NO. X07 HHD-CV 05-4050526-S

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING INC., et al. *Plaintiffs*	:	SUPERIOR COURT
v.	:	COMPLEX LITIGATION DOCKET
RELL, M. JODI, et al. *Defendants*	:	AT HARTFORD
	:	JANUARY 9, 2013

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

The Corrected Third Amended Complaint alleges that the defendants have failed to maintain a public school system that provides the children of Connecticut with suitable and substantially equal educational opportunities in violation of Article Eighth, § 1 and Article First, §§ 1 and 20 of the Connecticut Constitution.[1] Corrected Third Amended Complaint ¶¶ 4, 168. In their complaint, plaintiffs seek an order from this court on the basis of the state constitution that if entered would result in a radical departure from the manner in which the State of Connecticut through its elected representatives has funded its public school system for decades. Plaintiffs ask this court to declare that the existing statewide school funding system is "unconstitutional, void and without effect," and permanently "enjoin defendants from operating the current public education system, except as necessary to provide an expedient and efficient

[1] The plaintiffs named in the Corrected Third Amended Complaint include twenty-six public school students and their parent(s) or grandparent as "next friend" attending twenty-four schools in eleven school districts and the Connecticut Coalition for Justice in Education Funding, Inc. (hereafter "CCJEF"). Corrected Third Amended Complaint ¶¶ 5-47. The named defendants in the action are the former Governor, the members of the State Board of Education, the State's former Commissioner of Education, the State Treasurer and the former State Comptroller, all of whom have been sued in their official capacities only. Id. at ¶¶ 48-54.

transition to a constitutional public education system." Id. at ¶ 180iii and iv (emphasis added). Plaintiffs request that the court "appoint a special master to hold hearings, make findings, and report recommendations to the court with respect to the constitutionality of any new system of education proposed by defendants." Id. at ¶ 180vi. As explained more fully below, plaintiffs have submitted an expert report in this case from 2005 stating that in the 2003-04 school year alone the State of Connecticut spent $2.02 billion less than the amount established necessary for meeting "targeted adequacy."[2] One of CCJEF's stated goals is to "[s]hift the lion's share of funding for school operations away from local property taxes and onto the state." http://ccjef.org/key-goals-objectives (last visited Dec. 7, 2012). The bottom line is that plaintiffs' extreme and radical requested relief would amount to taking the state's funding decisions for public schools away from the citizens' elected representatives and turning them over to the courts who would rely on "experts" to determine through unproven econometric and other social science modeling how much money the state shall spend on public education.

Plaintiffs seek the monetary remedy detailed above. Their complaint asserts that the state has failed to provide suitable and substantially equal educational opportunities by virtue of "inadequate and unequal education inputs."[3] Corrected Third Amended Complaint at ¶¶ 62-124. Plaintiffs list some fourteen "inputs" and allege these inputs "have not been made available to all

[2] "With respect to the plaintiffs' funding claim, it is noteworthy that a report commissioned by plaintiff CCJEF contains an estimate indicating that, during the 2003–2004 school year, the state would have had to spend an additional $2.02 billion on elementary and secondary public school education to meet the constitutional standard advocated by the plaintiffs. See Augenblick, Palaich & Associates, Inc., Estimating the Cost of an Adequate Education in Connecticut (June, 2005) p. v, available at http://www.schoolfunding.info/states/ct/CT-adequacystudy.pdf (last visited March 9, 2010)." Connecticut Coal. for Justice in Educ. Funding, Inc. v. Rell, 295 Conn. 240, 340 (2010)(Zarella, J., dissenting)

[3] In referencing the terms "inputs" and "outputs" as pled in the complaint State defendants do not concede their propriety or legal relevance.

students or are not of adequate quality." Id. at ¶ 64. In addition to premising their constitutionally-based complaint on the listed "inputs," plaintiffs also assert that "the [s]tate's failure to provide suitable educational opportunities is in part evidenced by the low levels of many educational outputs." Id. at ¶ 92. With respect to "outputs," plaintiffs invoke the federal No Child Left Behind Act, 20 USC § 6301, et seq. (hereafter "NCLB") (Id. at ¶¶ 95-98), the Connecticut Mastery Test and the Connecticut Academic Performance Test (Id. at ¶¶ 99-107), "Retention Rates" (Id. at ¶¶ 108-115), "Courses Completed by Graduates" (Id. at ¶¶ 116-120), and "Graduation Rates" (Id. at ¶¶ 121-124).

