfunded, the Statute provides a specific mechanism to replenish the fund. Under Section 10-183qq, the State Bond Commission is authorized to issue Pension Obligation Bonds in a total amount not to exceed $2 billion for the purposes of addressing any unfunded liability of the TRS Fund. The

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[17] Cavanaugh MacDonald Consulting, LLC, Connecticut State Teachers' Retirement System Actuarial Valuation as of June 30, 2014, October 29, 2014 (https://www.documentcloud.org/documents/1350415-teachers-pension-report.html)

[18] Id., at 8.

[19] Jacqueline Rabe Thomas, Report: CT 4th Worst in Unfunded Pension Liabilities per Teacher. CT Mirror, May 16, 2016 (http://ctmirror.org/2016/05/16/report-ct-4th-worst-in-unfunded-pension-liabilities-per-teacher/)

[20] Jean-Pierre Aubry, Alicia H. Munnell, Final Report on Connecticut's State Employees Retirement System and Teachers' Retirement System, Center for Retirement Research at Boston College, November, 2015 (http://crr.bc.edu/wp-content/uploads/2015/11/Final-Report-on-CT-SERS-and-TRS_November-2015.pdf), 53.

Statute specifically states that the proceeds of the sale of these bonds must be used to reduce the unfunded liability of the TRS Fund.

The Governor's proposal circumvents the mechanisms set forth in the Statute to address unfunded liabilities of the TRS Fund. Because the Statute provides for a specific process by which the State can address the unfunded liabilities of the TRS Fund, the State should address any unfunded liabilities of the TRS Fund through this process.

III. Altering the State's Required Contributions to the TRS Fund May Violate Covenants Made by the State Pursuant to Pension Obligation Bonds Issued in 2008 to Address Unfunded Liabilities of the TRS Fund.

The Governor's proposal may violate certain covenants made by the State in bonds previously- issued to address the TRS Fund's unfunded liabilities. As previously discussed, the State is authorized to issue Pension Obligation Bonds in order to address any unfunded liabilities of the TRS Fund. In 2008, the State issued bonds in the amount of $2 billion to cover unfunded obligations of the TRS Fund, payable over a 25 year period.[21] These bonds included certain covenants made by the State as the bond-issuer, including the following:

> [t]he State of Connecticut does hereby pledge to and agree with the holders of any bonds issued [...] that, as long as the actuarial evaluation for each biennium, as required by this section, and the certification of the annual contribution amounts, as required by this section, are completed in the manner and by the dates required [...] *no public or special act of the General Assembly shall diminish such required contribution until such bonds, together with the interest thereon, are fully met and discharged.*[22] (emphasis added).

The aforementioned covenant obligates the State to make certain contributions to the TRS Fund and prohibits the State from reducing its own contributions to the fund. In a news publication discussing the ramifications of reducing state contributions to the TRS Fund, State Treasurer Denise Nappier suggested that altering contributions to the TRS Fund "would be a

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[21] Keith M. Phaneuf, CT Faces Legal Roadblock to Easing Rising Teacher Pension Costs, CT Mirror, June 20, 2016 (http://ctmirror.org/2016/06/20/ct-faces-legal-roadblock-to-easing-rising-teacher-pension-costs/)

[22] 2008 Pension Obligation Bond – State of Connecticut (https://assets.documentcloud.org/documents/2511193/connecticut-pob-covenant-for-teachers-retirement.pdf)

(legal) problem."[23] The Treasurer's general counsel, Catherine LeMarr, reiterated Treasurer Nappier's concerns regarding the legality of altering contributions to the TRS Fund, and questioned whether paying benefits to retired workers out of the state budget (rather than the pension fund) would require IRS approval.[24]

The Governor's proposal may violate certain covenants made by the State in the 2008 bond issuance. The bond covenants include a pledge by the state to make annual contributions to the TRS Fund, and the covenants prohibit the State from diminishing its own contributions to the TRS Fund. The Governor's proposal shifts a portion of contributions to the TRS Fund from the State to municipalities. This shift diminishes the State's required contributions to the TRS Fund, and may violate the bond covenants as suggested by the office of the Connecticut Treasurer.

Conclusion

The Governor likely cannot require municipalities to contribute to the TRS Fund through the state budgeting process. Requiring municipalities to contribute to the TRS Fund violates state statutes that specifically address (i) the allowable sources of funding for the TRS Fund, and (ii) the mechanisms by which the State should address any unfunded liabilities of the TRS Fund. The Governor's proposal not only likely violates state law, but may also violate covenants made by the State in 2008 pursuant to the issuance of Pension Obligation Bonds as well.

[23] Jacqueline Rabe Thomas and Keith M. Phaneuf, Treasurer Raises More Concerns About Malloy's Plan for Pensions, CT Mirror, November 10, 2015 (http://ctmirror.org/2015/11/10/treasurer-raises-more-concerns-about-malloys-plan-for-pensions/)
[24] Id.

B) (2)

Grogins, David L.

From: Les Pinter <l.pinter@danbury-ct.gov>
Sent: Thursday, March 16, 2017 10:30 AM
To: Grogins, David L.
Subject: ECS

Dave - This is an extract from a report of education funding methods and issues from a group that has been involved in State funding of schools.....the "Connecticut School Finance Project" (they are also proponents of schools choice). This is specifically on ECS, which as I mentioned, is no longer used as of 2014, per the report, due to funding shortages as well as an inability to apportion funding in a way that accurately reflects **need**. The (former) ECS formula as used now is just a year on year re-use of the previous block amount with small adjustments as indicated in this summary. It is no longer formulated through the 3 part system originally in place through 2013.
Then....as you know, Judge Mowkouasher's ruling came along.....
We can talk at your convenience.

Thanks for sending your opinion.

Les

How does the state determine how much money each school should get? 51 CT has 11 different funding formulas to divide up money between public schools • Each "type" of school has its own funding formula that is part of the Connecticut General Statutes (the laws of the state). • The formula that distributes most of the money is the Education Cost Sharing (ECS) formula. – This is the formula the state is supposed to use to distribute approx. $2 billion in state education funding to public schools each year. Sources: Connecticut General Assembly, Office of Legislative Research. (2013). Task Force to Study State Education Funding Final Report. Retrieved from http://www.cga.ct.gov/2013/rpt/2013-R-0064.htm. Conn. Gen. Statutes ch. 172, § 10-262h (2013). Moran, J. (2014). Comparison of Charter, Magnet, Agricultural Science Centers, and Technical High Schools (2014-R-0257). Hartford, CT: Connecticut General Assembly, Office of Legislative Research. Retrieved from http://www.cga.ct.gov/2014/rpt/2014-R-0257.htm. Conn. Acts 16-2 (May Special Session). 52 11 Different Funding Formulas • ECS (Traditional districts) • State Charter Schools • Local Charter Schools • CT Technical High School System • Regional Agriscience Centers • District Host Magnet Schools • RESC-Operated Sheff Magnet Schools • Edison Magnet School • Non-Sheff RESC Magnet enrolling less than 55% of students from 1 town • Non-Sheff RESC Magnet enrolling 55% of students or more from 1 town • Non-Sheff Host Magnet School 53 The Education Cost Sharing (ECS) formula determines how much money the state is supposed to give to each city/town to fund its public schools. 54 Why does CT have the ECS formula? • The state began providing aid to cities/towns as a result of a 1977 CT Supreme Court decision, Horton v. Meskill. • In Horton (1977), the Court ruled that an education funding system that allows "property wealthy" towns to spend more on education with less effort, is a system that impedes children's constitutional rights to an equal education. • As a result, CT established a formula to give money to public school districts that took property wealth into consideration. – In 1988, CT established the Education Cost Sharing (ECS) formula to serve this purpose. It has been revised numerous times since then. – In theory, the ECS grant is supposed to make up the difference between what a community can afford to pay and what it costs to run a public school system. Sources: Horton v. Meskill, 172 Conn. 615 (Conn. Sup. Ct. 1977). Connecticut General Assembly, Office of Legislative Research. (2013). Task Force to Study State Education Funding Final Report. Retrieved from http://www.cga.ct.gov/2013/rpt/2013-R-0064.htm. 55 How does the ECS formula work? • Connecticut uses three variables to determine how much a community must raise from its property taxes to pay education costs, and

how much the state must contribute to offset these costs: – The Foundation: The average estimated cost of educating a child. – Need Students: A calculation that considers the number of students within a town, including groups of students that are typically more costly to educate because they have greater needs. – Base Aid Ratio: Each community's ability to financially support education. Source: Conn. Gen. Statutes ch. 172, § 10-262f. 56 The ECS Formula Foundation x Needs Students x Base Aid Ratio = Town's Entitlement to the ECS Grant Source: Conn. Gen. Statutes ch. 172, § 10-262h (2013). 57 But the ECS formula has some problems and complications 58 #1: It doesn't fund all students based on their learning needs • The ECS formula only provides extra funding for students who are low-income (as measured by eligibility for free and reduced price lunch). • Many students have other special learning needs that require additional resources to give them access to the same opportunities. – EL students – Students with disabilities 59 Sources: Conn. Gen. Statutes ch. 172, § 10-262f (2013). Connecticut General Assembly, Office of Legislative Research. (2013). Task Force to Study State Education Funding Final Report. Retrieved from http:// www.cga.ct.gov/2013/rpt/2013-R-0064.htm. #2: The state can't fully fund the ECS formula • Fully funding the 2013 formula would cost Connecticut $600+ million more than the state is currently spending. • CT is in a fiscal crisis, and as a result, does not have additional funds available. • CT does not have enough money to pay each city and town the amount it is owed under ECS. – Therefore, most cities and towns actually get far less money than they are entitled to under the formula. Sources: Conn. Gen. Statutes ch. 172, § 10-262h (2013). Guay, K., & Perkins, N. (2014). The ABCs of ECS. New Haven, CT: Connecticut Council for Education Reform. Retrieved from http://ctedreform.org/ 2014/04/abcs-ecs/. Conn. Acts 16-2 (May Special Session). The full funding total was simulated by Kathleen S. Guay based on data provided by the Connecticut State Department of Education. 60 #3: CT stopped using ECS in 2013 • The state stopped using the ECS formula to distribute education funding to school districts in 2013. • This opens the door to funding schools based on politics, rather than the needs of kids and communities. 61 Sources: Conn. Acts 14-47. Conn. Acts 16-2 (May Special Session). Conn. Acts 16-3 (May Special Session). The full funding total was simulated by Kathleen S. Guay based on data provided by the Connecticut State Department of Education. #4: ECS grant amounts are now based on historical precedent • ECS grant amounts to districts do not change as a result of changes in the number of students the district serves, the learning needs of those students, or the community's ability to pay. – If the number of students in a district goes up or down, the ECS grant amount does not change accordingly. – If the number of low-income students a district is serving goes up or down, the ECS grant amount does not change accordingly. – If the ability of a community to contribute to its district's education budget goes up or down, the ECS grant amount does not change accordingly. • Instead, ECS grant amounts are increased or decreased on a percentage basis from the amount the district received last year. 62 Sources: Conn. Acts 16-2 (May Special Session). Conn. Acts 16-3 (May Special Session). #5: The result isn't equitable • Some towns get more than they are entitled to, while most communities get less than they should under the ECS formula. – Groton: $3.8 million (+18%) – Danbury: -$30.2 million (-49%) • Communities with similar needs receive different amounts of state education funding. – More than $5,000 per pupil gap between New Britain and Hartford. • It doesn't apply to all kids in all schools. – The ECS formula only applies to local public schools. Other types of schools are funded using 10 more formulas. 63 Sources: Connecticut State Department of Education. (2016). Connecticut Local Public School District Per Pupil Expenditures by Revenue Source & Property Tax Information, 2013-15. Available from http://ctschoolfinance.org/data/local-school-district-per-pupil-expenditures-by-revenue-sourceproperty-tax-information. Connecticut General Assembly, Office of Legislative Research. (2013). Task Force to Study State Education Funding Final Report. Retrieved from http:// www.cga.ct.gov/2013/rpt/2013-R-0064.htm. Conn. Acts 16-2 (May Special Session) State of Connecticut, Office of Policy and Management. (2016). FY 17 Municipal Opportunities and Regional Efficiencies (MORE) Lapse Savings. Retrieved from http://tiny.cc/h6i4hy. The full funding total was simulated by Kathleen Guay based on data provided by the Connecticut State Department of Education. There is no correlation between the percentage of lowincome students a district serves and per-pupil expenditures 64 Bridgeport $0 $5,000 $10,000 $15,000 $20,000 $25,000 $30,000 $35,000 0.00 0.10 0.20 0.30 0.40 0.50 0.60 0.70 0.80 0.90 1.00 NCEP % FRPL NCEP versus % FRPL 2015-16 Hartford New Britain District # 1 Cornwall Sharon R = -.22 Windham Sources: Connecticut State Department of Education. (2016). 2015-16 Net Current Expenditures Per Pupil. Available from http://ctschoolfinance.org/data/ connecticut-

public-school-district-spending-per-student-2015-16. Connecticut State Department of Education. (2016). CT Public School Enrollment_2000.mdb. Available from http://ct

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B 3

268 Conn. 295
Supreme Court of Connecticut.

BOARD OF EDUCATION OF THE TOWN AND BOROUGH OF NAUGATUCK
v.
TOWN AND BOROUGH OF NAUGATUCK, et al.

No. 16825.
|
Argued Sept. 8, 2003.
|
Decided March 30, 2004.

Synopsis

Background: Board of education brought action against municipality and its officials for a declaratory judgment that budget and board membership amendments to municipality's home rule charter were invalid. The Superior Court, Judicial District of Waterbury, Shortall, J., granted board's motion for summary judgment. Municipality and its officials appealed. The Appellate Court, 58 Conn.App. 632, 755 A.2d 297, vacated judgment and remanded with direction to dismiss. On board's petition for certification to appeal, the Supreme Court, 257 Conn. 409, 778 A.2d 862, Borden, J., reversed and remanded. On remand, the Appellate Court, Lavery, C.J., 70 Conn.App. 358, 800 A.2d 517, affirmed in part, reversed in part, and remanded. Certification was granted.

Holdings: The Supreme Court, Palmer, J., held that:

[1] budget amendment of charter which permitted voters to accept or reject board of education's budget did not was not preempted by statute which delineates procedures for the preparation and adoption of a local budget by a board of finance, and

[2] the budget amendment conflict with state education policy or infringe unduly upon the authority and discretion of the board of education.

Reversed and remanded.

Attorneys and Law Firms

**606 *297 N. Warren Hess III, for the appellant (named defendant).

Mark J. Sommaruga, Hartford, for the appellee (plaintiff).

Mary–Michelle U. Hirschoff, Bethany, filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Patrice A. McCarthy, Wethersfield, filed a brief for the Connecticut Association of Boards of Education as amicus curiae.

SULLIVAN, C.J., and NORCOTT, KATZ, PALMER and ZARELLA, Js.

Opinion

PALMER, J.

The sole issue presented by this certified appeal is whether an amendment to the town charter of the named defendant, the town and borough of Naugatuck (town),[1] providing for separate voter referenda on the town's education budget and operating budget, *298 is invalid because it violates General Statutes § 7–344[2] or **607 *299 because it otherwise is inconsistent with the statutory allocation of power between local boards of education and local budgeting authorities. The trial court struck down the budget amendment,[3] concluding that it impermissibly conflicted with the state's interest in education. The Appellate Court affirmed in part the judgment of the trial court on that ground and on the ground that the budget amendment violates § 7–344. *Board of Education v. Naugatuck,* 70 Conn.App. 358, 370, 378, 800 A.2d 517 (2002). We disagree that the budget amendment violates any state statute or policy and, therefore, we reverse in part the judgment of the Appellate Court.[4]

**608 The following stipulated facts and procedural history are necessary to our resolution of this appeal. The plaintiff, the board of education of the town and borough of Naugatuck (board of education), is established and organized under the laws of the state of Connecticut and vested with the authority and responsibility to implement the educational policies of the state in maintaining *300

the town's public school system. See General Statutes §§ 9–203 through 9–206 and 10–218 et seq. The town is a consolidated municipality; see General Statutes §§ 7–148(a) and 7–187(d); and operates under a town charter (charter), which constitutes the town's organic law. See General Statutes § 7–188(a).[5] The board of mayor and burgesses is the town's legislative body. The budget making authority of the town resides jointly in the board of mayor and burgesses and the board of finance (joint boards).

Section 12 of the charter, as revised to November 30, 1995, provides in relevant part that "[t]he head of each department, office, commission or agency ... shall, at least ninety days before the end of the fiscal year, file with the controller ... a detailed estimate of the expenditures to be made by his department ... and the revenue, other than tax revenue, to be collected thereby, during the ensuing fiscal year." Section 14 of the charter, as amended by the budget amendment of 1996, provides in relevant part: "Not later than fifteen days before the end of the fiscal year, the board of finance and the board of mayor and burgesses, meeting jointly, shall hold a public hearing on the budget as *301 recommended by said boards.... Not later than five days following said public hearing, the budget shall be adopted at a joint meeting of the board of finance and the board of mayor and burgesses, and an official copy shall be filed with the controller....

"Within fourteen days of the adoption of the budget, a petition requesting that such budget be put to a vote of the electors may [be] filed with the borough clerk.... Any such petition shall specify whether such vote of electors is being sought for the town operating budget or for the board of education budget and shall specify whether such vote is being sought because the level of expenditures in said budgets is too high or too low....

* * *

**609 "Nothing herein shall prohibit the simultaneous circulation of petitions for a vote of the electors on both the town operating budget and board of education budget and if both such petitions are circulated and contain the requisite number of signatures, there shall be two questions presented at the vote of the electors, one on the acceptance or rejection of the town operating budget and one on the acceptance or rejection of the board of education budget...."

Prior to November, 1996, the charter permitted town voters to petition for up to three referenda on the town's entire budget, which included the board of education budget. In November, 1996, by a margin of more than two to one, voters approved an amendment to § 14 of the charter, as revised to November 30, 1995, "allow[ing] up to (3) three separate budget referendums for both the Town Operating Budget and the Board of Education Budget." Thus, under the budget amendment, voters may petition for a vote on the town operating budget or the board of education budget or both. The budget amendment, therefore, effectively establishes the board of education budget as a separate *302 budget from the rest of the town budget for the purpose of soliciting voter input into the budget approval process. Furthermore, if by referendum voters reject a proposed budget as too high or too low, the revised budget presented at the subsequent public hearing presumably would be adjusted in conformity with the vote. That is, if voters reject a proposed budget as too high, the revised budget presumably would be adjusted downward; conversely, if voters reject a proposed budget as too low, the revised budget presumably would be increased.

The board of education commenced this action seeking, inter alia, a declaratory judgment that the budget amendment violates § 7–344 and several other statutory provisions relating to public education. The town maintained that, under Connecticut's Home Rule Act, General Statutes § 7–187 et seq., it is authorized to submit its education budget to a separate vote of the electorate irrespective of any conflicting provisions in § 7–344. The town also claimed that the budget amendment does not contravene any other state statute or policy relating to education. Ultimately, the parties filed with the trial court a stipulation of facts and cross motions for summary judgment.

In a comprehensive memorandum of decision, the trial court granted the board of education's motion for summary judgment. Although the court rejected the board of education's contention that the bifurcated referenda procedure authorized by the budget amendment violated § 7–344,[6] the court concluded that that procedure *303 unreasonably interfered with the board of education's ability to perform its duties pursuant to General Statutes § 10–220(a)[7] **610 and impermissibly conflicted with other " 'general laws' " furthering the state's interest

in education. Specifically, the trial court interpreted the budget amendment as giving voters a veto power over that portion of the budget relating to education, a power that the court concluded is inimical to the board of education's ability to discharge its statutory duties.

