



## OLR BACKGROUNDER: CCJEF V. RELL

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### CONNECTICUT CONSTITUTION, ARTICLE EIGHTH, § 1

"There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

### ISSUE

This report summarizes the Connecticut Superior Court's September 7, 2016 decision in *Connecticut Coalition for Justice in Education Funding (CCJEF) v. Rell*.

### SUMMARY

In this decision, the Superior Court held that the state did not fulfill its duty under article eighth, § 1 of the state constitution to provide an adequate education to public school students. Specifically, the court found that although the state exceeded the minimum public school funding level standard required by the constitution, it fell short of meeting its constitutional obligation in the following areas: (1) intervening in struggling school districts when local government falters; (2) distributing education aid; (3) defining elementary and secondary education; (4) setting standards for hiring, firing, evaluating, and paying teachers; and (5) funding special education, identifying eligible students, and delivering services. The court required the state to submit within 180 days plans that address each of these matters but did not specify required contents for these plans. The plaintiffs have 60 days to comment on them.

We summarize below the case's history; the Superior Court's findings, reasoning, and orders for each of the above five areas; and the decision's two appendices. Please note that this report does not address all arguments or legal precedents considered by the court. The full opinion is available on the Judicial Branch [website](#).

On September 15, 2016, the Attorney General filed an appeal seeking the Connecticut Supreme Court's review of the trial court's judgment.



## HISTORY

On November 22, 2005, CCJEF filed suit in Hartford Superior Court to challenge the constitutionality of the state's education funding system. CCJEF is a nonprofit organization whose members include municipalities, boards of education, professional education associations and unions, other Connecticut nonprofits, parents and grandparents, public school students age 18 and older, and other Connecticut taxpayers. In addition to CCJEF, the plaintiffs included several elementary and high school students and 16 towns. The defendants included former Governor Rell and other state officials ("the state").

The plaintiffs alleged that "by failing to maintain an educational system that provides children with suitable and substantially equal educational opportunities, the state is violating their constitutional rights" and has fostered an "educational underclass." It also contended that the state's failure to provide a suitable educational opportunity caused the plaintiffs irreparable harm.

The plaintiffs also alleged that the state's failure to provide suitable and substantially equal educational opportunities could be demonstrated through both educational inputs (e.g., class sizes, appropriate textbooks and other materials, and adequate services for students with special needs) and outputs (e.g., mastery test scores and graduation rates). The complaint also cited shortcomings in the state's Education Cost Sharing (ECS) formula, state funding for special education, and other state education grants to justify the request for relief. For a full summary of the complaint, see [OLR Report 2005-R-0887](#).

Among other types of relief, the plaintiffs sought a judgment (1) declaring that the state constitution guarantees students the right to suitable and substantially equal educational opportunities and (2) ordering the state to create a public education system that would provide such opportunities to students.

In 2007, the Superior Court granted the state's motion to strike several of the plaintiffs' claims, concluding that there is no "constitutional right to 'suitable' educational opportunities."

The plaintiffs appealed to the Connecticut Supreme Court, which issued its ruling in March 2010 in *CCJEF v. Rell*, 295 Conn. 240 (2010). While a majority of justices (four) agreed that the Superior Court must be reversed, there was no majority opinion. The plurality opinion concluded that article eighth, § 1 "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 to contribute to the state's economy, or to progress on to higher education" (*CCJEF v. Rell*, 295 Conn. at 244-45).

Justice Palmer agreed with the three-judge plurality that the state constitution guarantees students the right to adequate educational opportunities; however, he more narrowly defined constitutional adequacy, writing that an education policy or program must be entirely irrational and lack reasonability "by any fair or objective standard" in order to be found unconstitutional.

For a full summary of the Supreme Court's decision, see [OLR Report 2010-R-0527](#).

## **QUESTION BEFORE THE COURT**

The Supreme Court returned the case to the Superior Court for further proceedings to determine "whether the state's educational resources and standards have in fact provided the public school students in this case with constitutionally suitable educational opportunities" and, if not, what remedies must follow (*CCJEF v. Rell*, 295 Conn. at 320).

## **FINDINGS AND ORDERS**

Superior Court judge Thomas Moukawsher ("the court") ruled that the state's chief educational policies failed to provide public school students with constitutionally suitable educational opportunities.

In arriving at this ruling, the court announced a standard by which to judge the constitutionality of the state's education policies: "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."

The court used the highest standard of review, "beyond a reasonable doubt," when considering the evidence presented at trial and determining whether the state's educational policies met the above three criteria for constitutionality.