As is described more fully below, the 2012 educational reforms recently enacted by the elected branches of government have dramatically and comprehensively altered the public education system the plaintiffs ask this court to declare unconstitutional. The Governor, legislature, and the Connecticut State Department of Education (SDE) have not only accomplished much this year despite a substantial state deficit, but also vow to continue to make significant efforts in the field of educational reform. Despite the projected deficit in Connecticut for the current fiscal year, the elected branches of government have chosen to make education a priority and have targeted money and reforms towards the lowest performing schools. See http://www.ctpost.com/news/article/Deficit-expected-to-balloon-to-1-2B-4040685.php#page-1 (last visited Nov. 21, 2012); Pryor Affidavit, passim; Mahoney Affidavit, passim).[4] Plaintiffs' claims will be tried based upon the education system in effect at the time of trial. CCJEF v. Rell,

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[4] This is in contrast to the majority of states which have -- according to the Center on Budget and Policy Priorities, updated Sept. 4, 2012 -- cut per student spending during the current economic climate. According to that recent report by Phil Oliff, Chris Mai, and Michael Leachman, entitled New School Year Brings More Cuts In State Funding For Schools, while 35 states cut spending per student since 2008, Connecticut managed to increase spending by 6.1 percent. www.cbpp.org/cms/index.cfm?fa=view&id=3825 (last visited Nov. 27, 2012).

295 Conn. 240, 318-19 (plurality) and 321 (Palmer, J. concurring) (2010). These claims will be addressed in light of the very different and comprehensive educational landscape created by the 2012 educational reforms. Moreover, the Connecticut Supreme Court has made very clear that even where constitutional violations have been found in the education area, the courts in the first instance defer to the elected branches of state government to address these constitutional infirmities. E.g., CCJEF, 295 Conn. at 261-63 (plurality), 329, 335-38 (Palmer J., concurring), 398 (Vertefuille J., dissenting); 410, 413, 416-17 (Zarella J., dissenting); Horton v. Meskill, 172 Conn. 615, 653 (1977); Sheff v. O'Neill, 238 Conn. 1, 46 (1996). Proceeding under plaintiffs' present complaint when the educational landscape of Connecticut has since changed significantly would result in prejudice for all parties and the court, wasting valuable time and precious resources.

Accordingly, and as set forth more fully below, all plaintiffs' claims should be DISMISSED based on the doctrines of ripeness and mootness. Simply put, it is too late to evaluate the adequacy of the education system that existed at the time the lawsuit was filed, but no longer does; and it is too early to evaluate the adequacy of comprehensive reforms that have not yet been give a fair chance to take hold. In addition, as set forth more fully below, CCJEF's claims should be DISMISSED for lack of standing.

PROCEDURAL BACKGROUND

This action was originally filed as a limited class action lawsuit on December 12, 2005 (amended January 20, 2006) by public school students from various cities and towns, suing by and through their parents as "next friends," and CCJEF.[5] On March 6, 2006, the defendants filed

[5] Paragraph 37 of the original complaint (and ¶ 39 of the January 2006 amended complaint) defined the class:

a motion to dismiss arguing, inter alia, that CCJEF lacked standing. Docs. ## 103.00 and 103.10. On August 17, 2006, the court granted the defendants' motion to dismiss CCJEF for lack of standing. Doc. # 110. On September 13, 2006, the defendants filed a Motion to Strike counts One, Two, and Four, arguing in part that the constitution does not guarantee suitable educational opportunities as claimed by the plaintiffs. On September 17, 2007, the trial court granted Defendants' Motion to Strike, Doc. # 123, holding that the constitution did not afford plaintiffs a right to a suitable education. Plaintiffs were permitted an interlocutory appeal of that decision and in March 2010, by a 4-3 vote, the Connecticut Supreme Court reversed.[6] However, the issue for the court to determine was not one of liability, but whether the plaintiffs' claims were justiciable. CCJEF, 295 Conn. at 320 (plurality) ("further proceedings are required to determine as a question of fact whether the state's educational resources and standards have in fact provided the public school students in this case with constitutionally suitable educational opportunities"), 347 (Palmer, J. concurring) (case must be remanded for further proceedings).