On appeal to the Appellate Court, the town claimed that the budget amendment was valid by virtue of the broad powers with which the Home Rule Act vests municipalities. *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 364–65, 800 A.2d 517. The board of education maintained that the trial court correctly had concluded that the budget amendment was invalid and argued, as an alternate ground for affirmance, that the budget amendment nevertheless was invalid because it conflicted with § 7–344. See id., at 365–66, 800 A.2d 517. The Appellate Court agreed with both of the board of education's claims and affirmed in part[8] the judgment of the trial court.[9] Id., at 370, 378, 800 A.2d 517.

***304** The Appellate Court first concluded that the town's budgeting process falls within the purview of § 7–344 and that the budget amendment could not stand because it conflicted with that statutory provision. In determining that § 7–344 governs the town's budgeting process, the Appellate Court reasoned: "Because the statutes cited by the [town] contain broad, general grants of taxing and budgeting powers to municipalities; General Statutes §§ 7–148(c)(2)(A) and (B),[10] 7–194;[11] but ****611** the statute cited by the [board of education] specifically addresses the budget formulation and approval process; General Statutes § 7–344; we analyze the budget amendment issue by interpreting the latter. As a matter of statutory construction, specific statutory provisions are presumed to prevail over more general statutory provisions dealing with the same overall subject matter." (Internal quotation marks omitted.) *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 366, 800 A.2d 517. The Appellate Court further stated, as a basis for its ***305** conclusion that the budget amendment conflicts with § 7–344: "We discern from the language used by the legislature in § 7–344 its intent that a proposed municipal budget, once assembled by the board of finance via the specified process, be voted on by the electorate as a whole, not through piecemeal approval of its component parts. The legislature's use of the singular 'estimate' in the latter part of the statute addressing the voting process, as opposed to its use of the plural 'estimates,' in the earlier part of the statute describing the budget formulation process, supports this conclusion." Id., at 368, 800 A.2d 517.

The Appellate Court also concluded that the budget amendment was invalid because it impermissibly conflicted with state education policy. See id., at 373, 800 A.2d 517. The Appellate Court based this conclusion upon its determination that the budget amendment "upsets the balance between the board of finance and the board of education by allowing the electorate to veto only the education portion of the budget, in effect subjecting it to isolated scrutiny by voters who may or may not be aware of the board of education's statutory mandates or have a broad understanding of the town's financial resources and priorities as a whole, as does the board of finance." Id.

We granted the town's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly conclude that the budget amendment of the [town] was invalid?" *Board of Education v. Naugatuck,* 261 Conn. 917, 806 A.2d 1053 (2002). Because we reject both of the reasons advanced by the Appellate Court in support of its conclusion that the budget amendment is invalid, we answer the certified question in the negative.

I

The town first claims that the Appellate Court improperly concluded that the budget amendment violates ***306** § 7–344. The town contends that § 7–344 simply is not applicable when, as in the present case, the town operates under a charter that contains its own provisions concerning the manner in which the town budget is to be formulated and adopted. We agree with the town.

A

[1] [2] [3] [4] [5] Because the town operates under a charter pursuant to the powers granted to it by the Home Rule Act, we begin our review of the town's claim by explaining the purpose and effect of that act. "The purpose ... of Connecticut's Home Rule Act is clearly twofold: to relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern and to enable a municipality to draft and adopt a home rule charter or ordinance which shall constitute the organic law of the

city, superseding its existing charter and any inconsistent special acts.... The rationale of the act, simply stated, is that issues of local concern are most logically answered locally, pursuant to a home rule charter, exclusive of the provisions of the General Statutes.... Moreover, home rule legislation was enacted to enable municipalities **612 to conduct their own business and [to] control their own affairs to the fullest possible extent in their own way ... upon the principle that the municipality itself kn[ows] better what it want[s] and need[s] than ... the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs." (Citations omitted; internal quotation marks omitted.) *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 366–67, 780 A.2d 98 (2001); see also *Norwich v. Housing Authority*, 216 Conn. 112, 118, 579 A.2d 50 (1990) (ameliorative provisions of Home Rule Act favoring municipality's exercise of authority over its own affairs must be construed expansively to attain that legislative objective); *307 *Caulfield v. Noble*, 178 Conn. 81, 86–87, 90, 420 A.2d 1160 (1979) (municipalities granted broad authority under Home Rule Act to regulate their own affairs in recognition that municipalities are best suited to address their local needs). Consistent with this purpose, a state statute "cannot deprive cities of the right to legislate on purely local affairs germane to city purposes." *Caulfield v. Noble*, supra, at 87, 420 A.2d 1160. Consequently, "a general law, in order to prevail over a conflicting charter provision of a city having a home rule charter, must pertain to those things of general concern to the people of the state...." Id. In addressing the town's claim, therefore, we must determine whether § 7–344 pertains to a matter of statewide concern such that it preempts any conflicting provisions of the charter, in particular, the budget amendment. [12]

As we have indicated, the Appellate Court's conclusion that § 7–344 governs the town's budgeting process was predicated on its determination that, as a matter of statutory construction, the more specific language of § 7–344 predominates over the more general language of those provisions granting towns authority over budgetary matters, namely, § 7–148(c)(2)(A) and (B) and § 7–194. See footnotes 10 and 11 of this opinion. In framing the question in terms of the relationship between § 7–344, on the one hand, and §§ 7–148 and 7–194, on the other, however, the Appellate Court misperceived the issue raised by the town's claim. Contrary to the analysis employed by the Appellate Court, the issue presented is *not* whether § 7–344 takes precedence over the enabling provisions of §§ 7–148 and 7–194 but, rather, whether § 7–344 predominates over the *provisions of the town charter relating to the budgeting* *308 *process, including the budget amendment.* That issue, moreover, is not one that can be resolved by resort to general principles of statutory interpretation. As we have explained, its resolution depends, instead, on whether § 7–344 relates to a matter of statewide interest such that it supersedes those charter provisions. If so, then, and only then, must we consider whether the charter provision at issue, that is, the budget amendment, actually conflicts with § 7–344.

B

[6] We therefore turn to the question of whether § 7–344 relates to a matter of statewide interest or to a matter of purely local concern. We agree with the town that the answer to that question can be found in *Caulfield v. Noble*, supra, 178 Conn. at 81, 420 A.2d 1160, and its progeny.

**613 [7] In *Caulfield*, we held that General Statutes (Rev. to 1977) § 7–344 did not preempt a town charter provision that conflicted with that statute's budget setting procedures. Id., at 93, 420 A.2d 1160. Although the dispute in *Caulfield* centered on a different provision of § 7–344 than the dispute in the present case does, [13] essential to our holding in *Caulfield* was the predicate conclusion that matters concerning a town budget are of local rather than statewide concern. Id., at 90, 420 A.2d 1160. We therefore held, on the basis of this predicate conclusion, that general laws pertaining to such matters, such as General Statutes (Rev. to 1977) § 7–344, "do not supersede the provisions of home rule charters or ordinances on the same subject." Id., at 91, 420 A.2d 1160.

We subsequently have reaffirmed our determination in *Caulfield* that, in an area of local concern, such *309 as local budgetary policy, general statutory provisions must yield to municipal charter provisions governing the same subject matter. E.g., *Windham Taxpayers Assn. v. Board of Selectmen*, 234 Conn. 513, 536, 539, 662 A.2d 1281 (1995); see also *Shelton v. Commissioner of Environmental Protection*, 193 Conn. 506, 521, 479 A.2d 208 (1984). Although our analysis in *Caulfield* was limited to the particular provision of General Statutes (Rev. to 1977) § 7–344 at issue in that case; see footnote 13 of this opinion; § 7–344 pertains to budgetary matters only, and such

matters, under the Home Rule Act, are the prerogative of this state's towns and municipalities. We therefore see no reason why our conclusion in *Caulfield* is not equally applicable to the other provisions of § 7–344, including the one at issue in the present case. [14]

[8] **[9]** There can be no dispute, of course, that the education of our schoolchildren is an issue of statewide concern. See, e.g., Conn. Const., art. VIII, § 1; [15] General Statutes § 10–220(a). [16] It is also true that education is likely to comprise a significant part, if not the largest part, of any municipal budget. But the particular *procedure* pursuant to which a municipality adopts its budget, including the procedure that it employs in adopting the education component of the budget, is not *itself* a matter of statewide concern. [17] As we have stated, "[o]ur ***310** constitutional home rule provision ... prohibits the legislature from encroaching on the local authority ****614** to regulate matters of purely local concern, such as the organization of local government or *local budgetary policy.*" (Emphasis added; internal quotation marks omitted.) *Carofano v. Bridgeport,* 196 Conn. 623, 630, 495 A.2d 1011 (1985); accord *Shelton v. Commissioner of Environmental Protection,* supra, 193 Conn. at 521, 479 A.2d 208; see also *Windham Taxpayers Assn. v. Board of Selectmen,* supra, 234 Conn. at 536, 662 A.2d 1281 (appropriation of town budget is purely local matter because it relates to issues of importance only to town).

Our conclusion that § 7–344 does not serve as a basis for invalidating the budget amendment, however, does not end our inquiry. We still must address the more fundamental issue raised by the town's appeal, namely, whether the budget amendment violates any state statute or policy pertaining to *education,* which unquestionably is an area of statewide concern. We now turn to that issue.

II

The town claims that the Appellate Court improperly concluded that the budget amendment is invalid because it is inimical to the state's policy favoring education as expressed in our state constitution; see Conn. Const., art. VIII, § 1; various state statutes; see, e.g., General Statutes §§ 10–76d(a)(1), [18] 10–220(a) [19] and 10–222(a); ***311** [20] and decisions interpreting those provisions. We agree with the town that the budget amendment does not violate any state statute or policy favoring education.

We begin our review of the town's claim by summarizing the reasoning employed by the Appellate Court in upholding the trial court's invalidation of the budget amendment as incompatible with the state's interest in education. The Appellate Court commenced its discussion of the issue by underscoring the "statutory balance of power" between local boards of education and local boards of finance; *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 370, 800 A.2d 517; and by explaining the respective powers and responsibilities of those boards in terms first utilized by this court in *Board of Education v. Board of Finance,* 127 Conn. 345, 349, 16 A.2d 601 (1940).

[10] **[11]** "Where a town board of education includes in the estimates it submits to a board of finance expenditures for a purpose which is not within statutory provisions imposing a duty upon it nor within one which vests it with a discretion to be independently exercised, the board of finance may, if in its judgment, considering ****615** not only the educational purpose to be served but also the financial condition of the town, it finds that the expenditure is not justified, decline to recommend an appropriation for it; where, however, the estimate is for an expenditure for a purpose which the statutes ***312** make it the duty of the board of education to effectuate or [which] they vest in the board of education a discretion to be independently exercised as to the carrying out of some purpose, the town board of finance has not the power to refuse to include any appropriation for it in the budget it submits and can reduce the estimate submitted by the board of education only when that estimate exceeds the amount reasonably necessary for the accomplishment of the purpose, taking into consideration along with the educational needs of the town its financial condition and the other expenditures it must make. The board of finance in such a case must exercise its sound judgment in determining whether or to what extent the estimates of the board of education are larger than the sums reasonably necessary and if it properly exercises its discretion and the budget is approved by the town the board of education has no power to exceed the appropriations made." (Internal quotation marks omitted.) *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 371, 800 A.2d 517, quoting *Board of Education v. Board of Finance,* supra, 127 Conn. at 350–51, 16 A.2d 601.

[12] [13] [14] [15] The Appellate Court further explained that this court, in *Board of Education v. Board of Finance,* supra, 127 Conn. at 352–53, 16 A.2d 601, had recognized "that the statutory scheme for appropriations contemplated a give and take between the board of education and the board of finance, guided by their respective interests and expertise ... and noted that the statutes governing the appropriations process were evidently designed to produce a nice balancing of powers between the two boards...." (Citation omitted; internal quotation marks omitted.) *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 372, 800 A.2d 517. The Appellate Court continued: "Other cases have noted that [e]ach board is given broad, important and far-reaching powers.... Boards of education are charged with the duty of providing *313 reasonable educational facilities. Boards of finance are charged with the duty of providing the necessary funds and, at the same time, of seeing to it that expenditures for the educational program are kept within reasonable bounds *in view of the over-all financial resources of the town.* ... Further, a function of a board of finance is ... to eliminate wasteful or extravagant expenditures by considering the financial aspects of the municipal government *as a whole rather than from the limited viewpoint of any particular department,* whether it is the department in charge of education or of fire prevention or of police protection.... The board of finance's control, however, must be exercised reasonably by taking into consideration the duty of the board of education to maintain in the town a program of educational opportunity which meets the requirements of state law; the power of the board of education to exercise a sound and reasonable discretion in carrying out its duties; and the town's financial needs and resources." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., at 372–73, 800 A.2d 517.

The Appellate Court then explained its conclusion that the budget amendment is incompatible with the duties and responsibilities of the board of education. "[T]he budget amendment upsets the balance between **616 the board of finance[21] and the board of education by allowing the electorate to veto only the education portion of the budget, in effect subjecting it to isolated scrutiny by voters who may or may not be aware of the board of education's statutory mandates or have a *314 broad understanding of the town's financial resources and priorities as a whole, as does the board of finance. As the [trial] court stated, the budget amendment permits the voters to do what the board of finance cannot, that is, simply to reject the board of education's budget, '[w]ithout regard for whether the expenditures included in the board's budget are for purposes which the state statutes make it the duty of the board to effectuate, e.g., providing pupil transportation; [General Statutes] § 10–220(a); and special education; [General Statutes] § 10–76d; meeting the minimum expenditure requirement of [General Statutes § 10–262j],[22] or whether they are for purposes within the board's discretion under state statutes....' " *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 373, 800 A.2d 517. The Appellate Court therefore concluded that "the ... budget amendment intrude[d] into an area of statewide concern, [namely] public education, and conflict[ed] with the statutory scheme governing the process [by which] boards of education receive the appropriations necessary to fulfill their duties to the state." Id.

[16] We agree entirely with the Appellate Court's summary of the respective powers of local boards of education and boards of finance. We also agree fully that the powers wielded by a local board of education and a local board of finance also carry certain duties, among them the responsibility that each one exercise its power with due regard for the important role of the other. We disagree with the Appellate Court, however, that the budget amendment conflicts with the various powers and duties of the respective boards.

As we previously noted, under the process authorized by the budget amendment, voters may approve or disapprove either the operating budget or the education budget *315 or both. If both budgets are approved, both are adopted without further voter input. In the event that one or both of the budgets are rejected as too high or too low, the rejected budget or budgets are adjusted in conformity with the vote and, upon the filing of a petition as prescribed by the charter, a second vote is taken. If, after the second vote, one or both of the budgets again are rejected as too high or too low, then the rejected budget or budgets once again are adjusted in accordance with the vote and, upon the filing of a proper petition, a third and final vote is taken. If, upon the third vote, one or both of the budgets are again rejected, then the rejected budget or budgets are adjusted in accordance with the final vote and adopted by the joint boards without further voter input.

The Appellate Court's determination that this procedure conflicts with our statutory scheme governing the process by **617 which local boards of education "receive the appropriations necessary to fulfill their duties to the state"; id.; necessarily is predicated on the possibility that town voters will reject the education budget as too high one or more times.[23] Because that possibility is a real one, our analysis, like that of the Appellate Court, also is predicated on that scenario.[24]

*316 Contrary to the determination of the Appellate Court, however, we conclude that the budget amendment does not conflict with state education policy. The primary reason for our conclusion is straightforward: under the very statutes and case law on which the Appellate Court relies, the board of education lawfully cannot recommend, and the joint boards lawfully cannot adopt, an education budget that fails to satisfy state educational mandates or that otherwise fails to address adequately the educational needs of the town's schoolchildren. As we previously have stated, a local board of education has a duty to seek such funding as is reasonably necessary to meet the educational needs of its town's schoolchildren, considering, among other things, state mandates concerning education. See, e.g., *Board of Education v. New Haven,* 237 Conn. 169, 175–80, 676 A.2d 375 (1996); *Board of Education v. Board of Finance,* supra, 127 Conn. at 350–51, 16 A.2d 601. Likewise, a local budgeting authority has a duty to provide reasonably sufficient funding for the education of its town's schoolchildren, considering, among other things, the overall financial condition of the town. See, e.g., *Board of Education v. New Haven,* supra, at 178–79, 676 A.2d 375; *Board of Education v. Board of Finance,* supra, at 350–51, 16 A.2d 601. Thus, the state's interest in education cannot be compromised in any way when the board of education and the joint boards discharge their joint responsibility to ensure that *each and every* proposed education budget-including any education budget proposed after one or more such budgets have been rejected by the voters-satisfies state requirements and otherwise is adequate to meet the educational needs of the town's schoolchildren.[25] *317 In other words, as long as the **618 board of education and joint boards act in accordance with statutory requirements, *town voters never will have the opportunity to accept or reject an education budget that is insufficiently funded because the board of education is barred from recommending such a budget and the joint boards are barred from adopting such a budget.*

Moreover, the budget amendment does not infringe unduly upon the authority and discretion of the board of education. Indeed, there is nothing in the budget amendment to prevent the board of education from recommending a revised budget that is but a dollar lower than the budget last rejected as too high by voters.[26] On the other hand, the board of education is free *318 to recommend substantial cuts in an education budget that has been rejected as too high by voters if, in the exercise of the board of education's sound judgment, it concludes that such cuts are consistent with its responsibility to ensure that sufficient resources are allocated to the education component of the budget. Thus, although the budget amendment affords voters the opportunity to achieve one or more reductions in the education budget, the magnitude of those reductions is a matter entirely within the discretion of the board of education, subject to appropriate review by the joint boards. As we have explained, if the board of education and the joint boards exercise their respective powers lawfully, any education budget that ultimately is proposed and adopted necessarily will be adequate to meet the educational needs of the town's schoolchildren.

The Appellate Court overlooked this fact in concluding that the budget amendment "upsets the balance" between the board of education and the joint boards because it "permits the voters to do what the [joint boards] cannot, that is, simply to reject the board of education's budget, [w]ithout regard for whether the expenditures included in the [board of education's] budget are for purposes which the state statutes make it the duty of th[at] board to effectuate ... **619 or whether they are for purposes within the [board of education's] discretion under state statutes...." (Citations omitted; internal quotation marks omitted.) *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 373, 800 A.2d 517. As we previously noted, the board of education and the joint boards are required by law to submit for voter approval one or more education budgets that satisfy state mandates and that otherwise satisfy the needs of the town's schoolchildren as those needs reasonably are perceived *319 by the board of education and the joint boards in collaborative cooperation with each other. Thus, as we have explained, town voters never will have an opportunity to approve a proposed education budget that fails to satisfy legal standards.

[17] As our analysis necessarily suggests, we also disagree with the Appellate Court's characterization of the budget amendment as granting voters a veto power over the education budget. It is true that the budget amendment affords more voter input into the budgeting process than that authorized under the preamendment charter provisions. Indeed, the budget amendment affords voters the opportunity to reject as many as three proposed education budgets. The voters' opportunity to forestall the adoption of a budget, however, is not tantamount to a veto power, for even if voters were to reject all three proposed education budgets, the joint boards then would be required to adopt a budget, without further voter input, that complies with state mandates and that reasonably satisfies the needs of the town's schoolchildren. In view of that fact, it simply cannot be said either that the budget amendment gives voters a veto power over the education budget or that the budget amendment is incompatible with the state's interest in education.

The judgment of the Appellate Court is reversed insofar as it upholds the trial court's invalidation of the amendment to § 14 of the town charter providing for separate voter referenda on the town's education budget and operating budget and the case is remanded to the Appellate Court with direction to remand the case to the trial court with direction to render judgment in favor of the town with respect to that issue.

In this opinion the other justices concurred.