Ultimately, the court determined that, while the state's overall level of public education spending was above the amount required to be constitutionally adequate, the state fell short of meeting its constitutional obligation in the following areas: (1) intervening in struggling school districts when local government falters; (2) distributing education aid; (3) defining elementary and secondary education; (4) setting standards for hiring, firing, evaluating, and paying teachers; and (5) funding special education, identifying eligible students, and delivering services.

We summarize the court's findings, related reasoning, and orders for each of these areas below.

### ***Relationship between the State and Local Governments***

The court found that the state's duty under the state constitution (article eighth, § 1) to provide free public education and the General Assembly's responsibility to implement this by appropriate legislation are non-delegable. "The state is responsible for Connecticut public schools, not local school districts," the court wrote. From this determination, the court ordered the state to submit a plan within 180 days that redefines the relationship between the state and the local governments, with particular attention to state action regarding troubled school districts.

The court cited a 2012 Connecticut Supreme Court case, *Pereira v. State Board of Education*, which held, "Obviously, the furnishing of education for the general public is a state function and duty." Furthermore, the court cite the *Pereira* ruling that whatever local boards of education do, they do "on behalf of the state."

The *CCJEF* decision acknowledges Connecticut's historic affinity and various legal standards for local control, but notes local control is not absolute. The decision cited *Horton v. Meskill*, where the Supreme Court did not see local control as an obstacle to requiring the state to create an education funding formula that sent more state aid to property-poor towns than to property-wealthy towns.

The court reasoned that local control is often a good thing and is working in many towns, but not all. "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 it is powerless," the court found.

The decision did not accept the argument from witnesses for the state that various General Statutes restrain the state's ability to take action because those laws were put in place by the state. In addition, the decision goes on to note that in recent years the state has tried some form of state intervention in at least five districts (Bridgeport, Hartford, New London, Windham, and Winchester).

The decision states that if the court decides the state is not keeping its constitutional promise about education, then the court will have to decide what to do about it, including "weed[ing] out" any statutes that might hold back state efforts to intervene in low-performing schools. The decision does not specify what statutes these may be and whether they were previously cited in the ongoing proceedings of *CCJEF v. Rell*.

### ***Educational Aid Formula***

The court found that, beyond a reasonable doubt, Connecticut is failing in its “constitutional duty to provide adequate public education opportunities because it has no rational, substantial and verifiable plan to distribute money for education aid and school construction.” The court said this does not mean it should set the amount of money the state should spend on education. But it does mean the court is ordering the state to draft a rational spending plan within 180 days of the decision and follow it as a matter of law.

***Education Cost Sharing.*** To support its conclusion, the court cited the legislature’s 2016 approval of a reduction of Education Cost Sharing (ECS) aid to 14 of the state’s poorest towns by a total of \$5.3 million while protecting scheduled increases in ECS aid to 22 relatively wealthier towns of about \$5.1 million (ECS aid was also cut, and by a larger percentage, for each of the state’s 31 wealthiest towns). The court disagreed with the state’s argument that \$5 million is not a large amount in the context of education aid to towns (which totals over \$2 billion annually). The court noted that \$5 million could pay for approximately 59 full-time teachers for a year, which would be a significant number to struggling school districts. Furthermore, the court noted the following:

[This cut] 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.

***School Construction.*** The decision also criticized the state’s method of awarding school construction grants. First, it cited experts “for both sides in this case” who stated that physical facilities are at the bottom of their list of things necessary to help students learn, and then it found that the state continues to spend \$1 billion on school construction annually at a time when the state’s overall school population is steadily declining. Finally, a state school construction official told the court the state virtually never turns down a project for school construction grants and that every year legislators “with enough clout” are able to “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.”

With this the court ordered that school construction spending must be “connected substantially, intelligently, and verifiably to school construction needs aimed at helping students learn.”

**Formula.** The court proposed that many rational approaches are possible, and it would only review the aid formula “to be sure that it rationally, substantially, and verifiably connects education spending with educational need.” The court wrote that a formula could be designed that distributes aid based on need regardless of the appropriation the General Assembly approves. This would mean the funds are distributed proportionally as determined by the formula whether funds are held at the same level, increased, or reduced. Many current state education aid formulas, including ECS, take into account each district’s ability to raise funds through property taxes, which has always been considered a measure of town wealth.

The court concluded this part of the decision as follows:

Depending on what is proposed, the [judicial] 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 decision also requires the plan to include a timetable for implementation if the state believes the education system would be harmed by immediate implementation.