On November 19, 2010, the plaintiffs filed a Second Amended Complaint. (Doc. #135.00). Notably, the plaintiffs dropped the class action allegation in the Second Amended Complaint, yet still sought to have the entire state education funding system declared "unconstitutional, void and without effect." Second Amended Complaint at ¶ 169(iii). On January 6, 2011, defendants filed their answer and special defenses. Doc. #140.00. On

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> This complaint is brought on behalf of all children from ages three to eighteen who are not receiving suitable and substantially equal educational opportunities in the following school districts: Bloomfield, Bridgeport, Danbury, East Hartford, Hamden, Hartford, Manchester, Middletown, New Britain, New Haven, New London, Norwalk, Plainfield, Putnam, Stamford, and Windham.

[6] No opinion was joined by a majority of justices.

December 21, 2012, plaintiffs' filed a Third Amended Complaint and on January 7, 2013 a Corrected Third Amended Complaint, with defendants preserving their right to file any appropriate responsive pleading to challenge plaintiff CCJEF's standing and the named plaintiffs' right to obtain the relief sought in the Corrected Third Amended Complaint.

The defendants have had pending since September 15, 2011 two motions – one requesting the court to determine the legal standard for adequacy so that the parties can properly prepare their case, and one requesting the court to limit the plaintiffs' claims to public elementary and secondary educational opportunities, in recognition that pre-kindergarten (hereafter "pre-K") is not a textual constitutional mandate. See Docs. ## 144, 145, 153.

Although the plaintiffs' expert reports were due initially on March 1, 2011, they received an extension until July 16, 2012. The defendants obtained all plaintiffs' experts' reports shortly thereafter. None of these reports reference any of the legislative reforms enacted by the General Assembly during its 2012 session or the state's receipt of a waiver from requirements set out in the No Child Left Behind act. Likewise, no amended reports have been issued addressing the legislative and executive reforms implemented in the fall of 2012.

MOTION TO DISMISS STANDARD

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." Columbia Air Servs, Inc. v. Dept. of Transp., 293 Conn. 342, 346 (2009). A motion to dismiss may be brought to assert, inter alia, "lack of jurisdiction over the subject matter." Practice Book § 10-31(a). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." Fort Trumbull Conservancy, LLC v. City of New London, 265 Conn. 423, 430 n. 12 (2003). "The requirement of subject matter

jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings." Burton v. Comm'r of Envir. Prot., 291 Conn. 789, 802 (2009); Fairchild Heights Residents Ass'n v. Fairchild Heights, 131 Conn. App. 567, 572 (2011).

Because ripeness implicates the court's subject matter jurisdiction, it is a proper basis for a motion to dismiss. Milford Power Co. LLC v. Alstom Power, Inc., 263 Conn. 616 (2003) (ordering dismissal based on lack of ripeness); Lee v. Harlow, Adams and Friedman, P.C., 116 Conn. App. 289, 296 (2009); Bloom v. Miklovich, 111 Conn. App. 323, 336 (2008).

"Whether an action is moot implicates a court's subject matter jurisdiction and is therefore a question of law over which [the Court] exercise[s] plenary review." Comm'r of Public Safety v. FOIC, 301 Conn. 323, 332 (2011). "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates this court's subject matter jurisdiction." Valvo v. FOIC, 294 Conn. 534, 540 (2010). "Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings." FDIC v. Caldrello, 79 Conn. App. 384, 390 (2003).

The issue of standing also implicates the court's subject matter jurisdiction. Weidenbacher v. Duclos, 234 Conn. 51, 54 n.4 (1995) ("If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause."). Thus, a motion to dismiss is the appropriate procedural means for raising standing and hence subject matter jurisdiction. Conn. Prac. Book § 10-31(a)(1). See Electrical Contractors v. Dept. of Ed., 303 Conn. 402, 413 (2012); Conn. Associated Builders & Contractors v. Anson, 251 Conn. 202, 205 (1999); Conn. State Med. Soc'y v. Conn. Bd. of Exam'r in Podiatry, 203 Conn. 295, 298 (1987); CT Assoc. of Health Care Facilities v. Worrell, 199 Conn. 609, 610 (1986).

"Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." FDIC v. Peabody N.E., Inc., 239 Conn. 93, 99 (1996); see also Practice Book § 10-33 (lack of subject matter jurisdiction cannot be waived). "Whenever a court discovers that it has no jurisdiction, it is bound to dismiss the case." Pet v. Dep't of Public Health, 207 Conn. 346, 351 (1988); see also Liberty Mutual Ins. v. Lone Star, 290 Conn. 767, 812 (2009) (ripeness is an issue regarding justiciability, which implicates subject matter jurisdiction, and must be fully resolved before proceeding any further).

In reviewing a motion to dismiss the court must presume "the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." Sullins v. Rodriguez, 281 Conn. 128, 132 (Conn. 2007) (citations omitted).

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS BECAUSE THEY ARE NOT RIPE.

A. FACTUAL BACKGROUND

Due to the reforms made by the elected branches of government, plaintiffs' Corrected Third Amended Complaint filed on January 7, 2013 alleges constitutional violations predicated upon an educational model of funding, assessment, and accountability in the State of Connecticut that is no longer in place. See Governor Malloy's Remarks on Education Reform Agreement, http://www.governor.ct.gov/malloy/cwp/view.asp?A=4010&Q=503804 (last visited Nov. 7,

2012 with two attachments summarizing the Governor's six education reform principles and comparing reforms to prior model).[7]

The 2012 education legislative reforms enacted primarily in Public Act 12-116 and Public Act 12-104, among other things, increase funding and enhance educational opportunities for students in low performing school districts in a fundamental and innovative way in an effort to narrow the achievement gap.[8] In addition, the United States Secretary of Education has granted Connecticut a waiver from the requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001. See Exh. 2 – Pryor Affidavit, dated December 31, 2012 (hereafter "Pryor Affidavit"), Attachment H, Letter from U.S. Secretary of Education Arne Duncan to Commissioner Pryor dated May 29, 2012. As a result, the plaintiffs' bases for claiming that the state's constitutional duty is not met -- i.e. standards set out in the No Child Left Behind legislation, the Connecticut Mastery and Connecticut Academic Performance Test, and completion of certain essential courses -- no longer provide a sound metric on which to base their claims. See Corrected Third Amended Complaint, ¶¶ 95-101, 116-117.[9]

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[7] The Governor's six principles of education reform are 1) Enhance families' access to early childhood education opportunities; 2) provide state support and intervention in low-performing schools; 3) expand high-quality school models; 4) remove red tape and other barriers to success; 5) develop the very best teachers and principals; and 6) deliver more resources to districts that embrace reform.

[8] See http://cga.ct.gov/2012/ACT/PA/2012PA-00116-R00SB-00458-PA.htm (full text, last visited Nov. 8, 2012; http://cga.ct.gov/2012/ACT/PA/2012PA-00104-R00HB-05557-PA.htm (full text, last visited Nov. 8, 2012). The Connecticut General Assembly has provided an in-depth summary of these and other 2012 Public Acts related to education reforms. Certified copies of these summaries are attached hereto as Exh. 1.

[9] See American Federation of Teachers ("AFT") President Randi Weingarten endorse CT's reform legislation as a national model of cooperation and collaboration in the following video: http://leanforward.msnbc.msn.com/_news/2012/05/16/11736983-in-connecticut-a-rare-education-success-story?chromedomain=ed&lite (last visited Nov. 8, 2012).

1. P.A. 12-116 And Other New Legislation[10]

In furtherance of legislative reforms, the legislature in the spring of 2012 appropriated $100 million in FY 13 to be spent on the following initiatives:

- $50 million additional money for Education Cost Sharing (ECS) of which 80% ($39.5million) is directed to the 30 Alliance Districts that provide the Connecticut State Department of Education (SDE) with plans to improve their education programs;[11]
- $8.1 million for Charter Schools in FY 2013 to cover per student increase from $9400 to $10,500 and also fund additional seats as approved by the State Board of Education;[12]
- $7.5 million for the Commissioner's Network, which focuses on the lowest performing schools starting with up to four in FY 2013 and up to 25 low performing schools in network by July 1, 2014;
- $6.8 million for 1000 more Early Childhood (School Readiness) students, 750 of which will go to 19 of the lowest performing districts and 250 of which will go to the next level of academically challenged communities;
- $ 4.7 million to increase non-Sheff magnet school rates about $300 for each out of district student – mostly to Alliance districts like New Haven, Bridgeport and Waterbury;[13]