All Citations

268 Conn. 295, 843 A.2d 603, 186 Ed. Law Rep. 420

Footnotes

1 Other officials, former officials and a designated legislative body of the town also were named as defendants. They include: the board of mayor and burgesses of the town; William C. Rado and Timothy D. Barth, former mayors of the town; Sophie K. Morton, current town clerk and registrar of vital statistics; Judith E. Crosswait, current borough clerk; and Ann Hildreth and Jane H. Pronovost, former registrars of voters. Further references to the town include the other defendants.

2 General Statutes § 7–344, which delineates certain procedures for the preparation and adoption of a local budget by a board of finance, provides: "Not less than two weeks before the annual town meeting, the board shall hold a public hearing, at which itemized estimates of the expenditures of the town for the ensuing fiscal year shall be presented and at which all persons shall be heard in regard to any appropriation which they are desirous that the board should recommend or reject. The board shall, after such public hearing, hold a public meeting at which it shall consider the estimates so presented and any other matters brought to its attention and shall thereupon prepare and cause to be published in a newspaper in such town, if any, otherwise in a newspaper having a substantial circulation in such town, a report in a form prescribed by the Secretary of the Office of Policy and Management containing: (1) An itemized statement of all actual receipts from all sources of such town during its last fiscal year; (2) an itemized statement by classification of all actual expenditures during the same year; (3) an itemized estimate of anticipated revenues during the ensuing fiscal year from each source other than from local property taxes and an estimate of the amount which should be raised by local property taxation for such ensuing fiscal year; (4) an itemized estimate of expenditures of such town for such ensuing fiscal year; and (5) the amount of revenue surplus or deficit of the town at the beginning of the fiscal year for which estimates are being prepared; provided any town which, according to the most recent federal census, has a population of less than five thousand may, by ordinance, waive such publication requirement, in which case the board shall provide for the printing or mimeographing of copies of such report in a number equal to ten per cent of the population of such town according to such federal census, which copies shall be available for distribution five days before the annual budget meeting of such town. The board shall submit such estimate with its recommendations to the annual town meeting next ensuing, and such meeting shall take action upon such estimate and recommendations, and make such specific appropriations as appear advisable, but no appropriation shall be made exceeding in amount that for the same purpose recommended by the board and no appropriation shall be made for any purpose not recommended by the board. Such estimate and recommendations may include, if submitted to a vote by voting machine, questions to indicate whether the budget is too high or too low. The vote on such questions shall be for advisory purposes only, and not binding upon the board. Immediately after the board of assessment appeals has finished its duties and the grand list has been completed, the board of finance shall meet and, with due provision for estimated uncollectible taxes, abatements and corrections, shall lay such tax on such list as shall be sufficient, in addition to the other estimated yearly income of such town and in addition to such revenue surplus, if any, as may be appropriated, not only to pay the expenses of the town for such current year, but

also to absorb the revenue deficit of such town, if any, at the beginning of such current year. The board shall prescribe the method by which and the place where all records and books of accounts of the town, or of any department or subdivision thereof, shall be kept. The provisions of this section shall not be construed as preventing a town from making further appropriations upon the recommendation of its board of finance at a special town meeting held after the annual town meeting and prior to the laying of the tax for the current year, and any appropriations made at such special town meeting shall be included in the amount to be raised by the tax laid by the board of finance under the provisions of this section."

3 We hereinafter refer to the 1996 amendment to the town charter as the budget amendment.

4 The board of education also challenged an amendment to § 3.18 of the charter, as revised to November 30, 1995, that, among other things, decreased the number of elected board of education members from nine to eight and added the mayor or his designee as a ninth member. The trial court concluded that this amendment was invalid. On appeal, however, the Appellate Court reversed that part of the trial court's judgment invalidating the amendment to § 3.18 of the charter. *Board of Education v. Naugatuck,* supra, 70 Conn.App. at 374–78, 800 A.2d 517. The board of education has not cross appealed from that part of the Appellate Court's judgment and, therefore, we do not address that part of the Appellate Court's judgment.

5 General Statutes § 7–188(a) provides: "Any municipality, in addition to such powers as it has under the provisions of the general statutes or any special act, shall have the power to (1) adopt and amend a charter which shall be its organic law and shall supersede any existing charter, including amendments thereto, and all special acts inconsistent with such charter or amendments, which charter or amended charter may include the provisions of any special act concerning the municipality but which shall not otherwise be inconsistent with the Constitution or general statutes, provided nothing in this section shall be construed to provide that any special act relative to any municipality is repealed solely because such special act is not included in the charter or amended charter; (2) amend a home rule ordinance which has been adopted prior to October 1, 1982, which revised home rule ordinance shall not be inconsistent with the Constitution or the general statutes; and (3) repeal any such home rule ordinance by adopting a charter, provided the rights or benefits granted to any individual under any municipal retirement or pension system shall not be diminished or eliminated."

6 In rejecting the board of education's contention that the budget amendment violated § 7–344, the trial court stated: "The [board of education's] statutory argument rests on the statute's use of the singular 'estimate' in describing what is to be submitted to the town budget meeting and to a vote by the electors.... Wherever the singular 'estimate' appears in § 7–344, however, it is followed by the plural 'recommendations.' Without some help from legislative history it is not possible to base a conclusion that '[t]he language of this statute clearly contemplates one budget,' as the board [of education] argues, on such inconsistent wording." (Citation omitted.)

7 General Statutes § 10–220(a) provides in relevant part: "Each local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state as defined in section 10–4a and provide such other educational activities as in its judgment will best serve the interests of the school district...."

8 The Appellate Court reversed that part of the trial court's judgment invalidating the amendment to § 3.18 of the charter, which dealt with the issue of the composition of the board of education. See footnote 4 of this opinion.

9 The Appellate Court dismissed as moot the town's initial appeal from the judgment of the trial court on the ground that the budget amendment and the amendment to § 3.18 of the charter; see footnotes 4 and 8 of this opinion; had been superseded by similar provisions designed to cure certain procedural defects identified by the parties. *Board of Education v. Naugatuck,* 58 Conn.App. 632, 638, 641, 755 A.2d 297 (2000). Upon our granting of certification, however, we concluded that the case was not moot and, therefore, reversed the judgment of the Appellate Court dismissing the town's appeal. *Board of Education v. Naugatuck,* 257 Conn. 409, 429, 778 A.2d 862 (2001). The present appeal is from the judgment of the Appellate Court following our remand of the case to that court.

10 General Statutes § 7–148(c) provides in relevant part: "Any municipality shall have the power to do any of the following, in addition to all powers granted to municipalities under the Constitution and general statutes:

* * *

"(2) Finances and appropriations. (A) Establish and maintain a budget system;

"(B) Assess, levy and collect taxes for general or special purposes on all property, subjects or objects which may be lawfully taxed, and regulate the mode of assessment and collection of taxes and assessments not otherwise provided for, including establishment of a procedure for the withholding of approval of building application when taxes or water or sewer rates, charges or assessments imposed by the municipality are delinquent for the property for which an application was made...."

11 General Statutes § 7–194 provides in relevant part: "Subject to the provisions of section 7–192, all towns, cities or boroughs which have a charter or which adopt or amend a charter under the provisions of ... chapter [99] shall have

the following specific powers in addition to all powers granted to towns, cities and boroughs under the Constitution and general statutes: To manage, regulate and control the finances and property, real and personal, of the town, city or borough and to regulate and provide for the sale, conveyance, transfer and release of town, city or borough property and to provide for the execution of contracts and evidences of indebtedness issued by the town, city or borough."

12 We note that there is no statutory requirement that a municipality establish a board of finance, and there is no uniform set of procedures to which a municipality must adhere in formulating and adopting its budget if it does not have a board of finance.

13 At issue in *Caulfield* was the language of General Statutes (Rev. to 1977) § 7–344 requiring that a general fund surplus in a town budget be applied to reducing the tax rate for the upcoming fiscal year. See *Caulfield v. Noble,* supra, 178 Conn. at 83, 420 A.2d 1160. In the present case, the language of General Statutes § 7–344 that permits a town board of finance to submit an annual budget "estimate and recommendations ... to a vote" is at issue.

14 In light of our determination that the provision of § 7–344 at issue in the present case involves a matter of purely local concern and, therefore, that the budget amendment is not preempted, we need not reach the issue of whether § 7–344 actually conflicts with the bifurcated referenda approach authorized under the budget amendment.

15 Article eighth, § 1, of the constitution of Connecticut provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

16 See footnote 7 of this opinion.

17 This conclusion is not altered by § 7–344, which is concerned solely with the *budgetary process* to be employed by municipalities. Section 7–344 refers only to the budget process *generally* and contains no mention of the education component, or any other component, of local budgets. Thus, § 7–344 does not embody a policy either favoring or disfavoring any particular component of a municipal budget, including education.

18 General Statutes § 10–76d (a)(1) provides in relevant part: "In accordance with the regulations and procedures established by the Commissioner of Education and approved by the State Board of Education, each local or regional board of education shall provide the professional services requisite to identification of school-age children requiring special education ... prescribe suitable educational programs for eligible children, maintain a record thereof and make such reports as the commissioner may require."

19 See footnote 7 of this opinion.

20 General Statutes § 10–222(a) provides in relevant part: "Each local board of education shall prepare an itemized estimate of the cost of maintenance of public schools for the ensuing year and shall submit such estimate to the board of finance in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations for the school district, not later than two months preceding the annual meeting at which appropriations are to be made. The money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education...."

21 Although the Appellate Court referred to the town's board of finance, the town's budgeting authority actually belongs to both the board of finance *and* the board of mayor and burgesses. Nevertheless, the fact that the town budgeting authority belongs to both boards and not the board of finance alone has no bearing on the analysis or resolution of the claim before us. Consequently, all references to the board of finance include both boards. As we noted previously, we refer to the board of finance and the board of mayor and burgesses collectively as the joint boards.

22 General Statutes § 10–262j sets forth guidelines pursuant to which towns are required to make certain minimum expenditures for education.

23 Of course, if town voters were to accept the education budget on the first vote, or if they were to reject the education budget as too *low,* then it hardly could be claimed that such a vote is detrimental to the education budget. In such circumstances, the budget amendment clearly would not be in conflict with state education policy.

24 We do not *presume,* however, that, under the budget amendment, town voters necessarily will reject one or more proposed education budgets as too high. Because the budget amendment provides an equal opportunity for voters either to approve the education budget or to reject it as too high *or too low,* the budget amendment is neutral on its face. Moreover, we have been provided with no reason why voters are any more likely to reject the education budget as too high than they are to approve it or to reject it as too low. As we have indicated, however, our analysis is based on the worst-case scenario from the standpoint of the board of education, namely, that voters repeatedly will reject the education budget as too high.

25 Because the budget amendment contemplates the possibility of multiple voter referenda on the education budget, we acknowledge that the budget amendment may, to some extent, require enhanced cooperation between the board of education and the joint boards in arriving at an education budget that balances the educational needs of the town's

schoolchildren, the will of the voters and the town's overall fiscal condition. That consideration alone, however, does not lead to the conclusion that the budget amendment is invalid. Indeed, we previously have noted that, in general, the "financial relationship between the local board of education and the municipal government ... is complex." *New Haven v. State Board of Education*, 228 Conn. 699, 705–706, 638 A.2d 589 (1994). Moreover, we long have recognized that the division of power between local boards of education and local boards of finance has led to frequent clashes between the two boards. *Fowler v. Enfield*, 138 Conn. 521, 532, 86 A.2d 662 (1952). In fact, as we have explained, "[u]ntil there is a clear legislative directive which more explicitly defines the respective authority of the two boards, the clashes are likely to persist." Id. From time to time, those conflicts, when justiciable and not merely political; see *Board of Education v. Board of Finance*, supra, 127 Conn. at 353, 16 A.2d 601 (suggesting that some conflicts between town's board of finance and board of education are likely to be essentially political in nature and therefore nonjusticiable); will call for a "judicial determination testing the discretion exercised." *Fowler v. Enfield*, supra, at 532, 86 A.2d 662. Although the budget amendment arguably may complicate further the already complex relationship between the board of education and the joint boards, that mere possibility does not render the budget amendment inconsistent with state education policy.

26 We note that a proposed education budget likely will contain funding for discretionary items, that is, items that call for funding beyond that necessary to meet minimum state requirements or to provide for a minimally adequate education for the town's schoolchildren. Even if we assume, however, that a proposed education budget were minimally adequate such that any material reduction in that budget would bring it to an unacceptably low level, and the voters nevertheless were to reject that budget as too high, the board of education would be precluded from proposing a revised education budget for voter approval that encompasses reductions that are more than immaterial or de minimis. For the board of education to do otherwise would constitute a violation of the board's statutory obligation to seek funding sufficient to satisfy state educational mandates and the needs of the town's schoolchildren. See, e.g., *Board of Education v. New Haven*, supra, 237 Conn. at 175–80, 676 A.2d 375; *Board of Education v. Board of Finance*, supra, 127 Conn. at 350–51, 16 A.2d 601.

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

Connecticut Coalition for Justice in Education, Inc.
v.
Rell et al.

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|
September 7, 2016

Moukawsher, J.

Table of Contents

Abigail Adams

1. Summary: To be constitutional, the state's chief education policies do not have to be richly funded but they must at least be rational, substantial, and verifiable

In Connecticut's constitution, the state promises to give children a fair opportunity for an elementary and secondary school education. This doesn't mean the courts can tell the General Assembly how much to spend on schools. But the language can't mean that the state can leave learning to chance. It has to mean that the state must do thoughtful, visible things to give them that opportunity. To put it as a legal proposition, beyond a bare minimum, it is for the General Assembly to decide how much to spend on schools, but the state must at least deploy in its school's resources and standards that are rationally, substantially, and verifiably connected to teaching children. It isn't a lot to ask, but asking it raises doubts about many of our state's key education policies.

Requiring at least a substantially rational plan for education is a problem in this state because many of our most important policies are so befuddled or misdirected as to be irrational. They lack real and visible links to things known to meet children's needs. For instance, the state spends billions of dollars on schools without any binding principle guaranteeing that education aid goes where it's needed. During the recent budget crisis, this left rich schools robbing millions of dollars from poor schools. State graduation and advancement standards are so loose that in struggling cities the neediest are leaving schools with diplomas but without the education we promise them. State standards are leaving teachers with uselessly perfect evaluations and pay that follows only seniority and degrees instead of reflecting need and good teaching. With the state requiring expensive services but doing nothing to see they're going to the right people in the right way, special education spending is also adrift. All of this happens because the state is torn between the need for communal and objective standards and the apparently irresistible pressure for the idiosyncratic *status quo*. Instead of the state honoring its promise of adequate

schools, this paralysis has left rich school districts to flourish and poor school districts to flounder.

*2 To keep its promise of adequate schools for all children, the state must rally more forcefully around troubled schools. It can't possibly help them while standing on the sidelines imposing token statewide standards. And while only the legislature can decide precisely how much money to spend on public schools, the system cannot work unless the state sticks to an honest formula that delivers state aid according to local need.

Having a special promise of adequate schools in our highest law shouldn't put the courts in charge of schools, but it should at least mean this much: children have a judicially enforceable right to first principles governing our schools that are reasoned, substantial, and verifiably connected to teaching.

2. The state is responsible for the condition of our schools: Its duty to educate is non-delegable

The state is responsible for Connecticut public schools, not local school districts.

The Connecticut constitution, in article eighth, § 1, says: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

There is no misreading article eighth, § 1. It says the state—specifically the General Assembly—must fulfill the promise of free public schools. In 2012 in *Pereira v. State Board of Education* the Supreme Court didn't hesitate to underline this, holding: "Obviously, the furnishing of education for the general public is a state function and duty." [1]

The constitution gives the General Assembly leeway about how to keep this promise, but it isn't endless. Like anyone else with a job in hand, the state can get help—from state employees, local school districts, and others. But, that doesn't mean the state can point the finger of blame at these helpers when things go wrong. As the *Pereira* Court ruled, whatever local boards of education do, they do "on behalf of the state." [2] This means that like other important legal duties the state's responsibility for what happens in schools is non-delegable.

Legal duties can spring from charters, statutes, or the courts, but duties that come from constitutions are the highest duties and sweep the others aside when they conflict. In 2009, in *Machado v. Hartford,* the Connecticut Supreme Court held that, wherever they come from, our most important duties are so important that responsibility for them may not be sloughed off onto others—fulfilling those duties is "nondelegable." [3]

Our courts have made this rule stick in far more mundane contexts than this. For instance, in 2001, in *Gazo v. Stamford,* the Court applied the widely known rule that "the owner or occupier of premises owes invitees a nondelegable duty to exercise ordinary care for the safety of such persons." [4] As the Court explained it, nondelegable duties create vicarious liability situations, in which "the law has ... broaden[ed] the liability for that fault by imposing it upon an *additional,* albeit innocent, defendant ... namely, the party that has the nondelegable duty." [5] In *Ramsdell v. Union Trust Co.,* the Supreme Court held that the core functions of trustees are nondelegable. [6] In 2013, in *State v. Brown,* the Appellate Court held that even judges have constitutionally-mandated nondelegable duties: they may not delegate to the state's attorney or defense counsel the duty to canvas plea bargainers about what it means to break their plea deals. [7]

*3 In 2009, in *Teney v. Oppedisano,* the Superior Court held a plumber with warranty obligations liable for flood damage caused by an independent contractor because the plumber's duty to perform the work to the warranty standard was nondelegable. [8] In *Borovicka v. Oshkosh Corp.,* it confirmed the long-standing rule that liability for inherently dangerous activities is nondelegable. [9] In 2005, in *Cornelius v. Connecticut Dept. of Banking,* the Superior Court held that mortgage brokers must answer for the misdeeds of the appraisers they hire. [10]

And in 2009 in *Mochado v. Hartford,* the Supreme Court enforced the long-standing rule that cities can't pass off liability for public roads by hiring private contractors—the law puts the duty to maintain them on the cities and no one else. [11] The court took as a bedrock assumption that "a vital public duty, once imposed by the state, generally is considered nondelegable." [12]

If the work of plumbers, landlords and even judges is important enough to be non-delegable, the state's constitutional duty to provide free public schools is important enough to be non-delegable too.

The importance of the state's direct duty over education couldn't be clearer. In 1977, in *Horton v. Meskill* our Supreme Court held that because it is specifically enumerated in the constitution, "in Connecticut, elementary and secondary education is a fundamental right ..." [13] As the court knew, labeling the right "fundamental" raised it to the most important level known to law. In the equal rights context, it said that nobody from the General Assembly down could diminish one person's right compared with another's unless the court strictly scrutinized it and found the difference justified by some compelling state interest. [14] Car dealers, plumbers and landlords take a back seat here. Other constitutionally guaranteed civil rights may rise to this level, but no rights are more important.

Still the state would rather be a little less directly responsible. It points to a tradition of local control that it almost never brings up except to get itself out of a jam. It isn't persuasive here because most of the time in cases like the 1980 Supreme Court case *City Council v. Hall*, the state loudly reminds local governments that they are merely its creatures, and that "the only powers a municipal corporation has are those which are expressly wanted to it by the state." [15]

The state insists the Supreme Court has recognized the importance of local control. But that does not mean it has recognized its primacy. In *Horton v. Meskill,* for example, the court discussed the valuable benefits of local control but saw them as no obstacle to imposing an educational financing plan that sent more money to poor towns than rich ones. [16]

It's obvious that local control can be a good thing: the education commissioner and others testified to its strengths—where it is working. But this requires nothing more than acknowledging that little intervention is needed where little problems reside. Knowing this takes nothing away from insisting that where great problems persist, great efforts may be required. The state may not have to rush to interfere in most schools, but when it needs to interfere, the state should not be able to claim that it's powerless.

*4 It certainly can't say its hands are tied when it tied the knots itself. In describing its limits the state points mostly to restraints It has included in the General Statutes. State witnesses pointed again and again to these laws to say that the bulk of authority over education rests with local boards of education. But if the state isn't giving children a constitutionally required fair chance in school, it may not use its own laws as an excuse.