### ***Defining Elementary and Secondary Education***

The court found that, beyond a reasonable doubt, the state has broken its promise to provide free secondary education for the state’s poorest students by making a high school degree meaningless, as it is not credibly tied to real educational achievement. As for elementary education, it found the state’s failure to define it rationally violates the constitutional duty to provide a meaningful opportunity to get an elementary education.

Thus, the court ordered the state to propose within 180 days of the date of the decision (1) a mandatory and objective statewide graduation standard and definition that rationally, substantially, and verifiably connects secondary school learning with secondary school degrees and (2) a definition for elementary education “that is rationally and primarily related to developing the basic literacy and numeracy skills needed for secondary school.” The court urged the state to consider requiring all students to pass a statewide mastery test as a high school

graduation requirement, as 14 other states have, but it stopped short of mandating one.

**Secondary Education.** The court reasoned that it is not enough for Connecticut to show an increase in high school graduation rates when many of those graduating have done poorly on standardized tests. For example, the court cites data from Bridgeport, Danbury, East Hartford, Hartford, New Britain, New Haven, New London, Waterbury, and Windham as evidence that while the graduation rate for these districts ranges between 63.6% to 81.7%, the rate of students considered "SAT college and career ready" only ranges between 10% to 34%.

In addition to other evidence, the court cited two superintendents from low performing districts who admitted that students could graduate from their districts illiterate or lacking the skills to perform in higher education.

The court reviewed the state's current statutory requirements for high school graduation; currently 20 credits are required with at least four in English, three in math, three in social studies, two in science, one in arts or vocations, one in physical education, and a half credit in civics and American government ([CGS § 10-221a\(b\)](#)). (By law, the requirements are set to change starting with the students who are freshmen in the 2018-19 school year. They will be required to earn 25 credits, pass state exams for five specific courses, and complete a senior project.)

The court reasoned that the current requirements are undercut by another statutory provision:

Whatever the number of credits required, the state undercuts the requirement with §10-221a(t) 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 decision finds that since the vast majority of students in rich towns have no trouble achieving strong scores on various standardized tests, the state's failure is primarily with the poor towns.

**Elementary Education.** The court found that for a proper high school graduation requirement to work "constitutionally and practically" it must be joined with a "rational, substantial, and verifiable definition of an elementary school education." Experts on both sides testified that for students struggling in high school, their

primary problem is not having learned to read, write, and do basic math in elementary school.

The decision goes on to cite a number of examples where teachers describe some of their middle school students as illiterate and needing the most basic forms of help. The court goes on to cite research that indicates that if a child does not learn basic reading, writing, and math skills in elementary school, then it is very difficult for them to catch up later.

During the trial, Deputy Education Commissioner Ellen Cohn testified about a report she wrote on early reading strategies and the state's reading pilot program known as CK3LI. The court's order to propose a remedy that creates a rational, verifiable definition of elementary education points to Cohn's report and suggests aspects of how an elementary school literacy intervention program might work:

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.

The decision further suggests that whatever elementary plan is proposed, it may need to be phased in over time or apply to a small number of districts first such as the 10 lowest performing districts, known as the reform districts.

### ***Evaluation and Compensation of Education Professionals***

The court found that another area where the state has failed to meet its constitutional obligation to Connecticut public school students is in its educator evaluation and compensation systems. It held that "beyond a reasonable doubt . . . 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 court ordered the state to submit replacement plans for both evaluation and compensation no later than 180 days from the date of this decision, along with proposed implementation schedules.

***Educator Evaluation.*** The court concluded that Connecticut's educator evaluation system is "almost entirely local and the state standards are almost entirely



illusory.” It found the statute governing the state’s evaluation system ([CGS § 10-151b](#)) to be flawed, for although it gives the State Board of Education (SBE) the authority to adopt a model teacher evaluation and support program, another statute requires SBE to adopt guidelines for the program in consultation with another entity: a task force of education stakeholders known as the Performance Evaluation Advisory Council (PEAC) ([CGS § 10-151d](#)).

The court also found the evaluation model adopted by SBE, known as the System for Educator Evaluation and Development (SEED), to be problematic for the following reasons, among others:

1. It is not imposed upon every district; districts are permitted to create their own evaluation systems as long as they meet SEED guidelines and receive State Department of Education (SDE) approval.
2. Its percentages are based on weak values; for instance, the percentage originally intended to be linked to student standardized test score growth rates (11.25%) was later waived for two dozen school districts by SDE and then temporarily paused for all districts with the advent of the new Smarter Balanced Assessment Consortium testing.