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[10] See also P.A. 12-1 June 2012 Special Session (budget implementer full text at http://cga.ct.gov/2012/ACT/PA/2012PA-00001-R00HB-06001SS2-PA.htm last visited Nov. 8, 2012); P.A. 12-2 (full text at http://cga.ct.gov/2012/ACT/PA/2012PA-00002-R00SB-00501SS2-PA.htm, last visited Nov. 8, 2012) §§ 14—28, 138 June 2012 Special Session (implementer re certain education provisions); P.A. 12-104 (minor revisions to education statutes http://www.cga.ct.gov/2012/ACT/PA/2012PA-00104-R00HB-05557-PA.htm last visited Dec. 3, 2012); P.A. 12-189 (bond authorizations affecting education full text at http://cga.ct.gov/2012/ACT/PA/2012PA-00189-R00SB-00025-PA.htm last visited Nov. 8, 2012); P.A. 11-57 (bond authorizations affecting education, full text at http://cga.ct.gov/2011/ACT/PA/2011PA-00057-R00SB-01242-PA.htm last visited Nov. 8, 2012) (Summaries attached as Exh. 1).

[11] Alliance districts are the 30 lowest performing districts, which also tend to have the highest levels of poverty. The Alliance districts include: New Britain, Windham, Bridgeport, New London, Hartford, East Hartford, New Haven, Waterbury, Norwich, Meriden, Derby, Putnam, East Haven, West Haven, Bloomfield, Naugatuck, East Windsor, Ansonia, Stamford, Manchester, Winchester, Hamden, Windsor Locks, Danbury, Killingly, Vernon, Windsor, Middletown, Norwalk, Bristol. Exh. 2 - Pryor Affidavit, ¶ 6. They receive conditional money holding them accountable. Id. at ¶¶ 5 and 7. All but one of the plaintiff students in this case reside in the Alliance Districts.

[12] Almost all of the state charter school students come from Alliance school districts. Id. at ¶ 34.

- $7.5 million for FY 2013 ($3.5 million in this budget and $4 million carried forward into FY 2013 from 2012) some of which will be used for teacher evaluation pilot program and the rest to benefit students in high-need schools and districts (Talent Development);
- $3 million for SDE to create and be responsible for developing a quality tiered rating and improvement system for home, center, and school based early child care and learning by July 1, 2013, with the expectation that high need children and their early childhood providers will be a target for funding;
- $2.7 million to extend the early literacy pilot study from 2012 to include 2013 and include 25 new positions (20 reading interventionists and 5 literacy coaches) for 5 schools that must be selected from either the Education Reform Districts (the 10 lowest performing Alliance districts), the Commissioner's Network schools, or the lowest 5% of the schools in the state;
- $2.4 million for various initiatives such as kindergarten-8th grade science program, wrap around services, regional cooperation, new/replicated schools, bridges to success program, youth services bureau, school health coordinator program and a parent university;
- $4 million for Sheff initiatives to reduce racial isolation of Hartford resident minority students;
- $1.9 million in FY 2013 to establish ten new family resource centers in Alliance districts, with a preference for those in the Education Reform districts;
- $1.4 million in per student grant increases from $1,355 to $1750 related to Vocational Agriculture; 40% of these students attend Alliance district schools

Exh. 3 –Mahoney Affidavit, dated January 4, 2013, (hereafter "Mahoney Affidavit"), ¶¶ 4-16 .[14]

The new 2012 reform legislation reflects the Governor's education reform principles. First, it enhances families' access to high quality early childhood educational

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[13] Many magnet schools were created consistent with the goals of the 2008 settlement agreement related to the case, Sheff v. O'Neill, 236 Conn. 1 (1996). In Sheff, the Supreme Court held that the state must remedy de facto racial and ethnic segregation that existed in the Hartford public schools as it denied Hartford school children a substantially equal educational opportunity. Id. at 25-26. Non-Sheff magnet schools are those magnet schools that do not explicitly help the state meet the goals of the 2008 settlement relating to the greater Hartford area.