The standards at issue here are casualties of the state's view that education is by right a local affair. This has left most of the key state standards trying to look like statewide rules while being little more than guidance. Yet any review of the statutes shows that the state is being forced to recognize that it can't simply send money and hope for the best. Almost 15 years ago, following the federal No Child Left Behind Act, the legislature passed General Statutes § 10-223e setting up new ways for the state to take over dysfunctional school systems. Over the years, the state has intervened in varying ways in Bridgeport, Hartford, New London, Windham, and Winchester. The state knows it can't keep up the pretense that local schools are local problems, but it seems numb to the logical implications.

The state's direct responsibility is important to deciding this case. The court has to decide if the state is keeping its promise about education. If it isn't, the court has to decide what to do about it. This would require the court to weed out any General Statutes holding the effort back. Orders might have to limit state power, but given the state's direct and non-delegable responsibilities, court orders could also increase the power of the State Board of Education and Department of Education over troubled school systems and the agents they use to keep the state's promises to children. Depending on the depths of the problems revealed in some districts, those powers might change considerably.

3. The courts may impose reason in state spending, but they may not dictate precisely how much to spend beyond a bare minimum

The first job is to explore the limits of judicial power and decide if they are broad enough to address the problems pointed out at trial and the solutions mooted.

The basic promise in article eighth, § 1, is simple and is simple to repeat: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

In 2010 in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, four of the seven justices of the Connecticut Supreme Court sent this case here for trial after reading this promise to require that our education system must be minimally adequate.[17] Three justices said the education provision meant that the constitution "guarantees Connecticut's public school students educational standards and resources suitable to participate in democratic institutions, and to prepare them to attain productive employment and otherwise contribute to the state's economy or to progress on to higher education."[18]

Justice Palmer was the fourth and deciding vote for holding that the constitution requires an adequate education. Like concurring Justice Schaller, Justice Palmer saw that some standard of minimum adequacy is required to avoid doing "violence to the meaning of the term 'school' " in the constitution.[19] But to respect the rights of the legislature he defined the adequacy needed to pass constitutional muster more narrowly than the other three justices.[20]

*5 Ultimately, Justice Palmer was more restrained than the three-judge plurality, but he was still at a point on the same continuum with them. The continuum was the legislature's duty to calculate educational resources and standards rationally. The plurality said it would strike down an educational program inadequate to prepare children for college, careers, and democracy. But the plurality said it would "stay its hand" on remedies awaiting legislative action unless the state lacked "a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education ..."[21]

Justice Palmer, by contrast, said he would not even find a constitutional adequacy violation unless the irrationality point had been reached, and the state's program "is so lacking as to be unreasonable by any fair or objective standard."[22] He emphasized that the legislature might come up with a variety of solutions, but it must operate "within the limits of rationality."[23] This means that the most the four justices agreed on was that irrational public school resources and standards are unconstitutional.

This doesn't ask that much. Rationality doesn't mean the state must show a "compelling interests" for everything it does or that the education provision subjects its decisions about schools to "strict scrutiny." It just means that irrational standards and programs are unconstitutional. So for a violation to be found, the evidence must show in Justice Palmer's words that "core or essential components"[24] or in the plurality's words that the "resources and standards"[25] are irrational.

What does "irrational" mean in this context? It can't mean that the constitution's education provision requires nothing more than traditional equal protection case law that seeks out a "rational" basis for legislative distinctions. That's the lowest standard that could possibly apply. That standard led the Supreme Court in 2004 in *State v. Long* to say that for a distinction to be irrational is to "negate every conceivable basis which might support it ..."[26]

Applying this lowest possible standard here would contradict *Horton v. Meskill* where the Supreme Court held that education is a fundamental right.[27] As reflected in *Horton*, this usually means in equal rights cases that the laws at issue face some form of strict scrutiny.[28] Strict scrutiny is the highest possible standard that could apply. That standard only applied—the court only said education was a fundamental right—because the constitution's education provision requires specific action from the state about schools.[29] 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 *Horton*, the Supreme Court suggested that the way to resolve this is to remember that education cases are "in significant aspects *sui generis* and not subject to analysis by accepted conventional tests or the application of mechanical standards."[30] This means that when the majority of the Supreme Court in this case said the state's efforts must be "reasonable" and "rational" the words must reflect education's unique status in the constitution as something the state must do rather than merely

something it must not do. A call for action on education in the highest law of the land unavoidably leads Connecticut citizens to expect something more than a token effort. For this reason, the court can't have meant to confine these words to the minimal equal protection analysis that applies to rights that aren't fundamental commands. The court must have expected something more.

*6 So while we have to focus on rationality, we should at least expect that it means some rational thing substantial enough to be seen and verifiable enough to be measured. Anything less would hardly have required a trial. The state could have met it by adopting a budget and spending as much as a dollar or so, and the constitution's promise of free public schools would be empty. But insubstantial efforts can hardly satisfy a specific constitutional command. To keep from frustrating legitimate public expectations, we don't have to demand that the state's efforts be perfect or follow any particular fixed idea, but we can certainly expect that these efforts will be more than illusory; we can expect that they have real worth, solidity, value, meaning—we can expect them to be substantial, and to be seen to be so.

They must be seen to be so because the efforts can't be credible if we have to guess whether they exist. We can't possibly judge the adequacy of the state's work unless that work and its connection to teaching children are verifiable. We should be able to study budget formulas to see if they reasonably account for the differing needs of districts. Standards should be clear enough so we can tell if they reasonably connect what they do with what they are supposed to do. With visible statistical evidence we can measure the effects of these standards in the schools. But the judiciary can hardly play a realistic role in protecting children's educational opportunities if there are no governing principles for the state to follow, and the courts are left counting the desks and supplies in every classroom in Connecticut. This would move the judiciary from policing first principles to being the first principal in every school in the state. The state simply cannot fulfill hopes fairly raised by our constitutional promise by adopting empty, unrecognizable, or non-existent policies: only discernible policies should be credited with being policies at all.

Taking these three points together means that if the court is to conclude that the state is not affording Connecticut children adequate educational opportunities, it must be proved that the state's educational resources or core components are not rationally, substantially, or verifiably connected to creating educational opportunities for children.

This must be proved against a high standard. As the Supreme Court held in *Kerrigan v. Commissioner of Public Health* in 2008, constitutional violations have to be proved beyond a reasonable doubt.[31] The plaintiffs say proof by a preponderance of the evidence should be enough in this unusual case involving an affirmative state obligation concerning education. But the Supreme Court chose to "acknowledge" the higher standard in its analysis of an education claim in 1985 in its second review of *Horton v. Meskill*.[32] More tellingly, the plurality in this case held it up as a check against raids on legislative prerogatives, noting that "deciding that a statute is unconstitutional, either on its face or as applied, is a delicate task in any event, and one that the courts perform only if convinced beyond a reasonable doubt of the statute's invalidity."[33] If the three justices leaning closest to the plaintiffs' position thought a high standard of proof applies, we can assume that the justices firmly against the plaintiffs would rely on it even more heavily. This court will require proof beyond a reasonable doubt.

The Supreme Court never got to consider any proof or apply any standard about what the constitution required. It sent the case here for the standard to be "refined and developed further as it is applied to the facts eventually to be found at trial in this case."[34] All four justices finding a constitutional minimum deemed the "core or essential components"[35] the "resources and standards"[36] subject to review. But the opinion only considered the education provision in the limited context of case law about the resources devoted to schools.

*7 These justices all cited a 1995 standard on minimum resources from the New York Court of Appeals in *Campaign for Fiscal Equity, Inc. v. State*.[37] The plurality seemed to view the New York standard as a starting point because it went on to review later New York case law that expanded on it. But Justice Palmer appeared to view it as enough to consider about resources; he didn't even cite the more expansive decisions. Interpreting constitutional language similar to Connecticut's, the New York court listed what it considered basic enough features from which to discern a school rationally:

> minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.[38]

This is a fairly easy standard for schools to meet, and even on its face it's unlikely to force the state to increase the raw amount of money it spends each year. But if this is the narrowest ground a majority of the upper court can agree on concerning a minimum level of resources, this court has to follow it.

Our Supreme Court approved of this narrowest-grounds of agreement approach in 2005 In *State v. Ross* where it quoted the U.S. Supreme Court saying 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 the position taken by those Members who concurred in the judgments on the narrowest grounds ..."[39] The plaintiffs cite the District of Columbia Court of Appeals ruling in 1991 in *King v. Palmer*[40] to argue this is not true if the two sets of opinions are mutually exclusive. The problem for the plaintiffs is that the justices' positions are not mutually exclusive. Justice Palmer merely takes a more restrained view of the same belief that the plurality holds. This means four justices agree that Justice Palmer is right. Three of them simply think he should have gone further.

The narrowest-grounds rule favors Justice Palmer's view on what the constitution requires. But there isn't a lot of law on this point in Connecticut, so it's worth saying that even if the court didn't have to follow the common thread in his opinion, this limited approach would still be right. Beyond a bare minimum, the judiciary is constitutionally unfit to set the total amount of money the state has to spend on schools.

Courts are constitutionally unfit because they can't sort out competing legislative spending priorities or even competing constitutional spending priorities. This is why any constitutional standard the courts set for overall spending levels must be modest. Courts look at the issues and the evidence brought to them in specific cases. Judges see issues under a microscope. As the Connecticut Supreme Court held in *Travelers Ins. Co. v. The Netherlands Ins. Co.* in 2014, courts only consider cases or controversies.[41] A court does not hold sway over the general welfare. The case or controversy requirement means a court doesn't hold public hearings on the entire state budget nor can it launch its own investigations. The legislature's concern by contrast is the entire public welfare.

*8 The plaintiffs hired as an expert witness Henry Levin, a Columbia University professor specializing in educational economics. He recognized that the costs and benefits of education spending must be weighed against other spending priorities before they can be imposed. The plaintiffs know that only the General Assembly does this. The legislature uses no microscope. It faces the full tidal wave of public demand. It considers every public matter and weighs it against the interests that compete with it for funding. In weighing those interests against each other, unlike the courts, the legislature can seek out whatever information it chooses. It is nonsense under such a system for a court to set expansive goals for the schools and direct whatever spending it takes to achieve them when it hasn't even thought about how its orders might undercut spending on other important rights, including those protected by the constitution.

This court already sits in the shadow of other lawsuits pressing constitutional demands for money. For over 20 years, *Juan F. v. O'Neill* has left a federal judge in the name of the constitution dictating state spending on child protection issues.[42] How can this court decide how much to spend teaching children against another court ordering how much to spend to keep them from abuse or neglect? Following our Supreme Court's 1996 decision in *Sheff v. O'Neill,* billions of dollars have been spent addressing Hartford students' race discrimination claims.[43] Is an integrated education worth more or less money than an

adequate education? Should the court drag the *Sheff* and *Juan F.* parties before it to explore the issues? Or should the court blindly pile on top of those mandates whatever else it thinks might be needed and let the chips fall where they may? What about the stipulated settlement in *Shafer v. Bremby* requiring the state to speed up processing Medicaid claims? What about *Briggs v. Bremby* where a federal court ordered the state to speed up processing food stamp claims?[44] What does the court say to prisoners without beds or decent lawyers? To challenges filed on behalf of the mentally ill? Any ruling taking an overly-broad view of judicial discretion over education spending would squeeze the money being spent on those cases and what might be spent on them. It also would take money from causes without cases of their own—all without even considering whether they exist—all without weighing their importance against the claims made here. It can't matter that some courts have already taken expansive views of their constitutional authority over government spending. It doesn't change the good reasons against this view. It only suggests the judiciary should consider that the standard it sets in one matter may adversely affect other matters.

It doesn't help to try to mask the judiciary's role either. Orders that indirectly drain public money still drain it. Just as much damage is done by declaring legislative efforts unconstitutional and deferring action to the legislative branch "subject to judicial review? Nominally deferring to the legislature on a remedy while menacing it with potential action, still chooses the priority of one claim to public fun over others without even identifying and weighing the competing rights.

Arguably, this is what the Connecticut Supreme Court did in 1996 in *Sheff v. O'Neill*[45] and in 1977 in *Horton v. Meskill.*[46] Most notably the *Sheff* Court declared: "the needy schoolchildren of Hartford have waited long enough" and concluded that "[w]e direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas."[47] This approach does not apply here. *Sheff* considered what it called the unique circumstance of race discrimination,[48] and *Horton* was an equal protection case which expressly rejected the notion of considering "adequacy."[49] Perhaps that's why the Supreme Court majority in this case did not apply this thinking.

*9 Only three of seven justices in this case suggested an expansive view of judicial power might be adopted and followed by judicial monitoring of a legislative response. Writing for them in the plurality opinion, Justice Norcott said that the court's job was to "articulate the broad parameters of that constitutional right, and to leave their implementation to ... the political branches of state and local government ..."[50] He wrote that so long as the other branches rationally act within those parameters, "the judicial department properly stays its hand ..."[51]

In adopting his "unreasonable by any fair or objective standard" test, Justice Palmer rejected this approach:

> I take a different view from the plurality with respect to the scope of the right guaranteed by article eighth, § 1. In particular, I believe that the executive and legislative branches are entitled to considerable deference with respect to the determination of what it means, in practice, to provide for a minimally adequate, free public education. Thus, it is the prerogative of the legislature to determine, within reasonable limits, what a minimally adequate education entails.[52]

The narrow ground of agreement among four justices in the upper court is that courts should be restrained in finding the violation, not merely in remedying it. The remaining justices thought the courts shouldn't get involved at all.

That leaves only one way to set a high constitutional threshold without blindly mandating more spending. It would be to find the constitution breached but say the court won't do anything about it. But this can't be done either. That approach was rejected in 1984 in *Pellegrino v. O'Neill* when our Supreme Court said the judiciary will not give advisory opinions.[53] The *Pellegrino* Court barred them in the face of constitutional claims about the underfunding of the judiciary. The court recognized its unfitness to decide how much to spend on the courts, and it approved of *Horton* only because that unusual case covered matters on which the court assumed it could act directly.[54]

Thus, if the court weren't limited by the minimal elements listed in the New York case, it would still reject an expansive view of its power to set overall state educational spending levels. Beyond a bare minimum, it is for the legislature to decide how much to spend on schools.

4. This state spends more than the bare minimum on schools

While the legislature has the job of setting overall school spending, this doesn't mean it can spend less than the modest constitutional minimum. The legislature must spend at least enough to create things recognizable under contemporary standards as schools. Because it has done so—because Connecticut schools more than meet the New York minimum standard the upper court pointed to—the state has not violated the constitution by devoting an overall inadequate level of resources to the schools.

Connecticut schools already go far beyond the New York minimum. The state spends a billion dollars a year on just that case's concern about school buildings. In recently completed or underway projects in Bridgeport alone, the state has committed $378 million to new buildings. While statewide enrollment has been declining for over a decade, spending on buildings has increased. And according to Michele Dixon, an educational consultant with the state office overseeing school construction grants, the state basically never turns down a project. The state shapes them, but especially in poor districts, it ultimately approves them and then pays most of the bill. With the billions of dollars spent in recent years on magnet schools aimed at desegregation, it has paid even more, particularly with Hartford-area magnet schools built in the wake of *Sheff v. O'Neill,* where it has paid 100% of the bill.

***10** There is anecdotal evidence of physical deficiencies in some schools—a leaky roof here, a unreliable boiler there—but nothing to suggest a statewide failure to provide adequate facilities, including classrooms which provide enough light, space, heat, and air to permit children to learn. Where there are problems as in Windham or New London they appear to be already on the state's list to be fixed and fixed mostly with state money. The plaintiffs haven't proved by a preponderance of the evidence, or beyond a reasonable doubt, at the state's schools lack enough light, space, heat, and air to permit children to learn.

No witness or document suggests that children lack desks, chairs, pencils, and reasonably current textbooks either. Again, there is some anecdotal evidence that teachers in some schools find themselves using older textbooks and some teachers buy supplies. But there is no proof of a statewide problem caused by the state sending school districts too little money. Many teachers supplement their materials from internet sources and most children have some access to computers. There are certainly some hardships with computers and significant disparities in computer access, but against a minimal standard the plaintiffs have not proved by a preponderance and certainly not beyond a reasonable doubt that there is a systemic problem that should spark a constitutional crisis and an order to spend more on school supplies.

Connecticut children have minimally adequate teachers teaching, reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies. Connecticut uses a nationally recognized test called Praxis to certify teachers. Both sides of this lawsuit commended it. The Department of Education maintains an array of teacher training materials online and in the field to support teachers, including help with curriculum initiatives. In impoverished districts with troubled schools, it provides very direct help, including extra money for interventionists, teacher coaches, and technical support. No one suggests that teaching in Connecticut is broadly incompetent. The claim is that opportunities for good teaching are not being rationally marshaled in favor of needy kids. Judged against a low minimum and judged as a system, the plaintiffs have plainly not met their burden to show beyond a reasonable doubt that Connecticut lacks minimally adequate teaching and curricula nor have they proved it by a preponderance of the evidence.

That Connecticut is spending enough to meet a low constitutional threshold is made even clearer by the host of extras the state provides beyond the conservative minimum. Since 2012, over $400 million in new money has flowed into the 30 lowest performing schools under the state's Alliance Districts program. Its Commissioner's Network of schools currently focuses additional resources and interventions on 14 individual failing schools. In 2015, it yielded for them some $13 million in additional financial

support. On top of this, the state currently allots roughly $4 million a year for school improvement grants to around 30 high needs schools. When temporary federal funds following the Great Recession were cut, Connecticut was one of a handful of states that kept the extra spending going out of its own pocket. Most of what the state has done financially has been combined with additional non-financial resources.

State and federal programs also beef up needy schools districts by providing students breakfast, lunch, and many times food to take home. Schools in some districts feed students even in the summer. After-school programs instruct and care for kids. Parents are invited into schools to share in learning. Homeless children are sought out and their needs tended. There are programs to prevent sexually transmitted diseases, young parents programs, pregnant student supports, and mental health programs. The plaintiffs claim that all of these programs are under-effective because they are under-funded. But the very existence of these programs means the state far exceeds the bare minimum spending levels the judiciary is willing to order under the education provision, so the plaintiffs' claims for more overall spending belong in the legislature, not the courts. The evidence certainly shows that thousands of Connecticut students would benefit from enhancing some of these programs, but once the state spends enough to meet the bare constitutional minimum only the legislature can decide whether to spend more on them or spend on something else.

***11** All of this extra spending benefits poor districts but not wealthier districts. It is on top of basic education aid that has a history of strongly favoring poor districts over wealthier ones. This heavy tilt in state education aid in favor of the state's poorer communities shows the state is devoting to needy schools a great deal more in resources than is required by the modest standard created by the New York court.

This tilt is also fatal to the plaintiffs' equal protection claim as a basis for an order to increase the total amount the state spends on education. The Connecticut constitution provides in article first, sections 1 and 20 that all citizens enjoy "equal rights" to state benefits and "equal protection of the law." In 1985, in *Horton v. Meskill,* our Supreme Court held that an equal protection claim based on spending disparities can only succeed if, among other things, any claimant can show that the disparities "jeopardize the plaintiffs' fundamental right to education."[55] Unlike the disparities in *Horton,* the state's current education spending disparity favors the impoverished districts with which the plaintiffs are most concerned. They can hardly claim getting more money compared to other towns is the cause of their woes. They claim lack of enough money is the cause of inadequacy, but that claim has no place under the Horton equal protection analysis.[56] Equal protection analysis is comparative; it does not provide a basis to dictate the absolute amount of money the state has to spend on schools.