Additionally, the court found Connecticut’s educator evaluation system to be “dysfunctional,” “inflated,” and “virtually useless,” as it provides “no way to know who the best teachers are” because “virtually every teacher in the state – 98% – [is] being marked as proficient or even exemplary.”

***Educator Compensation.*** The court wrote that teacher compensation in Connecticut is based on years on the job and advanced degrees and found that these factors “may have almost no role in good teaching.” It instructed the state to find a new way to link compensation to effective teaching.

The court criticized the notion of adopting a teacher compensation system that ties teacher pay to student test results and promoted one that pays teachers extra money for teaching in shortage areas and troubled districts. It encouraged the state to also look to other compensation systems, however, including one that accounts for seniority and advanced degrees, as long as seniority and degrees do not constitute the system in its entirety.

***Administrator Evaluation and Compensation.*** School districts’ evaluation and compensation of principals and superintendents also received passing criticism from the court. The court noted the parties’ agreement that this evaluation and compensation is handled “even more loosely and locally” than teacher evaluations,

despite the fact that the state insisted in its testimony that school administrators are the most important factor in turning around troubled schools.

### ***Special Education***

The court found the state to be engaged in two practices regarding the administration of special education that raise constitutional concerns. First, it found that the state is spending money on severely disabled students who may be incapable of receiving any form of education. Second, it found the state's system for identifying student eligibility for special education services to be mostly arbitrary and dependent upon the "irrational" criteria of where children live and the pressures placed on their respective school systems. The court ordered the state to submit within 180 days new special education standards that rationally, substantially, and verifiably link special education spending, identification, and services with elementary and secondary education.

***Special Education Spending on "Social Needs."*** The court recognized schools' duty to provide students with an "appropriate" public education under the U.S. Supreme Court's interpretation of the federal Individuals with Disabilities Education Act (IDEA) in *Board of Education v. Rowley*, 458 U.S. 176 (1982). It also highlighted the directive in *Rowley* that requires state and local agencies, in cooperation with a child's parent or guardian, to formulate the child's special education services. But the court drew a distinction between a school's duty to provide special education services related to education and other services that the court deemed "social services," such as medical services like physical and occupational therapy, when they have "no substantial connection to education." The court reasoned that IDEA's requirement that school districts provide "related services" through special education did not specify that they must pay out of their education budgets for such "social needs."

The court wrote that "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." It instructed the state to rethink what constitutes an "appropriate" education for severely disabled, multiple-handicapped children, as the state and local governments do not have infinite monetary resources.

According to the court, the state must construct standards for school districts to use that will guide them in deciding how to "identify and focus their efforts on those disabled students who can profit from some form of elementary and secondary education."

**Identification for Services.** The court reasoned that there are vast differences among school districts in the way they identify students as eligible for special education services because the state “hardly” has any standards for identifying and addressing specific disabilities. While the court admitted that some disabilities are more difficult to recognize than others, and that they must be addressed in a “highly individual” way, it suggested that the state make information about specific disabilities part of required protocols for schools to use when identifying students for special education services. The court noted that SDE’s current guidelines for districts on special education do not include information that a school planning and placement team “can use to know how to ensure uniformity, to accurately label, to set reasonable goals, and to use reasonable means to carry them out.”

Furthermore, the court found that the state does not reasonably monitor the over- or under-identification of special education students. Although the state monitors schools for IDEA compliance, it focuses mostly on paperwork compliance rather than the appropriateness of individual special education plans, according to the court.

## **APPENDICES**

### ***Appendix 1: Findings of Fact***

This appendix contains 1,060 findings of fact that the court considered material to the decision and justified by the evidence. Rhetorical claims or descriptions by any party are not included. These findings are categorized into the following groups:

1. positive findings about Connecticut's schools,
2. contrasts between rich and poor towns in Connecticut,
3. high school graduation facts,
4. primary school facts,
5. teacher compensation and evaluation,
6. special education facts, and
7. focus district facts.

### ***Appendix 2: Subordinate Rulings***

This appendix contains five subordinate rulings that enabled the case to proceed to its current stage. In each of the first four rulings the state made a claim that, if successful, would have ended the case by showing the plaintiffs did not have standing (two separate rulings), the case was moot or unripe, or that the state is

immune from lawsuit due to sovereign immunity. In each of the four, the court ruled against the state.

In the last subordinate ruling, addressing evidentiary objections, the court sided with the state to strike any testimony and report from Robert Palaich regarding the amount of money necessary to operate an educational system. But the court sided with the plaintiffs regarding the testimony of Dr. Henry Levin of Columbia University regarding high school graduation standards, although the court specifically did not rely on anything he said that the state objected to regarding monetizing the value of high school graduation.

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