[14] Although the Governor and legislature have made some statewide rescissions to help reduce the state's budget deficit, which include a part of these appropriated funds, see Exh. 2 - Mahoney Affidavit, ¶¶ 23 and 24, these reductions do not alter the comprehensive nature of these new educational reforms.

opportunities. Although prior state law provided funding for some pre-K slots, there had been no state obligation to create a specific number of early childhood education opportunities. Now, the new public act creates for FY 2013 one thousand new early education slots in low-income communities, launches a facilities study for the continued expansion of early education, and calls for the development of a Tiered Quality Rating and Improvement System by the Connecticut State Department of Education (SDE). Exh. 2 - Pryor Affidavit, ¶ 27.

Second, the new 2012 reform legislation authorizes for the first time intensive state interventions and enables supports necessary to turn around up to twenty-five of Connecticut's lowest-performing schools, establishing what will be known as the Commissioner's Network.[15] The development of each school's turnaround plan was largely guided by a local turnaround committee, with representation from school district administration, parents, teachers, as well as the Commissioner of Education's designee. Id. at ¶ 10; see P.A. 12-116 §19. In certain circumstances, financial impact bargaining with unionized faculty will be conducted on an expedited timeframe regarding elements of the plan. See P.A. 12-116 § 20.

Also for FY 2013, P.A. 12-116, § 4 creates a pilot program to enhance literacy for students in kindergarten-3rd grades. Exh. 2 - Pryor Affidavit, ¶ 27. Five elementary schools from the 10 education reform districts have been selected to pilot this intensive

[15] The Commissioner of SDE has selected the four schools participating in the Commissioner's Network for FY 2012-13 and the State Board of Education has approved turnaround plans for: Bridgeport's Curiale School, Hartford's Core Knowledge Academy at Milner School, New Haven's High School in the Community, and Norwich's Stanton School. Exh. 2 - Pryor Affidavit, ¶¶ 8, 12-15.

new reading intervention program for K-3 grade students. Id. at ¶ 28.[16] By January 1, 2013, SDE will develop or approve reading assessments, for districts to use in identifying K-3 grade students who are reading deficient, compatible with best practices in reading instruction and research. P.A. 12-116 § 5. Beginning July 1, 2014, all certified teachers and administrators working in K-3 are required to take practice reading instruction exams with each local and regional board of education reporting the results annually to the SDE. P.A. 12-116, § 6. Twenty-five new positions - - one literary coach and four reading interventionists in each of the five pilot elementary schools -- will help implement new instructional practices, individualized academic interventions based on student needs, and data monitoring strategies to improve literacy instruction. Exh. 2 – Pryor Affidavit, ¶ 29.

Third, the new legislation expands the availability of high-quality school models, including traditional schools, magnets, charters, and others. Per pupil funding, under the new act, increases charter per pupil funding from $9,400 to $10,200 for 2012-2013, to $11,000 for 2013-2014, and to $11,500 for 2014-2015. Exh. 3 - Mahoney Affidavit, ¶ 6; Exh. 2 - Pryor Affidavit, ¶ 34; see also n.14 supra. The legislation requires state charter schools to submit a recruitment and retention plan detailing efforts to serve priority student populations. Exh. 2 - Pryor Affidavit, ¶34. The State Board of Education will hold schools accountable for adherence to these plans. The SDE must endeavor to launch two charter schools focused on English

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[16] These five schools are: Anna E. Norris Elementary School in East Hartford, Latin Studies Academy at Burns School in Hartford, John Barry Elementary School in Meriden, Truman Elementary School in New Haven, and Windham Center Elementary School in Windham. Exh. 2 - Pryor Affidavit, ¶ 28. "Educational reform districts" are a subcategory of Alliance districts which are the ten districts with the lowest district performance indices. Conn. Gen. Stat. § 10-262i, as amended by P.A. 12-116 § 34.

Language Learners/dual language programs in the coming years. Id. Financial incentives are offered in low-performing districts to open charter schools to those local boards of education that reach agreement with their bargaining unit regarding staffing flexibility and submit high-quality turnaround plans, with $500,000 startup grants and $3000 per pupil operating grants within available appropriations beginning in the 2013-2014 school year. Id. at ¶ 35. Substantial new funding ($1,425,000 increase) will be provided to regional agricultural science and technology education centers. Id. at ¶ 39; Exh. 3- Mahoney Affidavit, ¶ 16. Magnet and technical high schools will receive additional funding. Exh. 3 - Mahoney Affidavit, ¶ 9; Exh. 2 - Pryor Affidavit, ¶¶ 34, 37, 40. Increases for per pupil operating grants for non-Sheff magnets total $2.5 million, the funding of an additional magnet school totals $2.297 million, and special legislation for the Edison Magnet School in Meriden totals $2.2 million. Exh. 3 - Mahoney Affidavit, ¶ 9; Exh. 2 - Pryor Affidavit, ¶ 37. Technical high schools receive an increase in funding of $700,000. Exh. 3 - Mahoney Affidavit, ¶ 19; Exh. 2 - Pryor Affidavit, ¶ 40.