5. Whatever the state spends on education it must at least spend rationally

The state's latitude to decide how much overall money to spend on schools doesn't mean the state can have a constitutionally adequate school program while spending its money whimsically. As already explained, rationality was the test the Supreme Court set up for the education provision, and to give this standard any weight it has to require the state's spending plan to be rationally, substantially, and verifiably connected to creating educational opportunities for children.

A rational education plan has a substantial and verifiable link between educating children and the means used to do it. Following *Horton,* the state said it adopted one that evolved into what is now the Educational Cost Sharing formula in General Statutes § 10-262f-i. That formula starts with a foundation amount of aid per pupil. Nothing in the formula explains how it was chosen, and the most the parties suggest is that the basic number may reflect typical per pupil spending back when it was adopted. The formula then calls for that number to be adjusted for a variety of factors which include, among other things, the relative wealth of the town, student population and educational need. The formula includes producing a dollar amount defined in the statutes as a "fully funded" amount. The parties wrangle over just how aspirational this "fully funded" amount is. But whatever it means to be "fully funded," the state has never gotten near it. And whatever the formula's virtues and vices, they don't matter anymore because the state stopped using the formula in 2013-14. The state says this is okay because it's free to repeal the ECS formula entirely and work without any discernable plan at all.

ECS not being used

It's nearly doing that now. In place of the formula, since 2013-14, the legislature has simply adopted set dollar amounts of aid for each town. It did the same thing for several years before 2013-14 by overriding the formula and simply adopting the same numbers year after year. The state says it can do this because while you can't tell why districts get what they get the state has still been giving much more money to property-poor towns than to property-rich towns.

*12 But a plan that spends a lot of money and is not entirely irrational is still not a rational plan. Without consciously and logically marshaling education aid—if the legislature can adopt principles and then ignore them—the state cannot be said to have a formula at all, not to mention one that takes seriously the Supreme Court's insistence on "a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education." The General Assembly may have the power to decide how much to spend on education, but the state cannot afford to misallocate it or hide its spending priorities from scrutiny. Without a defensible and discernible plan, no one can be sure what the state is delivering and what lines it may not cross.

Yet the state claims the legislature doesn't have to allocate education aid rationally. It says it can spend education aid capriciously, taking money from those in need and giving it without explanation to those without need, so long as in general more aid goes to poor towns than rich towns. This is because the state says that any review of educational adequacy has to be episodic instead of systemic. Under this view, for each year, without explanation or plan, the General Assembly can adopt budgets. To consider an adequacy challenge under the constitution, you would have to look each year in each town to see if it met the New York minimum standard. Under this approach, presumably New Haven might get more money than Hartford without any reason so long as both cities got the bare minimum, and it wouldn't matter how much money Darien got as long the bare minimum Hartford got was a few dollars more. Educational spending priorities under this approach could be concealed in a black box of secrecy free from all but the most perfunctory review.

But this still isn't enough for the state. Another part of its argument says that the only people who would have standing to sue for a constitutional violation are individual children who can prove harm to them personally by some specific act of bad teaching, lack of supplies, etc. The state even agreed this would mean that any relief would have to be individual too. The state retreated only slightly when the court started describing this kind of claim as one for "educational malpractice."

Whatever we name it, the state's approach would be a disaster. The courts have no business running the schools, not to mention second-guessing every child's education. If there is a meaningful role for the courts in enforcing the constitutional promise of an adequate education, it has to be at a very high level: the courts can set a minimum base for overall resources and then ensure that the major policies carrying them into action are rationally, substantially, and verifiably calculated to achieve educational opportunities.

This constitutional principle is important regardless whether an individual school system is flush with resources or not. But it adds to the urgency of ensuring a rational scheme to know how hard it is for poor cities in this state to fill in any gaps. 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.

The limited means of the state's largest city shows how bad the situation is. According to the state's most recent municipal fiscal indicators, with 147,000 people Bridgeport has enormous needs that it struggles to meet. The people of the city are so poor that the federal government makes no distinctions but gives free lunch to all of its 21,500 students. Its unemployment rate in recent years has hovered near 12%. The per capita income in that town was recently measured at $20,000 in a county where some towns' per capita income exceeds $95,000. Its median household income is $41,050 in a county where some towns' median household income exceeds $200,000. While it spends less on education per pupil than the statewide median, Bridgeport's per capita debt is more than three times the state median. It has the third worst rate of collecting outstanding taxes in the state. Connecticut municipalities get 70% of their revenue from property taxes and spend most of that revenue on schools, so a property poor town is a town that has less for its schools. While Bridgeport has almost eight times as many people, the taxable property in the nearby town

of New Canaan is worth over $1 billion more than all of the taxable property in crowded Bridgeport. The taxable property in nearby Greenwich is worth more than four times that in Bridgeport though it has less than half the population.

*13 Bridgeport has a very hard time coming up with money when the state shortchanges it. The burden of Bridgeport's debt as a percentage of the value of its taxable property is already the worst in the state, 7.5 times the state median. Having little valuable property to tax, its mill rate —the tax burden per dollar of assessed value of property —is double that of most nearby towns. And while those towns have some of the highest and best bond ratings in the country, even with the state behind it, Bridgeport's bond rating is significantly impaired, making it even more expensive for the city to borrow.

Gaps in school resources are grappled to gaps in school results. While reason is needed for an important constitutional action regardless of results, achievement gaps in Connecticut certainly can explain the stakes. The distance between the rich and poor students in this state is great enough to remove any doubt about the importance of being careful to send money where it is most needed.

On average, Connecticut students do exceptionally well on standardized tests. This shows up in the Nation Assessment of Educational Progress, the federal government sponsored "nation's report card":

> Based on NAEP 2013 Grade 4 reading results, no state earned an average scale score higher than Connecticut.
>
> Based on NAEP 2013 Grade 8 reading results, no state earned an average scale score higher than Connecticut.
>
> Connecticut high school seniors from the Class of 2013 outperformed students from all other states in the 12th grade NAEP reading assessment.

The Programme for International Student Assessment sponsored by the intergovernmental Organization for Economic Co-operation and Development similarly ranks Connecticut at the top in several categories:

> Only four education systems in the world outperformed Connecticut in reading on the 2012 PISA assessment.
>
> Only seven education systems in the world earned scores higher than Connecticut in science on the 2012 PISA assessment.
>
> In mathematics, only 12 education systems in the world scored higher than Connecticut on the 2012 PISA assessment.

Connecticut is the home of some of the world's best students. But the NAEP and PISA measures both suffer from what Stanford University Professor Sam Savage calls, the "flaw of averages."[57] The flaw of averages is easy to see. Averages mislead when they cut across wide extremes. Let's say the average Windham household income were $30,000. If Bill Gates moved in, Windham's average household income would soar. Windham would look rich, but typical income in the town wouldn't have changed at all.

So it is with Connecticut's schools. Many soar, but some sink. Schools serving the poorest in Connecticut are concentrated in just 30 out of its 169 municipalities. The children in most Connecticut towns do well on tests and some do extremely well, pulling up the average to impressive heights. But viewed individually, the state of education in some towns is alarming.

Until recently, Connecticut's statewide tests were home grown. The state tested elementary school students with the Connecticut Mastery Test. It tested secondary school students with the Connecticut Academic Performance Test.

These tests reveal alarming statistics about reading skills among the poor that suggest there are no resources the General Assembly can afford to spare them in favor of indiscriminate impulse or political routine. The state points to a few improvements in recent years, but the testing gap is still so great that any gains the state points to can't mean the gap will heal itself if the state merely sits on its hands.

*14 Every expert at the trial agreed that acquiring reading skills by the end of third grade is essential. Without the skill to read, the rest of the material the schools present later is often lost. But while well over 70% of the students in the state's richest communities met their third grade reading goals in recent CMT tests, on average nearly 70% of the least affluent students in the

towns this case has focused on did not. While less than 1 in 10 students in many of the state's richest communities are below the most basic reading levels under CMT, nearly 1 in 3 students in many of the state's poorest communities can't read even at basic levels.

Third grade readers rated as "advanced" are approaching a majority in rich towns, but there is no appreciable percentage of advanced readers in the poor cities. Likewise, while around 90% of the students in the state's richest places made their third grade math goals, most students in the poorest places did not.

The contrast is equally stark in high school. Under CAPT in the last few years, most of the children in Darien, New Canaan, Ridgefield, Weston, Westport and Wilton scored as "advanced" in math and approached the same status in reading. Meanwhile, one out of three children in Bridgeport, Windham, New Britain, and similar communities didn't even reach the most basic levels in math and only did modestly better at reading. Not reaching the most basic level means they don't have even limited ability to read and respond to grade level material. There can be no serious talk of these children having reached the goals set for them. Only a tiny number of them did. In Bridgeport, New Britain and similar communities only 10-15% made it that high. Therefore, 85-90% of them missed their goals.

Things only get worse when we look at what happened when the state adopted new tests it deemed more appropriate—the tests developed by the Smarter Balance Assessment Consortium, a group of states led in part by Connecticut. The state first used the SBAC test for the School Year 2014-15. The tests showed that while nearly 70% of the poor missed the minimum standards for English, over 80% of the richest towns exceeded them. While around half of the students in poor focus towns didn't even meet the lowest requirements, only insignificant numbers of the students in the richest towns missed them.

There is no place to hide this bad news. The achievement gap between the rich and poor in Connecticut is not just because our rich do so well. If it were, our poor would consistently outpace the poor in poorer states. But they don't. According to 2013 NAEP tests, Connecticut's poor children are no better readers than the poor anywhere else in the country and do worse at math. In fact, 2015 NAEP results show that poor children in 40 other states did better in math than Connecticut's poor—including children in places like Arkansas Mississippi, and Louisiana—10 did about the same, and nobody did worse. The numbers for eighth graders were not much better.

The state says more money will not necessarily fix this problem. Its expert witness Michael Podgursky, an economics professor at the University of Missouri, testified convincingly that there is no direct correlation between merely adding more money to failing districts and getting better results. This is hard to argue with, and the plaintiffs concede that only well-spent extra money could help. But if the egregious gaps between rich and poor school districts in this state don't require more overall state spending, they at least cry out for coherently calibrated state spending.

There is no room for a slack system to support cities like Bridgeport. If education spending could be set by something other than educational need, it could even empower the legislature to make the balance worse. It might lead to desperately needed funds moving away from starving cities to rich suburbs for no good reason. This would be a big problem in a system supposed to be guided by need and reason. Yet while the plaintiffs were in court complaining of the lack of a principled system, the legislature started moving money from poor towns to rich ones.

*15 Throughout 2016, the state has faced a bone-crushing fiscal crisis. Thousands of state employees have been laid off. Resources are scarce and being carefully rationed. The state knows there couldn't be a worse time to move education money from struggling poor districts to rich districts. But the state did it anyway in May 2016 when, in the name of austerity, it amended the 2016-17 fiscal year budget.

Under the changes adopted, education aid to the state's poorest districts—with the exception of Danbury and Stamford—was cut by over $5.3 million:

Ansonia	$ 82,361
Bridgeport	$ 905,293

Derby	$ 39,412
East Hartford	$ 245,381
Hartford	$1,003,800
New Britain	$ 230,590
New Haven	$ 770,653
New London	$ 129,072
Meriden	$ 301,307
Norwalk	$ 57,755
Norwich	$ 181,023
Waterbury	$ 668,272
West Haven	$ 603,559
Windham	$ 133,117
	$5,351,595

In the same bill, while significantly cutting funds for some wealthy districts—without formula or explanation—the state also protected education aid *increases* for other comparatively wealthy towns in the state amounting to over $5.1 million in extra money:

Berlin	$ 59,301
Branford	$ 304,456
Canton	$ 10,050
Chester	$ 7,858
Cromwell	$ 68,585
East Granby	$ 40,618
Glastonbury	$ 263,457
Haddam	$ 99,496
Hamden	$ 67,521
Middlebury	$ 103,096
New Fairfield	$ 3,812
Newtown	$ 322,147
Orange	$ 266,396
Rocky Hill	$ 430,201

Seymour	$ 181
Shelton	$ 686,007
Simsbury	$ 288,579
Trumbull	$ 331,250
West Hartford	$1,494,623
Wethersfield	$ 480,424
Woodbridge	$ 32,760
Woodbury	$ 289,888
	$5,170,282

The plaintiffs certainly think this is wrong, but the state says that $5 million isn't much money. But there are two problems with the claim that we shouldn't worry about the diversion of only $5 million dollars. First, in desperate times in desperate towns $5 million is a lot of money. At $85,000 a head that represents around 59 full-time teaching positions at a time when poor cities without substantial tax bases are struggling with some of the nation's neediest students. Second, it broadcasts that the legislature does not feel bound to a principled division of education aid. If this view of the state's constitution won out, the legislature would be free to make today's $5 million tomorrow's $50 million and the next day's $500 million.

There are no millions to be diverted in the face of financial circumstances that are choking poor Connecticut towns to death. Based on prior budgets, Bridgeport had been expecting an extra $8 million for 2016-17. Without the extra funding, the school district was facing a $15 million funding gap just to maintain current services when the state took nearly a million dollars more away from it and gave it to wealthier towns. This followed a deficit of $5.8 million from the prior year. 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.

***16** For almost all students, there will be no high school buses in Bridgeport. Children will get tokens for the public transit system and some youngsters will have to figure out how to switch multiple transit buses just to make it to school in the morning. City efforts to raise taxes to make up the difference have resulted in reported threats of secession by the city's wealthiest neighborhood and angry meetings jammed with hundreds of residents.[58] At the board of education, the interim superintendent reports that she routinely faces four to five hours of harassment from disgruntled board members. Real board business in Bridgeport usually doesn't even get started until around 11 p.m.

It's the same in other poor towns. Too little money is chasing too many needs. Wasteful spending cannot be blamed for it all. Incompetent leadership is not the real answer. The interim superintendent in Bridgeport is a former education department official. She a top candidate for commissioner. Another top candidate runs the cash-strapped East Hartford public schools.

These schools might be recognizable as schools for constitutional purposes, but they face systemic problems that require consistent and rational solutions. Against this backdrop, considering the fundamental right of a

child to an education in Connecticut, the state cannot meet its educational duties under the constitution without adhering to a reasoned and discernible formula for distributing state education aid. That formula must apply educationally-based principles to allocate funds in light of the special circumstances of the state's poorest communities. An approach that allows rich towns to raid money desperately needed by poor towns makes a mockery of the state's constitutional duty to provide adequate educational opportunities to all students.

So does a system that spends money on school construction without rhyme or reason. The state devotes $1 billion to school construction every year when the rest of its basic education aid totals roughly $2 billion. This happens while experts for both sides in this case rated physical facilities at the bottom of their lists of things that help students learn. A recent international study says the same thing, rating buildings' impact on education of "very low or no impact." [59]

Still Connecticut keeps on spending and does so without following any rational criteria for what should be built or renovated and what shouldn't. As Michele Dixon from the office of school construction testified, there is no practical limit on spending beyond the raw dollar amount the state borrows each year and local appetite for building and sharing some of the cost, which for some projects has been zero. While the state has project criteria that create nominal priorities, Dixon reported that virtually all projects find their way into the two highest priority categories because the criteria are fluid enough to encourage it.

This building boom has happened while the state's student population has been shrinking considerably. It also goes on amidst a legislative free-for-all where, as Dixon testified, every year legislators with enough clout swoop in and change school construction spending priorities or reimbursement rates to favor projects in their districts without any consideration of relative needs across the state. In the absence of a constitutional mandate this approach might be permissible, but decisions rationally related to children's needs are an irreducible minimum in education spending. To form a logical part of an organized school system for this state, school construction spending must be connected substantially, intelligently, and verifiably to school construction needs aimed at helping students learn. To pass muster there must be a legitimate goal and a rational, substantial, and verifiable plan to achieve it.

*17 Beyond a reasonable doubt, Connecticut is defaulting on its constitutional duty to provide adequate public school opportunities because it has no rational, substantial and verifiable plan to distribute money for education aid and school construction. This doesn't mean the court should draft the state's education spending plan, but it does mean the state has to draft a rational one and follow it as a matter of law. Without a court order, a plan adopted today can be ignored tomorrow. That's what happened with the Educational Cost Sharing formula. Instead, the court will begin its review of the state's proposed remedy 180 days from the entry of judgment on this ruling.

Many rational approaches are possible. A formula can be designed that distributes money in proportion to need regardless of the overall amount the General Assembly decides to spend. Depending on what is proposed, the review and approval might be of key principles only, leaving the legislature the flexibility to change parts of it as circumstances warrant. While its starting point is unclear, the ECS formula contained some sensible elements for designing a state budget formula. The important thing is that whatever rational formula the state proposes must be approved and followed. If the legislature can skip around changing formulas every year, it invites a new lawsuit every year.

The court will only review the formula to be sure that it rationally, substantially, and verifiably connects education spending with educational need. The plan should include a timetable for carrying it out if the state believes the system would be harmed by any immediate changes. The plaintiffs will have 60 days to respond to the state's plan and then a hearing will be scheduled.

6. The state must define an elementary and secondary education reasonably

Any spending plan rationally, substantially, and verifiably linked to teaching children must not only be deliberate, it must be aimed at what the constitution promises: a free elementary and secondary education. A spending scheme really can't be said to be aimed at elementary and

secondary school education when the state doesn't even enforce a coherent idea of what these words mean.

For its secondary schools, the state has allowed the form of high school graduation to overwhelm its substance. High school graduation rates in Connecticut are going up. But, as Henry Levin, an economics and education professor at Columbia University testified, increasing high school graduation rates is a worthy goal, but it loses its desired effect if the state hasn't set a meaningful standard level of achievement meriting graduation.

In Connecticut there isn't one. The state's definition of what it means to have a secondary education is like a sugar-cube boat. It dissolves before it's half-launched. It was sunk by a highly-soluble statutory scheme.

The state's central high school graduation requirement is in General Statutes § 10-221a(b). It requires high school students to complete 20 "credits" to graduate: four in English, three in math, three in social studies, two in science, one in the arts or vocations, one in physical education and a half-credit in civics and American government. For the class of 2020 the credits needed are supposed to go up by five.

Whatever the number of credits required, the state undercuts the requirement with § 10-221a(f) defining a credit as the "equivalent" of a 45-minute class every school day for a year. If using the word "equivalent" weren't enough to keep a student from having to actually go to class to get credit later language removes any doubt by directly letting students do online work as a substitute for showing up. The online work must be "equivalent," "rigorous," "systematic" and "engag[ing] but the law doesn't make these words actually mean anything. Still, General Statutes § 10-223g says that school districts with high dropout rates must have these online credit programs.

*18 Computers are unseen culprits in this murky business. Online credit recovery is credit-earning work where students sit in front of computers reviewing material instead of in classrooms. It's unregulated. It's ill-defined, but the legislature demands it. Superintendent Rabinowitz, Superintendent Garcia and two high school principals agreed that whatever it was it was less demanding than classroom work. Rabinowitz admitted the system was an open invitation for abuse and that the invitation had been accepted.

General Statutes § 10-223a(b) includes equally insubstantial guidance. It requires local school districts to "specify the basic skills necessary for graduation ... and include a process to assess a student's level of competency in such skills." The law requires an undefined role for a mastery examination, leaving that role to be great, small, or indifferent. It accompanies this loose arrangement with one of its few inescapable mandates. The basic law decisively forbids school districts from using minimum test scores as the sole basis for promotion or graduation. If this point is not clear enough in § 10-223a(b), it is repeated in § 10-14n(e).

The only other thing directly addressing graduation standards is a 15-year-old letter from the education commissioner to superintendents. It attached a copy of the Milford public school graduation standards and encouraged superintendents to read it.