Fourth, P.A. 12-116 §§ 35-57 ensure that Connecticut has the very best teachers and principals working within a fair system that values skill and effectiveness. Exh. 2 - Pryor Affidavit, ¶ 18. The SDE will recognize schools of distinction and their effective practices will be shared with other schools. Id. at ¶ 26; P.A. 12-116, § 13. Connecticut has developed new teacher evaluation guidelines and a data collection and evaluation support system. Id. at ¶¶ 18 and 21; see also the Performance Evaluation Advisory Council (PEAC) guidelines adopted by the State Board of Education, dated June 27, 2012 (attached to Exh. 2 -- Pryor Affidavit as Attachment C). Districts may develop their own teacher and principal evaluation system, subject to approval by SDE, or adopt the State Model. Exh. 2 – Pryor Affidavit at ¶ 19. The consensus framework developed by PEAC requires annual performance evaluations of principals,

administrators, and teachers. Id. at ¶ 18. Professional development is strengthened by requiring job-embedded coaching as the predominant form of training. Id. at ¶ 19. Over the next year, the evaluation and support system will be implemented in a pilot group of 10 school districts or consortia of districts, followed by state-wide implementation in 2013-2014. Id. at ¶ 21.[17] Excellent teachers will now be eligible for recognition as a "distinguished educator." [18] Id. at ¶ 19; P.A. 12-116, §§ 37-38. A new system of evaluation exists, with effective teachers earning tenure and ineffective ones (not merely incompetent ones) dismissed pursuant to fair, speedy, and manageable proceedings. Id. at ¶ 20. Termination hearings will focus on whether the evaluation ratings are in accordance with the new evaluation program and are reasonable. Termination hearings must occur within tighter timeframes, and the duration of hearings will be limited. Id.

Starting with FY 14, Public Act 12-116, § 10 requires SDE to establish a Municipal Aid for New Educators (MANE) grant program to provide grants of up to $200,000 to local or regional boards of education within the ten educational reform districts by March 1, annually, to offer employment to up to five graduating seniors in the top 10% of their teacher preparation programs. Id. at ¶ 23. Starting in July 2015, students in teacher preparation programs will be required to have four semesters of

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[17] This pilot group includes: Bethany; Branford; Bridgeport; Capitol Region Education Council (CREC); Columbia, Eastford, Franklin, and Sterling; Litchfield and Region 6; Norwalk; Waterford; Windham; Windsor. See Gov. Malloy's Announcement, dated 6/4/12 http://www.governor.ct.gov/malloy/cwp/view.asp?A=4010&Q=505420 (last visited Nov. 8, 2012).

[18] Teachers with this designation, as well as those teachers with provisional and professional certificates, are eligible to serve as mentors in the Teacher Education and Mentoring (TEAM) program, provided they satisfy the requisite years of experience. P.A. 12-116, § 37. Each mentor receives a minimum of $500 for each beginning teacher he or she mentors from the local or regional board of education. Id. at § 38. Such stipend is included in the teacher's earnings for retirement purposes. Id.

classroom clinical, field, or student teaching experience. Id. at ¶ 22. After July 1, 2016, each teacher and administrator applying for a professional educator certificate must hold a master's degree in a subject appropriate to their certification endorsement. Id. at ¶ 24.