The state says that even if it doesn't have a strong graduation standard it still has new statewide academic standards that outline what high school students should learn. The "common core" and the tests created by the smarter balance academic consortium set significant goals. The standards say what students should learn at each grade level, but they can't do much good where they're needed most because they don't stop students from graduating when they fall miles below the standard. The new standards might affect school ratings under state and federal measures. They might draw attention to failing schools and students. But the schools and students at issue here were utterly failing under the old system too. It's too late for a court to accept as constitutional a system for troubled schools that does little more than call attention to problems.

In the end, the state admits it needs new graduation standards. But on this and other subjects it says it's working on the problem and should be free to keep trying. Unfortunately, the "work" the state cites on graduation standards only highlights its paralysis, not its progress.

In 2015, the General Assembly launched a task force to study aligning high school graduation requirements with the state's new common core standards. The task force decided that high school graduation standards needed

an "urgent overhaul." It called for the new standards to have "rigor," "alignment," and reflect "21st Century skills." But it spoke mostly in generalities, and while it said "mastery" is more important than "seat time," the only thing it suggested doing about mastery was *weakening* year-end mastery tests expected to acquire force in 2020. In fact, on the various graduation pathways it envisioned, the task force never suggested any way students would have to show they have mastered high school material. In the wake of this wobbly logic the report made the puzzling disclaimer that "the task force wishes to make it very clear that it is not denigrating the importance of acquiring academic knowledge and skills ..."

This seems obvious grounds for relief. And the task force even saw fit to add that, not only were they good, but knowledge and skills should be pursued "rigorously." Still the whole thing suggests the report was some kind of spoof. The task force certainly took nothing away from that impression when its biggest thought on how to fix the problem turned out to be another task force. But the state couldn't even get that job done. In 2016, any prospect for another task force along with hope for improved graduation requirements died in a legislative committee—without even a vote. [60]

*19 Reading the task force report and the statutes after hearing and watching school officials struggle to talk about graduation standards forces the conclusion that the state is paralyzed about high school graduation. The state sings the praises of a high school degree as a door opener. It hears clamoring from the community to get them into students' hands. But in the end it only leaves districts free to meet these demands in the easiest possible way—by supplying students with unearned diplomas.

The lack of a substantial and rational high-school-graduation standard has resulted in unready children being sent along to high school, handed degrees, and left—if they can scrape together the money—to buy basic skills at a community college. Those who can't immediately buy the education they were supposed to get for free must hope for a higher-education degree someday or simply accept drastically reduced prospects every day.

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. Recent CAPT test results show that one out of three high school children in Bridgeport, Windham, New Britain and similar communities did not reach even the most basic levels in math and only did modestly better at reading. Not reaching the most basic levels means these children can't even demonstrate a limited ability to read and respond to grade level material. An East Hartford high school science teacher testified that 80% of her students do not test at grade level. Many of them, she said required explanations of common words like "faucet" and "sink." In Bridgeport, New Britain, and similar communities, around 90% of the students missed their high school achievement goals. SBAC tests revealed that across the state 80 to 90% of the poor failed to reach the *minimum* standards for high school reading. Recent PSAT scores in Bridgeport show that just 1.9% of students were on track to be college and career ready. SAT scores showed 90% of Bridgeport students were not college and career ready.

Yet Bridgeport has a high school graduation rate of over 70%. Only 2% of Windham high school students were on track under the PSAT for college and career ready but that town's superintendent reports that it now has a graduation rate of more than 80%. No wonder the school superintendent of Bridgeport painfully but readily confessed that a functionally illiterate person could get a Bridgeport high school degree. No wonder the superintendent of Windham likewise conceded that her system was producing graduates who were ready for neither college nor a career. Contrasts between very low SAT college-and-career ready scores and very high graduation rates are stark in poor communities across the state:

Municipality	Most recent graduation rate %	SAT college & career ready %	Graduating but not ready %
Bridgeport	71.5%	10%	61.5%
Danbury	78.1%	34%	44.1%
East Hartford	78.3%	20%	58.3%

Hartford	71.5%	8%	63.5%
New Britain	63.6%	25%	38.6%
New Haven	75.5%	11%	64.5%
New London	71.1%	16%	55.1%
Waterbury	67.9%	15%	52.9%
Windham	81.7%	34%	47.7%

This isn't the SAT's fault. While there is a gap in most communities, the number of unready graduates is pretty small in Connecticut's wealthiest towns:

Most recent SAT college & Graduating but graduation career ready % not ready % Municipality rate % Darien 96.7% 86% 10.7% New Canaan 98.4% 83% 15.4% Ridgefield 97.6% 78% 19.6% Weston 97.2% 83% 14.2% Westport 97.8% 84% 13.8% Wilton 97% 81% 16% Greenwich 95.1% 69% 26.1%

Municipality	Most recent graduation rate %	SAT college & career ready %	Graduating but not ready %
Darien	96.7%	86%	10.7%
New Canaan	98.4%	83%	15.4%
Ridgefield	97.6%	78%	19.6%
Weston	97.2%	83%	14.2%
Westport	97.8%	84%	13.8%
Wilton	97%	81%	16%
Greenwich	95.1%	69%	26.1%

***20** You can't overlook the failure of our graduation standards in poor towns when a solid majority of their students are graduating unready and a solid majority of students in rich towns aren't having any trouble at all. But if test scores aren't enough, higher education realities remove any doubt that the state is failing poor students by giving them unearned degrees.

According to the state's statistics, more than 70% of impoverished students across the state's public higher education system and 70% of all Connecticut community college students don't have basic literacy and numeracy skills and have to get special instruction. Now higher education is under pressure too with Public Act 14-217, § 209(b) deflecting attention from the problem by requiting state colleges to embed remedial work in credit-bearing courses rather than in stand-alone remedial courses. It's almost as though the inevitable end will be to keep pushing these students along and giving them more unearned degrees—this time while charging them for the privilege. But the origin of the problem isn't so easily buried. The higher education figures led even the state's chief education performance officer, Ajit Gopalakrishnan, to agree that the statistics force the conclusion that the state's high schools are graduating students unprepared for higher education.

Without a reasonable and substantial state standard, these unready graduates are an inevitable product of demands for higher graduation rates. The federal and state government rate schools higher the higher their graduation rates. Aid amounts and remedial requirements are sensitive to these numbers too. While the state says this factor is weighed less than others that doesn't change the

message: high school graduation rates should rise. And so they do. While the state points to one high school principal who testified that higher rates at his school meant more educated graduates, this testimony can't overcome the overwhelming statewide statistics and their consistency with credible testimony from other educators. The state is letting graduation rates rise without them meaning that there are more educated people among us.

Without any reasonable doubt, this breaks the state's constitutional promise of a free secondary education by making it for the neediest students meaningless. Among the poorest, most of the students are being let down by patronizing and illusory degrees. It's a safe bet that doing away with them will put enormous pressure on schools, but perhaps when it comes to focusing attention above all on basic literacy and numeracy skills, enormous pressure is just what they need.

A new system is constitutionally required to rationally, substantially, and verifiably connect an education degree with an education. The superficial, subjective, and easily circumvented systems some schools use are the root of the problem. The obvious way to replace them is to use a readily available means to show that students have been educated—that is, that students have learned something useful by going to school. Every school system on earth knows how to do this. Some form of objective test is given. The form of it is always fought over, but the state has already proved it knows how to create and impose one and believes it's an appropriate tool. Right now, to get a high school degree outside of secondary school—to get a "graduate equivalent degree"—General Statutes § 10-5 requires in most cases passing "an examination approved by the commissioner." The state can hardly say that an objective graduation requirement is too much to ask when it's already using one.

***21** Others have them too. According to the state's witness, Stanford University professor of education and economics Edward Hanushek, they work. He particularly likes Massachusetts's objective mastery requirement. Hanushek was impressed that our neighbor state radically changed things in the 1990s, and he said these changes made Massachusetts a national education leader. In 1993, Massachusetts passed Mass. Gen. Laws c. 69, § 1D. It requires students to pass a statewide standard test or, in a few cases, another objective test tailored for an individual student under an "educational proficiency plan." Either way Massachusetts made what children learn matter most, not how much time they sit in a classroom or how long they stare at a computerized lesson. Fourteen states including Massachusetts, New York, and New Jersey now require their students to pass a test to get a degree. [61] The state has plenty of examples to consider.

It will have 180 days to consider them. Then it must submit for court review an objective and mandatory statewide-graduation standard. We can hope the state picks one that will become the preeminent standard in the United States. But it doesn't have to be that good to pass constitutional muster. All the definition has to do is rationally, substantially, and verifiably connect secondary-school learning with secondary-school degrees. If they aren't shams Connecticut can follow the Massachusetts example and adopt multiple tests. But the tests mustn't fall prey to the kind of evasions in place now. As in some states, the test could lead to different kinds of degrees—"class one," "class two," "honors," "certificate of completion," etc.

Presenting a policy in six months doesn't mean that the state has to apply it to all students immediately. The state should propose a way to introduce the new requirement as quickly as possible but as fairly as possible. It should address the problem of requiring students to meet a new standard we haven't prepared some of them to face. The schedule may connect that problem with granting varying diploma degrees temporarily or otherwise. If it is reasonable, it will be approved. Once the court has the state's plan, the plaintiff may have 60 days to comment on it.

The only way a mastery-based high school graduation requirement can work constitutionally and practically is to join it with a rational, substantial, and verifiable definition of an elementary school education. Experts like Rutgers University Professor Stephen Barnett for the plaintiffs and Hanushek for the defendants are sure that the basic problem for those having trouble in secondary school starts from them not learning to read, write and do basic math in elementary school. Again, Connecticut has no state standard with any teeth for students to pass from elementary to secondary school.

Elementary school is the heart of the problem for students in struggling Connecticut districts. Secondary school students can't succeed without elementary school skills,

and children just aren't picking them up in this state's poorest communities.

Gregory Furlong, a teacher at Bridgeport's Byrant Elementary School, says that fifth graders at his school are often reading at kindergarten "See Spot run" levels. They still get promoted. Elizabeth Carpasso, a Bridgeport middle school teacher, deals with these children three grades later in eighth grade. She has put her textbooks aside because the children can't read them. She looks for other ways of teaching her class and passes the students on. Elsa Saavedra-Rodriguez, principal of New Britain's Smalley Elementary School, tells the same story. Virtually none of her students have the basic skills they should have before moving up and not one exceeds them. Ruth Stewart-Curley teaches English language learners at New London's Benny Dover Jackson Middle School. Sixth through eighth graders are lumped together in her class. Some are entirely illiterate. Some can't even hold a pencil. They range from those who speak no English to those bordering on the mainstream. Mixed in are special education students. She is supposed to teach these students English and science. But she can't find a text to use with a diverse and troubled group like this. She struggles along, but her work sounded frustrating at least and maybe even fruitless at worst. But the kids move on. Patricia Garcia, Windham superintendent, sees her students at every level missing what they are supposed to be doing in their grade and sadly watches them moving up the grades anyway.

*22 These aren't isolated stories. The test scores described earlier and detailed in this opinion's factfinding appendix show how for thousands of Connecticut students there is no elementary education, and without an elementary education there is no secondary education. Beyond a reasonable doubt the state's failure to define elementary education rationally violates its constitutional duty to provide a meaningful opportunity to get one.

Several experts testified about the importance of good elementary schools and preschools and their connection to success in secondary school. They included:

Eric Hanushek from Stanford.

Henry Levin from Columbia.

Robert Villanova director of LEAD CT and former superintendent of the Farmington Public Schools.

Early Childhood Commissioner Myra Jones Taylor.

Bridgeport Superintendent Frances Rabinowitz.

East Hartford Superintendent Nathan Quesnel.

Education Commissioner Dianna Wentzell.

Deputy Commissioner Ellen Cohn.

All of them 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. Many pointed directly at the end of third grade. A child lost then is hard to recover. According to a 2012 study by the Annie B. Casey Foundation, more than a quarter of children illiterate at the end of third grade never even graduate from high school—and in Connecticut we know just how easy that is to do.

While both sides of the case agree on the priority, they want to do different things about it. The plaintiffs lean too hard on more money as the answer. Some of their witnesses suggested that basic literacy work meant an army of reading interventionists simply layered on top of what is already being done.

The state leaned too hard on leadership as the solution. The education commissioner and others rigidly suggested that none of the state's schools were short of money and that all would be well if the school day were reorganized, curriculum martialed, and teachers collaborated. Given the magnitude of the problem this seemed doubtful. More air went out of it when rebuttal witnesses Superintendent Rabinowitz and East Hartford Superintendent Quesnel credibly explained that most of these tactics are painfully familiar and mostly being used already.

Deputy Education Commissioner Ellen Cohn was a breath of fresh air. Cohn wrote a 2014-15 report on early reading strategies. This former Navy nurse said the task is like a medical triage. To her, early literacy was important enough to mean stripping resources from wherever necessary to prevent another wave of children passing through elementary school set up to fail. It would require giving her department the power to mandate the basic literacy techniques in a state reading pilot called CK3LI. She said the merit of these techniques is now beyond debate, and no witness quarreled with her. To

Cohn, the job could be done. It would mean painful realignments but the state could break the cycle of failure in its poor communities.

Cohn wanted strong elementary school standards but opposed just keeping children back and doing the same thing over again. She believed children who stay back too often become children who later drop out. More important she believed doing the same thing over again would get the same result.

Whatever the right answer is, Cohn must be right that the state can't continue down the same path with troubled elementary schools. The failure is just too big and the response to it is just too small. Therefore, the state must propose a definition of what it means to have an elementary school education that is rationally and primarily related to developing the basic literacy and numeracy skills needed for secondary school. No definition without force behind it can be rational, especially since the state would already say that it has amply laid out what elementary school should achieve by adopting its common core standards. Here the difference between a definition and a constitutionally adequate definition is that the former may have no real consequence while the latter requires substantial consequences. In other words, the definition of an elementary education must be rational and substantial and its effectiveness verifiable.

***23** The state will have 180 days from this decision to propose a remedy that creates a rational, substantial, and verifiable definition of elementary school. There are many possibilities. Many of the elements that need to be given life and weight are in Cohn's report. They might gain some heft, for example, if the rest of school stopped for students who leave third grade without basic literacy skills. School for them might be focused solely on acquiring those skills. Eighth grade testing would have to show they have acquired those skills before they move on to secondary school. This would give the schools four school years to fix the problem for most children. The work could start as early as high-quality preschool. But it's up to the state to decide that not the court.

Whatever the state does, the effort in troubled districts would likely focus on whole classes of children. In many city schools virtually none of the students have the skills they need to leave third grade, so it's not as if a new approach would mean that a small number of children would be left socially isolated. Whatever the state comes up with will have to allow for the special challenges poor districts face, including the reality that many poor children move from school to school as they more frequently than most children move from home to home.

The state must tell the court what powers over local districts it needs to get the job done. But it must also marshal its financial resources. The state could do this several ways. It could simply provide the money. It could cut spending on unfocused and inconsequential school construction, and spend the savings on communities that need drastic interventions. The state could take money from elsewhere in the state education budget or from elsewhere in the school budgets of troubled districts. Cohn's triage analogy may prove painfully apt. But the education commissioner and the deputy commissioner emphasized that money for needed interventions can be found if courage is used in reprioritizing district spending to focus money on the key problem. Everyone in this litigation agrees on what that key problem is, so the state should have a chance and the power in troubled districts to test its claim that the resources can be found to give meaning to the constitution's promise of a free elementary school education.

As with the other orders, the parties should propose for the remedies stage a plan to roll out the changes. One aspect of triage that won support from experts like Hanushek is that the state would be better off trying to succeed with a full blown effort in a small number of districts rather than sapping its strength by trying to succeed in too many districts at once. Starting efforts with some group of districts with fewer members than the state's 30-member Alliance District group might work —the lowest to which it labels "Reform Districts" in particular might make sense. Spreading the standards from the greatest to the least troubled districts also might work. The only thing that would make neither progress on the ground nor with the court would be a plan that is more of a dodge than a to-do list.

7. Connecticut's teacher evaluation and compensation systems are impermissibly disconnected from student learning

Most of the state's education money is spent on teachers. Both sides agree this is where the money belongs. It is also

undisputed that good teachers are the key to a good school system. The problem is that in Connecticut there is no way to know who the best teachers are and no rational and substantial connection between their compensation and their effect on teaching children.

The first problem is a dysfunctional evaluation system. Despite a lot of talk, teacher evaluation is still almost entirely local and the state standards are almost entirely illusory. This has left virtually every teacher in the state—98%—being marked as proficient or even exemplary while nothing in the system and no one in the case indicated these results are useful or accurate. The state insists that many schools across the country suffer from this problem, but—as we all learned in school—others doing something wrong is hardly an excuse.

*24 An inflated teacher evaluation system, like a graduation or grading system where everyone succeeds, is virtually useless. A virtually useless evaluation system is constitutionally inadequate to undergird the state's largest financial commitment to education. As with the other key points, students can't receive a constitutionally adequate educational opportunity when something of this importance to schools has no rational, substantial, and verifiable connection to effective teaching.

General Statutes § 10-151b misses that connection by missing any real requirement entirely. It says that schools must have evaluations "consistent with the guidelines for a model teacher evaluation and support program adopted by the State Board of Education." But while requiring the guidelines, the statute didn't even allow the board to adopt the guidelines by itself. The law gave the board until 2012 to adopt the guidelines through a typical task force approach required by § 10-151d under which they must be adopted "in consultation with" something called the Performance Evaluation Advisory Council or "PEAC." PEAC members included teachers, principals, school boards, superintendents—everyone in education most likely to disagree about what to do—people whose views are vital but whose votes are most likely to stifle a meaningful result.

PEAC did not disappoint. Although it faced a federal mandate to include a connection between teacher evaluations and student learning, PEAC did everything it could to weaken this requirement and then reconvened a year later to weaken it some more.

An earlier federal mandate, the No Child Left Behind Act, was roundly criticized for linking teacher evaluations to student test results. Some of the thinking behind this criticism shows up in the 2010 decision in this case, reflecting legitimate concerns that teachers are not responsible for the condition students are in when they walk into the schoolhouse. In the schools at the center of this case in particular, everyone agrees that crushing socio-economic circumstances handicap many of the students and make it wrong to expect them to get the same test scores as other Connecticut students. But those old cries of foul persisted at PEAC even when the new Every Child Succeeds Act replaced measuring absolute student performance with measuring evidence of growth. It hardly seems unreasonable to evaluate teachers partly based on how much their students have learned from them. The state's own expert Eric Hanushek insisted this was a vital element, saying that these so-called "measures of student learning" should make up around 35% of teacher evaluations.

Yet PEAC seems to have buckled under the load of criticism about tests. In the end, the State Board of Education set its teacher evaluation standards in capitulation to PEAC rather than in consultation with it. The instrument of surrender was a series of guidelines and a sample called the System for Educator Evaluation and Development or "SEED." The first article of the surrender is that schools don't have to use SEED at all. They can come up with their own system and use it so long as the Department of Education approves it as meeting the guidelines.

The main surrender is in the guidelines. Perhaps its authors thought people would assume the guidelines were serious simply because they are so complex. They certainly are complex, but they are not serious.

Under the guidelines, half of the evaluation is supposed to be on teacher practices and skills. This half is subjective and is like the traditional system where ultimately a principal watches a teacher in action and files a review. The remaining 10% of the first half is an equally subjective but highly limited role for parent or peer evaluation surveys.

*25 The evaluation's second half is supposed to meet federal requirements about connecting how teachers do

with how students learn. It says its focus is "student outcome indicators." But it quickly turns to slush. Measures of student achievement were supposed to make up 22.5% of a teacher's evaluation. One-half of this—a mere 11.25% of a teacher's evaluation—was supposed to be linked to growth rates in the state's carfully wrought system of student testing.

The other 11.25% addressing "outcome indicators" is illusory. First, the state allows schools to use any "standard indicator" or any "non-standardized indicator" of how much students learn. Second, the teacher has to agree to use it at all and then the teacher and evaluator have to agree what weight to give a standardized indicator and what weight to give the "non-standardized indicator." The goals can be changed mid-year. The only guidance about it is that it's supposed to be "fair, reliable valid and useful" or at least be so "to the greatest extent possible." In short, this part of the evaluation doesn't really *require* anything at all.

If this wasn't weak enough, the department then granted some two dozen waivers to school systems which didn't want to follow the guidelines and, in 2014, it gave up all pretenses, vaporizing the 11.25% that was supposed to be based on the state's official test scores, using the new SBAC testing system as an excuse. PEAC suggests that it will be imposed later, and the state has managed to hold off federal sanctions with these blandishments. The remainder of the student outcome indicators—5%—can optionally he student input or something called "whole-school student learning indicators." In a gutted system, what these indicators are hardly seems to matter.

The state's teacher evaluation system is little more than cotton candy in a rainstorm. Everything about it suggests it was designed to give only the appearance of imposing a significant statewide evaluation standard. These empty evaluation guidelines mean good teachers can't be recognized and bad teachers reformed or removed. As Superintendent Rabinowitz testified, these failures are integral to the daunting task she faces in trying to weed out teachers holding her system back. They run counter to the spirit if not the letter of the Every Child Succeeds Act. And they make a mockery of years of work the state has put in perfecting goals for students and the yardsticks to measure them against. Why bother measuring how students are doing if it never has any direct connection to how they're being taught?

Beyond a reasonable doubt the state's teacher evaluation system creates no rational, substantial, and verifiable link between teacher evaluations and student learning. It's not merely a matter of the standard being weak. The standard fails the constitutional test because it doesn't even honestly do what it says its doing.

It could. The state's chief performance officer, Ajit Gopalakrishnan, said the state has student test growth data for all of the state's teachers. He agreed the department could use the information in whatever intelligent way it might want to judge whether teachers are teaching. But it doesn't use or distribute the information for this purpose at all.

Better teachers aren't made by teachers earning better degrees or by long years on the job. Plaintiffs' expert Jennifer King Rice, professor and associate dean at the University of Maryland, agreed with state expert Eric Hanushek of Stanford about this. So did Superintendent Rabinowitz. So did Commissioner Wentzell. According to this undisputed view, teachers make significant gains in the early years of teaching but plateau after about five years. [62] No one defended the idea that having a master's degree makes a better teacher and an extensive study by Jennifer King Rice shows it has nothing to do with how well a teacher teaches. Although state officials, local board members, superintendents, principals, and teachers testified, no one said long years on the job and advanced degrees always meant good teaching.

***26** Yet in Connecticut these two factors, which may have almost no role in good teaching, play virtually the entire role in deciding how much a teacher makes. The only exceptions are some loan programs and tuition forgiveness plans designed to attract teachers in shortage areas. Otherwise, the billions that flow to increased teacher pay in this state have nothing to do with either how much teachers are needed or some recognized measure of how well they teach.

Connecticut pays teachers well. It ranked third in the country in terms of teacher salary in 2012-13, but Professor Rice's study showed that doesn't matter so much to teachers. Money isn't the biggest reason why teachers teach or where they teach. But if the way money is spent—especially on raises—means nothing, it's still being wasted. Professor Hanushek in particular

saw this as a lost opportunity. He thinks paying more while influencing nothing merely locks in inefficiencies. He and the commissioner of education testified that pay differentials based on things like shortages make more sense. As Superintendent Quesnel testified, East Hartford gets six times as many applications for elementary teacher jobs than for high school science instructors, yet there is no distinction in pay that reflects the difficulty of attracting and keeping one group of teachers over another. The same shortage problems with only minimal shortage solutions hold true in many districts for math teachers, bilingual instructors, special education teachers, and, in general in poor districts where the working conditions make the jobs less attractive.

The state sees itself as powerless here. It set up a system of local control in which school districts must agree on these things with teachers. But if the system was set up by the state then the state is responsible for the system. Any obstacle to a rational system the state has set up, the state can take down. The state is not powerless.

There are ways the state could link compensation to effective teaching, but it's nothing to do lightly. Studies show that some financial incentives have little worth.[63] Bluntly tying pay to test results for example makes no sense. It would give teachers in rich districts more money just because their kids always do better on tests while stripping money from teachers in poor districts where teaching skill is most needed. Professor Rice agreed that some financial incentives work and others don't. Extra money for shortage areas and in troubled districts seem to get the strongest support from full-time experts like Hanushek and Rice, professionals like Quesnel, and scholarly sources too.[64] But that didn't mean other approaches linking compensation and performance should be ruled out.

It also doesn't mean that there is no role to play for seniority beyond 5 years and advanced degrees. It's not as though any conceivable role these things might play would be irrational; the problem is that it's irrational for these two factors to play the only role. The court isn't going to decide how to pay teachers. The only thing the court concludes is that beyond a reasonable doubt the teacher pay system we have lacks a rational, substantial, and verifiable connection between teaching need and teaching pay.

*27 The parties agree that paying and evaluating principals and superintendents is handled even more loosely and locally. Yet the state insists that leadership is the biggest thing troubled schools need to succeed, with the commissioner practically pounding the table about the importance of principals who know what's wrong in their schools and have the courage to set it right. Former Farmington superintendent Robert Villanova, a respected authority on school leaders, highlighted this too. For him, the political chaos that often overwhelms the basin of paying and reviewing superintendents is hurting our schools, including the arcane contractual relationships that push superintendents out of most districts with unnatural regularity.

The court finds beyond a reasonable doubt that the state is using an irrational statewide system of evaluation and compensation for educational professionals and therefore denies students constitutionally adequate opportunities to learn. The state will submit plans to replace them no later than 180 days from the date of this decision. The plans can include appropriate rational elements of the current system but should include proposals for hiring, evaluating, promoting, removing, and compensating educational professionals including teachers, principals, and superintendents. The plaintiffs may then have 60 days to respond to the proposals. The parties should include proposed implementation schedules. If the state proposes a rational plan the court will approve it.

8. The state's program of special education spending is irrational

Not every dollar the state spends on schools is fair game for constitutional scrutiny. But like teacher salaries, special education spending is so large that whatever happens to it has an outsized influence on the state's chance of keeping its promise of adequate opportunities in our schools.

Congress and the General Assembly have ordered school districts to bear immense financial burdens in the name of special education without giving them much help shouldering them. Special education mandates come chiefly from the federal Individuals with Disabilities Act (IDEA) at 20 U.S.C. § 1400 *et seq.* and General Statutes § 10-76a *et seq.* IDEA's purpose under 20 U.S.C. § 1400(d)(1)(A) is "to ensure that all children with disabilities have

available to them a free appropriate public education (FAPE) that emphasizes special education and related services to meet their unique needs and prepare them for further education, employment, and independent living." The law also requires that students learn in the least restricted environment (LRE) possible with the goal of keeping them in the classroom with the other children. As experts for both sides explained, the IDEA mandates an "Individual Education Program" (IEP) be prepared following a "Planning and Placement Team" (PPT) meeting which includes school psychologists or counselors, working with parents and teachers. These PPT meetings and the resulting evaluations decide whether a child is eligible for special education with the IEP essentially telling the school system what it has to do and consequently what it has to spend.

The state has a pretty broad view of the program. It says special education requires extensive services ranging from tutoring services for students with mild dyslexia to immensely expensive transportation and therapy for profoundly, multiply-disabled children. The state's vision is well-reflected in a case it cited. In 1989, the First Circuit Court of Appeals interpreted IDEA in *Timothy W. v. Rochester, New Hampshire School District.*[65] Timothy W. had almost no cerebral cortex and could respond to light and other things just enough to let people know he was experiencing them.[66] The First Circuit said the act covered all disabled children and required that all of them receive an "appropriate."[67] The *Timothy W.* case has contributed to this and other states telling school districts to transport, care for and provide extensive services for multiply-disabled children regardless whether the state can do anything that would look to most people like education. It is a phenomenon that costs immense sums, but conventional education thinking seems resigned to it.

*28 The cost of special education is staggering. In many places over 20% of the money spent on schools is spent on special education, and more than 66,000 students are enrolled. In 2013-14 federal, state, and local spending on special education in Connecticut reached $1.82 billion when annual basic state school aid was roughly $2 billion. Almost all of that $1.82 billion comes from local government; federal and state aid amounts to just 15-20%.

The state does insist it pays more. It says that for federal purposes it uses an old post-*Horton* formula to claim 19%-22% of its general local education aid is special education aid. But this really isn't credible anymore since the evidence shows it is largely an arbitrary percentage, it was abandoned from the formula decades ago, and the state has now entirely given up any pretense of having a formula. Around 10% of special education spending—around $200 million—is spent every year on students with multiple disabilities.

Bridgeport Superintendent Rabinowitz said her district spent around $75 million on special education in 2014-15 and got just $1.5 million of it from the federal government and $4.8 million from the state. Because the law makes her spend whatever the IEPs require for special education children, she has less to spend on other children. At great expense—a single student's care can cost $100,000 or even $200,000—Bridgeport cares outside of the district schools for roughly 300 children that might be called multiply-disabled and incapable of being educated within the system. According to East Hartford Superintendent Quesnel, the only children he's spending more money on each year are children in special education. For years zero-increase budgets for his school system have left him constantly stripping resources from the student population as a whole to meet those things like special education over which he is powerless.

There are two problems with special education serious enough to warrant constitutional concern. First is the problem of spending education money on those in special education who cannot receive any form of elementary or secondary education. Second is the evidence that shows that getting picked for special education in this state is mostly arbitrary and depends not on rational criteria but on where children live and what pressures the system faces in their name.

Daniel J. Reschly is a professor of educational psychology at Vanderbilt University. He was the state's special education expert at trial. Reschly said that special education spending is crowding out spending on general education in Connecticut and across the country. Margaret McLaughlin, a professor of special education at the University of Maryland, was the plaintiffs' expert. She agreed with Reschly. A 2013 state study of education funding said the same thing and said schools should change the way they pay for special education and how it's done.

Reschly said a lot about how schools identify special education students. Schools are supposed to make a call about whether a student needs services and what services if any are "appropriate." A school might grant or deny services to a child with a reading problem depending on why the child can't read and whether the system can give the child an "appropriate education." Schools have to use judgment.

But Reschly also considered cases like *Timothy W.* About these difficult cases, he said the schools never make a judgment call at all. He, other witnesses, and scholarly sources say circumstances like Timothy W.'s and worse can costs school districts amounts approaching and exceeding $200,000 a year per child. [68] Yet school officials never consider the possibility that the education appropriate for some students may be extremely limited because they are too profoundly disabled to get any benefit from an elementary or secondary school education. Reschly struggled to say why hundreds of thousands of dollars might be spent on someone profoundly disabled without even considering whether it's a good idea while for other disabled children the schools have to shape programs to fit their prospects and circumstances. After a lot of back and forth, he settled on saying that schools provide extensive services for the multiply-disabled without inquiring into their circumstances to avoid the "degree of pushback" they would get by saying limited or no services were appropriate.

***29** Part of the problem may be unfounded fear of cases like *Timothy W.* That case turn on whether IDEA covered a child who could not be educated in any traditional sense. [69] Framed that way, the First Circuit could only answer that the act covers all disabled children, and it requires them to be given an education appropriate for their circumstances. But that ignores the real judgment call that Reschly says schools run away from. The call is not about whether certain profoundly disabled children are entitled to a "free appropriate public education." It is about whether schools can decide in an education plan for a covered child that the child has a minimal or no chance for education, and therefore the school should not make expensive, extensive, and ultimately pro-forma efforts. For a child in a coma, the judgment call may be painful, but it is simple: the "appropriate" education service for a child in a coma is likely little more than evaluating the child's condition and following the proper procedure to recognize that no educational service is appropriate because the child cannot benefit from it. No case holds otherwise, and this means that extensive services are not *always* required.

A description of the IDEA "appropriate education" duty came from the highest authority nearly 35 years ago in the U.S. Supreme Court's opinion in *Board of Education v. Rowley*. [70] Rowley was mostly deaf. She was certainly capable of getting an education and was getting one. The question was whether she should have a sign language interpreter with her in class as opposed to less expensive assistance. [71]

The Supreme Court held that the act aimed, not at an equal education, but a "basic floor of opportunity" that "consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." [72] It also recognized that "[t]he educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom." [73] The Court rejected the idea of a one-size-fits-all analysis of what effort maybe enough:

> The determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem. The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with nonhandicapped children, while another child may encounter great difficulty in acquiring even the most basic of self-maintenance

> skills. *We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act.* [74]

The Supreme Court overturned the lower court rulings requiring the sign language interpreter, saying only local experts control how far any effort must go: "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child." [75]

Out of this kind of modest statement, urban legends about IDEA seem to have grown, and they have led many to think the law requires unthinking, expensive, and futile efforts in the name of education. Media reports reflect a wide public perception that herculean efforts are required even to achieve virtually nothing. [76] But as Justice Ruth Bader Ginsberg, sitting on the D.C. Circuit Court of Appeals in 1984, wrote in *Lunceford v. District of Columbia Board of Education*: public "resources are not infinite," and federal law "does not secure the best education money can buy; it calls upon government, more modestly, to provide an appropriate education for each (disabled] child." [77] Reschly was reluctant but clear enough: the reason so much is spent is because someone has to take responsibility for saying that it shouldn't be, and no one is willing to do it.

*30 If, as Reschly and others said, roughly 10% of the special education population fits this description and we assume the unlikely scenario that they command just 10% of total special education spending then this is costing our state schools nearly $200 million a year. This doesn't mean none of the money should be spent or even decide how much should be spent. An appropriate education for some severely-disabled multiple-handicapped children doubtless requires this kind of spending to get results, but we don't know who these children are because no judgment on the question is made at all—schools wrongly think they aren't supposed to think, but must do something no matter the degree or character of the benefit.

Neither federal law nor educational logic says that schools have to spend fruitlessly on some at the expense of others in need. Medical services including physical and occupational therapy may help some multiply-disabled children and may be an important social service. When they are "related services" to educating children under 20 U.S.C. § 1401(17), IDEA says schools must supply them. But when they have no substantial connection to education no one says they have to be paid for out of education budgets.

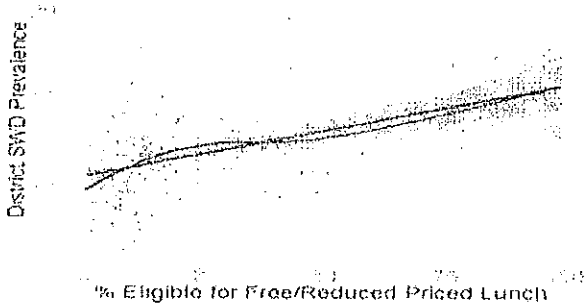
This kind of spending is hard to square with seeing the constitution as requiring a substantial, rational, and verifiable connection between things schools do and things that teach kids. That thinking must at least require schools to spend education money on education. It means schools shouldn't be forced to spend their education budgets on other social needs—however laudable—at the expense of special education children who can learn and all the other children who can learn along with them. The first step is for schools to identify and focus their efforts on those disabled students who can profit from some form of elementary and secondary education. This will require state standards to address this issue and require school districts to make the necessary judgments.

Doubtless the state can choose to continue to serve multiply-disabled children in any way it sees fit. It may simply have to rethink forcing local school districts to pay for it with local school money.

Spending education money on education is certainly needed to marshal resources for thousands of children in inner city schools whom we already know can be educated but aren't being educated. This includes special education students. Reschly's research shows that while there are very few children like Timothy W. there is a bigger problem with special education money and it affects all the disabled children in our schools.

Reschly closely studied which students were getting tapped for special education in Connecticut. He did it to prove that impoverished students are not being identified for special education much more than wealthier students. But he discovered something more ominous along the way. He drew some scatter graphs comparing school districts and considering the identification rates for various kinds of special education. Figure 4 in his report shows total prevalence patterns for special education identification:

Figure 4. Relationship of Total SWD Prevalence and District Poverty in 2010-2011



Each dot on his graph is a school district. The horizontal axis shows relative poverty based on the percentage of students who receive free and reduced price lunches under federal law. The vertical axis shows students with disability (SWD) identification prevalence—the total percentage of the student population found eligible for special education. Overall, the scatter graphs show that children aren't significantly more likely to get special education just because they live in a poor town.

*31 But the graphs also show that the disability identification rates vary so widely between districts that Reschly was left scratching his head trying to find a pattern. Similar districts were identifying completely dissimilar percentages of special education students. He didn't think this could mean one town had many intellectually disabled children while another town with the same characteristics had scarcely a single one. Instead, Reschly was left believing that the variations meant some districts were ignoring problems, some districts were over-identifying problems, and some districts just refused to use certain labels. For example, some districts he knows avoid saying kids are intellectually disabled—those formerly called mentally retarded—preferring instead to call them autistic.

His experience with Connecticut's system and others revealed chaos. Poor districts call some children emotionally disturbed while wealthy districts call the same kind of children ADHD sufferers—with consequent variations in services and expenses. In many districts there is no limit to special education when it comes to bad behavior. Bad behavior in these places always comes from some kind of disability like emotional disturbance no matter where it comes from, how bad it is, or how often it happens.

Deputy Commissioner Cohn supported this sense that things were out of control. She explained that children in Hartford were under-identified for special education, but she said "you just need a hang nail to get identified for special education in Glastonbury." Reschly thought "it always has been remarkable ... that schools could have markedly different rates of disability identification using the same state definitions and classification criteria." He ultimately agreed that the inexplicable and in his word "enormous" differences between districts can only be because the state standards allow serious over-inclusion or under-inclusion in special education.

This unstable reality is because Connecticut hardly has any state standards for identifying specific disabilities and a method of dealing with them. Doubtless, some categories of disability are harder to recognize than others and, yes, everyone knows that what needs to be done is highly individual. Does a child slow to read have dyslexia? Is a behavior problem ADHD or emotional disturbance? Plainly these depend on the child. But Reschly doesn't agree that all speech and language difficulties are subjective and many other disabilities can obviously be identified with more or less objectivity (blindness, etc.) and so can the typical services schools should provide.

Reschly said the problem can be brought far closer to reason by standard procedures and methods of ensuring compliance with them. He says that without them too many judgments are open to outside pressure to supply unneeded special education services or supply the wrong ones. Reschly said the system is warped by pressure from parents, by pressure from individual schools for more outside resources, and by pressure from central school district leaders to use in-house services and save money. Reschly and others saw these pressures as a "significant" problem. They hurt schools, but more important they hurt the children the schools are supposed to educate by ignoring their actual needs.

Even with government spending $1.8 billion every year on special education in Connecticut the state requires little or nothing of districts in how they go about spending it. The state did publish a 2010 book of guidelines. The guidelines focus on federal law and walk through generalities, discussing the relationship between general and special education and making some general suggestions about accuracy. The guidelines include nothing that local PPT

can use to know how to ensure uniformity, to accurately label, to set reasonable goals and to use reasonable means to carry them out. The state also pointed to a document called "Guidelines for the Practice of School Psychology." These guidelines are even less helpful. They say nothing about how to identify disabled students, virtually nothing about special education, and psychologists aren't even required PPT members. More helpfully, the department website publishes informational papers on a variety of topics, including specific information on subjects like intellectual disability, autism and ADHD. Fleshed out and made part of required protocols, documents like these might be useful, but the only evidence is that these resources are there if anyone wants them and nothing more.

*32 There isn't any reasonable monitoring of over-identification or under-identification either. IDEA compliance is the focus of a lot of work and some regular samples across the state, but its focus has been on ensuring paperwork compliance and monitoring compliance with the individual education plans that get created without examining their appropriateness. This process does not significantly address under-identification or over-identification.

Special education identification and intervention is unquestionably individualized, but that doesn't mean it has to be chaotic. Without a rational basis, neither the state's command to local school districts nor its means of identifying and educating disabled students can stand under the constitution's education provision. Here again, it is not a question of whether the state has chosen the most effective course. The problem rises to a constitutional level because, with respect to one of the largest components of its funding scheme, the state beyond a reasonable doubt lacks a rational, substantial, and verifiable connection between its educational mandate and a means of carrying it out.

Within 180 days, the state will submit new standards concerning special education which rationally, substantially, and verifiably link special education spending with elementary and secondary education. The plaintiffs will have 60 days to respond.

9. The difference between rational policy and the best policy

The connection between the constitution's education mandate and the means of carrying it out doesn't have to be ideal to avoid judicial scrutiny. Not everything has to be perfectly equal either. If these things were true, this decision could say a lot about several topics.

It might discuss class size. There was a spirited debate at trial about class size that challenged the preconception that a smaller class was a better class. That discussion highlighted the importance of good teachers over smaller class sizes. There was also a robust discussion about the role of interventionists and classroom teachers as well as the role of classroom teachers and paraprofessionals. The role of a good principal was discussed. The most effective way to create an education budget was mooted. The relative importance of racial integration and effective education was discussed, with several witnesses debating the role of the state's magnet schools. The struggles of English language learners were reviewed with many suggestions for how to ease their lot.

But if there was any one thing in the trial that stood out as good—as opposed to constitutional—policy it was the need for universal high-quality preschool. 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. Eric Hanushek, the state expert from Stanford, believed the state would gain a lot from targeting free public preschool to a small number of cities and offering it to every child in them rather than spreading the effort thinly to some children throughout the state. Early Childhood Commissioner Jones-Taylor agreed. More work in this area cries out for attention—but not from this court.

All this is just to show that there is a difference in a constitutional case between a court pushing good education policy and a court barring irrational education policy. The legislature makes policy. The only reason for any of the court's legal conclusions is that the fundamental right to an adequate educational opportunity won't mean much unless the state's major policies have good links to teaching Connecticut children. The remedies that will be considered in this case are required because in several senses these links are missing.

10. The next job is to craft remedies

*33 To get rid of an irrational policy, adopt a rational one. It's the court's job to require the state to have one. It's the state's job to develop one. The court will judge the state's solutions, and if they meet the standards described in this decision, uphold them. The state will submit proposed reforms consistent with this opinion within 180 days. The state will propose changes consistent with this opinion on the following subjects:

the relationship between the state and local government in education;

an educational aid formula;

a definition of elementary and secondary education;

standards for hiring, firing, evaluating, and paying education professionals; funding, identification, and educational services standards for special education.

Once the state submits its proposed remedies, the plaintiffs will have 60 days to comment on them and propose alternatives. A hearing will then be scheduled.

All proposals will include a timetable and any other proposed variables related to carrying them out along with a thorough justification. Both parties should list any statutes they claim are invalidated by the court's rulings.

11. Conclusion: Schools are for kids

This case has been fought over for more than 11 years. It started in Superior Court in 2005 and the Supreme Court sent it here for a trial nearly seven years ago. After the parties spent countless hours gathering evidence and the court heard many motions, it has had 60 days of trial stretching over a six-month period. Over 5,000 exhibits were marked and thanks to nearly 2,000 fact admissions they were whittled down to 826 full exhibits. Over 50 witnesses testified, including nearly 20 education and financial experts. Thousands of pages of briefing have been filed and studied. The court has made 1,060 individual findings of fact in an appendix to this decision. So nothing here was done lightly or blindly. The court knows what its ruling means for many deeply ingrained practices, but it also has a marrow-deep understanding that if they are to succeed where they are most strained schools have to be about teaching children and nothing else. If they are to succeed rather than be overwhelmed by demands for alternative schools, public schools must keep their promises. So change must come. The state has to accept that the schools are its blessing and its burden, and if it cannot be wise, it must at least be sensible. The implications here are plain:

The state's responsibility for education is direct and non-delegable; it must assume unconditional authority to intervene in troubled school districts. The court can't dictate the amount of education spending, but spending including school construction spending must follow a formula influenced only by school needs and good practices.

The state must define elementary and secondary education objectively, ending the abuses that in some places have nearly destroyed the meaning of high school graduation and have left children rising from elementary school to high school without knowing how to read, write, and do math well enough to move up.

The state must link the terms of educators' jobs with things known to promote better schools: it cannot churn out uselessly perfect teacher evaluations nor can teacher pay consider solely what degrees teachers have and how long they have been on the job.

The state must end arbitrary spending on special education that has delivered too little help to some and educationally useless services to others; it must set sensible rules for schools to follow in identifying and helping disabled children.

*34 The clerk will enter judgment partially favoring the plaintiffs, and the court will schedule a hearing on remedies after reviewing the proposals the parties begin submitting 180 days from now. The court will retain jurisdiction to enforce the equitable constitutional decrees in this ruling.

All Citations

Not Reported in A.3d, 2016 WL 4922730

Footnotes

1 304 Conn. 1, 33.
2 *Id.*
3 292 Conn. 364, 371-72.
4 255 Conn. 245, 257.
5 *Id.*
6 202 Conn. 57, 69.
7 145 Conn.App. 174, 181.
8 2009 WL 1055528.
9 2013 WL 2350516.
10 2005 WL 1757631, 5.
11 292 Conn. 364, 372-73.
12 *Id.* at 372.
13 172 Conn. 615, 648.
14 *Id.* at 640.
15 180 Conn. 243, 248.
16 172 Conn. at 638.
17 295 Conn. 240.
18 *Id.* at 244-45.
19 *Id.* at 331.
20 *Id.* at 321.
21 *Id.* at 317 n.59.
22 *Id.* at 321.
23 *Id.* at 336.
24 *Id.* at 343.
25 *Id.* at 320.
26 268 Conn. 508, 534 cert. denied, 543 U.S. 969.
27 172 Conn. at 648-49.
28 *Id.* at 649.
29 Id.
30 172 Conn. 615, 645.
31 289 Conn. 135, 155.
32 195 Conn. 24, 35.
33 295 Conn. 240, 267.
34 *Id.* at 318.
35 *Id.* at 343 (Justice Palmer).
36 *Id.* at 320 (Plurality).
37 *Id.* at 301, 316 (citing 86 N.Y.2d 307).
38 *Id* at 317.
39 272 Conn. 577, 604 n.13, quoting, *Marks v. United States,* 430 U.S. 188, 193 (1977).
40 950 F.2d 771 (*en banc*).
41 312 Conn. 714, 730.
42 2:89 CV 859 (D.Conn.) (SRU).
43 3:12 CV 0035 (D.Conn.) (AWT).
44 792 F.3d 239.
45 238 Conn. 1.
46 172 Conn. 615.
47 238 Conn. at 3, 46.
48 *Id.* at 25.

49 172 Conn at 645-46.
50 295 Conn. at 317, n.59.
51 295 Conn. at 282.
52 *Id.* at 321.
53 193 Conn. 670, 683.
54 Id.
55 195 Conn. at 38.
56 Id.
57 See, Sam L. Savage and Jeff Danzier, *The Flaw of Averages: Why We Underestimate Risk in the Face of Uncertainty.* (John Wiley & Sons, Inc. 2012).
58 www.ctpost.com/local/article/Bad-day-at-Black-Rock-over-taxes-Tuesday-833515.
59 https://educationendowmentfoundation.org.uk/evidence/teaching-learning-toolkit/physical-environment.
60 https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2016&bill_num=378.
61 http://www.edweek.org/ew/section/multimedia/state-testing-an-interactive-breakdown-of-2015-16.html.
62 See also, http://tntp.org/publicatons/view/the-mirage-confronting-the-truth-about-our-quest-for-teacher-development at 15.
63 See, e.g., Roland G. Fyer, Jr., "The Production of Human Capital in Developed Countries: Evidence from 196 Randomized Field Experiments" (March 2016) at 47; http://scholar.harvard.edu/files/fryer/files/handbook_fryer_03.25.2016.pdf.
64 *Id.* at 52.
65 875 F.2d 954.
66 Id.
67 *Id.* at 959-60.
68 See, Note, "Special Education, Equal Protection and Education Finance: Does the Individuals with Disabilities Education Act Violate a General Education Student's Fundamental Right to Education?" 40 B.C. L. Rev. 633 at 634 (March 1999).
69 875 F.2d 954 (1989).
70 458 U.S. 176 (1982).
71 *Id.*at 184.
72 *Id.* at 201.
73 *Id.,* at 198.
74 *Id.,* at 202 (emphasis added).
75 *Id.,* at 207.
76 See, e.g., "A Struggle to Educate the Severely Disabled," www.nytimes.com/2010/06/20/education/20donovan.html; "Special Needs, Painful Costs," articles.courant.com/2001-02-09/news/0102092823_1_special-education-severely.
77 745 F.2d 1577, 1583.

End of Document

----------FOR DISCUSSION PURPOSES----------

C

Governor's Proposed 2017-18 Budget Effect on Newtown:

• Loss of Intergovernmental Revenues	($3,814,563)
• Teacher Retirement Contribution to State	($3,917,100)
• Increase in Special Education Grant	$1,031,481
• Loss on Motor Vehicle 32.0 Mill Cap	($900,000)
Total Effect on Newtown Budget	($7,600,182)

Actions Taken in 2017-18 Budget Process to Date:

• BOS - Adjusted State Revenue Estimates (Increase in grand list covered this)	($906,847)
• BOF – Adjusted State Revenue Estimates (Reduction in budget & increase in tax collection rate covered this)	($579,546)
Total Actions Taken To Date	($1,486,393)

Board of Education's Requested Operational Plan 2017-2018

SPECIAL EDUCATION PROGRAMS

Tuition

The school district is required by law to provide a free appropriate education for all students (FAPE). To appropriately meet the needs of our students who require highly specialized programming or programming beyond current district resources, the tuition line funds these out of district programs. Additionally, costs for placements associated with Due Process and mediations are funded through this line. Our current out of district placement percentage is 6.6%. The state average is approximately 7%. The out of district placement target set forth by the Connecticut State Department of Education is 6%.

Unanticipated – Students and Increases

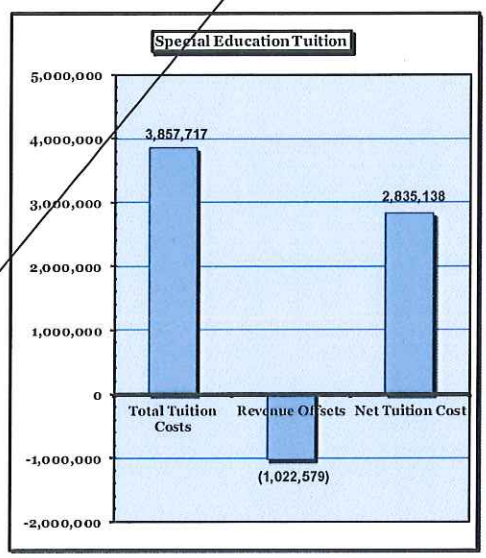
Out-of-district placements often pose a challenge to staying within a set budget. Private special education schools also have the right to increase tuition and often new rates are set after budgets are determined.

	Object	*2014 - 15 Expended*	*2015 - 16 Expended*	*2016 - 17 Budgeted*	*2016 - 17 Current*	*2017 - 18 Requested*	*$ Change*	*Notation*
	OUT-OF-DISTRICT SPECIAL ED SERVICES & TUITION							
560	Out-Of-District Placements	2,173,375	3,136,813	2,990,002	2,990,002	2,835,138	(154,864)	
	Subtotal	2,173,375	3,136,813	2,990,002	2,990,002	2,835,138	(154,864)	

560 - OUT-OF-DISTRICT SPECIAL ED. TUITION

# of Students	School	Cost
4	Location 1	$407,766
3	Location 2	$488,226
1	Location 3	$117,500
10	Location 4	$712,680
4	Location 5	$300,000
2	Location 6	$295,600
1	Location 7	$181,422
1	Location 8	$35,000
2	Location 9	$154,000
2	Location 10	$166,189
2	Location 11	$108,910
1	Location 12	$71,096
1	Location 13	$237,771
1	Location 14	$69,644
1	Location 15	$53,520
	Vo-ag Students	$24,585
	Additional Placements - TBD	$0
	Mediated Agreements	$433,808
36	Subtotal	$3,857,717
	Revenue Offsets	
	Excess Cost Grant Revenue	-$1,022,579
	Total with Offsets	$2,835,138

Net



Note: This amount will fluctuate as students move in and out of district

SPECIAL EDUCATION (EXCESS COST) ACCOUNT BUDGET DEVELOPMENT:

ESTIMATED EXPENDITURES	$3,857,717
EXCESS COST GRANT	($1,022,579)
BUDGET AMOUNT USED	$2,835,138

WHAT IF ACTUAL:

BUDGET	$2,835,138
ACTUAL EXPENDITURES	$3,500,000
GRANT ACTUALLY NEEDED TO BALANCE ACCOUNT***	($ 664,862)
BALANCE IN ACCOUNT	$ - 0 –

*** PER STATUTE THE BALANCE OF THE GRANT CAN BE PLACED IN GENERAL FUND REVENUES

TOWN OF NEWTOWN CLAIMS ANALYSIS

FISCAL YEAR 2011 - 2012

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	TOTALS		
TOWN	213,000	304,000	266,000	171,000	223,000	302,000	238,000	227,000	298,000	276,000	312,000	318,000	3,148,000	28%	
BOE	860,000	618,000	742,000	561,000	573,000	621,000	601,000	657,000	692,000	726,000	659,000	802,000	8,112,000	72%	
TOTAL	1,073,000	922,000	1,008,000	732,000	796,000	923,000	839,000	884,000	990,000	1,002,000	971,000	1,120,000	11,260,000	MAR=	73%

FISCAL YEAR 2012 - 2013

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	TOTALS		
TOWN	247,000	226,000	168,000	198,000	190,000	266,000	242,000	246,000	279,000	262,000	304,000	215,000	2,843,000	25%	
BOE	722,000	764,000	611,000	812,000	694,000	739,000	596,000	754,000	677,000	763,000	843,000	709,000	8,684,000	75%	
TOTAL	969,000	990,000	779,000	1,010,000	884,000	1,005,000	838,000	1,000,000	956,000	1,025,000	1,147,000	924,000	11,527,000	MAR=	73%
													2.4%		

FISCAL YEAR 2013 - 2014 — 111,750 h.s.a.

	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	TOTALS		
TOWN	275,000	238,000	389,000	180,000	276,000	280,000	220,000	203,000	336,000	261,000	403,000	462,000	3,523,000	27%	
BOE	958,000	865,000	493,000	741,000	649,000	804,000	546,000	721,000	856,000	739,000	623,000	803,000	8,798,000	73%	
TOTAL	1,233,000	1,103,000	882,000	921,000	925,000	1,084,000	766,000	924,000	1,192,000	1,000,000	1,026,000	1,265,000	12,321,000	MAR=	73%
													6.9%		

FISCAL YEAR 2014 - 2015 — 135,583 h.s.a.

	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	TOTALS		
TOWN	331,000	221,000	352,000	475,000	307,000	304,000	234,000	365,000	361,000	304,000	340,000	202,000	3,843,000	32%	
BOE	834,000	821,000	543,000	599,000	644,000	652,000	603,000	728,000	782,000	801,000	843,000	701,000	8,730,000	68%	
TOTAL	1,165,000	1,042,000	895,000	1,074,000	951,000	956,000	837,000	1,093,000	1,143,000	1,105,000	1,183,000	903,000	12,573,000	MAR=	73%
										NAF fees	179,000	47,000	2.0%		

FISCAL YEAR 2015 - 2016 — 171,250 h.s.a.

	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	TOTALS		
TOWN	268,000	291,000	258,000	571,000	288,000	228,000	320,000	268,000	425,000	268,000	221,000	264,000	3,670,000	29%	
BOE	1,080,000	817,000	737,000	701,000	655,000	848,000	671,000	753,000	1,005,000	690,000	693,000	1,055,000	9,705,000	71%	
TOTAL	1,348,000	1,108,000	995,000	1,272,000	943,000	1,076,000	991,000	1,021,000	1,430,000	958,000	914,000	1,319,000	13,375,000	MAR=	76%
													6.4%		

FISCAL YEAR 2016 - 2017 — 311,000 h.s.a.

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	TOTALS			
TOWN	327,000	300,000	242,000	375,000	296,000	295,000	218,000	219,000	450,000				2,722,000	29%		
BOE	891,000	781,000	619,000	643,000	909,000	800,000	626,000	531,000	900,000				6,700,000	71%		
TOTAL	1,218,000	1,081,000	861,000	1,018,000	1,205,000	1,095,000	844,000	750,000	1,350,000	-	-	-	9,422,000	-	$	12,906,849
													plus H.S.A. pmts		$	313,000
															$	13,219,849
																-1.2%

h.s.a. payments not in monthly claims above.

3/23/2017

TOWN OF NEWTOWN
MEDICAL SELF INSURANCE FUND ANALYSIS @ JAN 31, 2016
FISCAL YEAR 2017 - 2018 FORECAST

ESTIMATED FUND BALANCE @ JULY 1, 2017		3,491,000	
ESTIMATED REVENUES			
EMPLOYER CONTRIBUTIONS:			
MUNICIPAL	3,163,000		
EDUCATION	8,685,000	11,848,000	0%
EMPLOYEE CONTRIBUTIONS:			
MUNICIPAL	357,000		
EDUCATION	2,244,000	2,601,000	
RETIREE/COBRA/AGENCY CONTRIBUTIONS:			
MUNICIPAL	350,000		
EDUCATION	392,000	742,000	
INTEREST EARNED ON INVESTMENTS		15,000	
TOTAL REVENUES		15,206,000	
ESTIMATED EXPENSES			
CLAIMS/NAF:			
MUNICIPAL		14,031,500	(5.5%)
EDUCATION			
ADMINISTRATIVE FEES:			
MUNICIPAL		1,050,000	
EDUCATION			
CONSULTANT FEES		55,000	
TOTAL EXPENSES		15,136,500	
ESTIMATED FUND BALANCE @ JUNE 30, 2018		3,560,500	25%
25% OF TOTAL CLAIMS =	3,507,875		

TOWN OF NEWTOWN
MEDICAL SELF INSURANCE FUND ANALYSIS @ JAN 31, 2016
FISCAL YEAR 2016 - 2017 FORCAST

FUND BALANCE @ JULY 1, 2016		2,743,000	
ESTIMATED REVENUES			
EMPLOYER CONTRIBUTIONS:			
MUNICIPAL	3,163,000		
EDUCATION	8,685,000	11,848,000	
EMPLOYEE CONTRIBUTIONS:			
MUNICIPAL	353,000		
EDUCATION	2,200,000	2,553,000	
RETIREE/COBRA/AGENCY CONTRIBUTIONS:			
MUNICIPAL	350,000		
EDUCATION	392,000	742,000	
INTEREST EARNED ON INVESTMENTS		10,000	
TOTAL REVENUES		15,153,000	
ESTIMATED EXPENSES			
CLAIMS/NAF:			
MUNICIPAL		13,300,000	FROM CLAIMS ANALYSIS
EDUCATION			
ADMINISTRATIVE FEES:			
MUNICIPAL		1,050,000	
EDUCATION			
CONSULTANT FEES		55,000	
TOTAL EXPENSES		14,405,000	
ESTIMATED FUND BALANCE @ JUNE 30, 2017		3,491,000	26%
25% OF TOTAL CLAIMS =	3,325,000		

E

	BOS	BOE	
Pension - stay with original actuary report. Impliment new method and discount rate phase in next year.	133,030	55,090	Commit to actuary changes next year
	188,120		

	BOS	BOE	
Medical - adjust increase from 2% to 0% due to claims experience up to February 28, 2017	63,630	173,714	January & February were positive claims months
		237,344	