Fifth, the new legislation expands ECS funding by $50 million, of which approximately $39.5 million will go to the thirty lowest performing districts, now known as the Alliance districts. Exh. 3 - Mahoney Affidavit at ¶ 5. In order to receive this funding, these districts will have to provide SDE with reform plans to improve their education programs, such as implementation of tiered interventions in their schools, extended learning time, strengthened reading programs for elementary school students, coordinated wraparound services for students, and the implementation of strategies to attract new top teaching and principal talent. The SDE will review and approve such district plans prior to disbursement. See Id.; Exh. 2 - Pryor Affidavit, ¶ 5; P.A. 12-116 § 34.[19]

In addition, the new legislation establishes ten new family resource centers in elementary schools within the Alliance Districts.[20] The centers will provide an array of wraparound services for children and their families. Exh. 2 – Pryor Affidavit, ¶ 30. Grants will be provided to two educational reform districts in support of a newly established coordinated school health pilot program. See P.A. 12-1, § 231. The coordinated school health pilot program will enhance student health, promote academic

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[19] The new act also creates a new accountability template for all districts and schools, known now as a "common chart of accounts" to enhance transparency for state and local education spending. Exh. 2 - Pryor Affidavit at ¶ 41.

[20] The ten newly selected schools for expanding family resource centers are: J.C. Clark School, Hartford; Fair Haven Elementary School, New Haven; Franklin Mayberry Elementary School, East Hartford; John B. Stanton Elementary School, Norwich; Greene-Hills School, Bristol; Jonathan Reed Elementary School, Waterbury; Ridge Hill School, Hamden; Roger Sherman Elementary School, Meriden; Ross Woodward Classical Studies School, New Haven; Smith Elementary School, New Britain. Id. at ¶ 31.

achievement, and reduce childhood obesity by bringing together school administrators, teachers, other school staff, students, families and community members to assess health needs, set priorities, and evaluate and implement school health activities. This pilot program will include, but not be limited to, the following components: school nutrition services, physical education, a healthy school environment, staff health and wellness, family and community involvement, health education and services, school counseling, and school psychological and social services. P.A. 12-1 § 231 (June Special Session). The new legislation also provides grants up to $50,000 to three to five local or regional eligible board of education applicants to adopt and implement a new school nutritional rating system pilot grant program in select districts. Exh. 2 – Pryor Affidavit, ¶ 33. The state must also fund twenty new or expanded school-based health clinics to be selected by the Department of Public Health and located in Alliance districts. Id. at ¶ 32; Exh. 3 - Mahoney Affidavit, ¶ 17.

2. The State Has Received A Waiver From The Requirements Of No Child Left Behind.

The state is under additional obligations to implement the reforms articulated in its Elementary and Secondary Education Act Flexibility Request Application (hereafter "NCLB Waiver"), which was granted by Arne Duncan, the United States Secretary of Education on May 29, 2012 and provides a waiver of a multitude of requirements under the No Child Left Behind Act. See Exh. 2 - Pryor Affidavit, ¶ 50 and Attachment H; NCLB Waiver, http://www2.ed.gov/policy/eseaflex/approved-requests/ct.pdf.[21]

[21] SDE had sought and received input from a wide array of persons involved in public eduation before submitting its NCLB Waiver application, including but not limited to teachers and their unions, parents, students, and local education agencies. See NCLB Waiver, http://www2.ed.gov/policy/eseaflex/approved-requests/ct.pdf pp. 13-26. Likewise, input from

The NCLB Waiver was developed to further efforts around four principles: (1) transitioning to college-and career-ready standards and assessments; (2) developing systems of differentiated recognition, accountability, and support for intervention in low performing schools; (3) evaluating and supporting teacher and principal effectiveness; and (4) reducing duplication and unnecessary burden. NCLB Waiver, pp. 15-17, and Attachments A-1, A-6.

In 2010 Connecticut adopted the nation-wide Common Core State standards as the new standard for curriculum offered to Connecticut students. Exh. 2 – Pryor Affidavit at ¶ 43. The waiver principles endorse college and career ready standards and hold schools accountable for student competence in writing, science, mathematics and reading. Id. In the future, additional accountability measurements in categories such as civics, arts, fitness, and school climate will be considered for inclusion. See NCLB Waiver p. 32; NCLB Waiver Summary http://www2.ed.gov/policy/eseaflex/approved-requests/ct.pdf (last visited Nov. 7, 2012); NCLB Waiver Summary (attached as Exhibit 4).

In accordance with the waiver, Connecticut must now support districts, schools, and educators as they transition to the Common Core State Standards. Exh. 2 – Pryor Affidavit, ¶ 44. The state will be adopting new assessment tools and providing for new training and professional development. Id. The state is creating new accountability processes and evaluation systems for teachers and schools, as well as streamlining data reporting requirements. Id. at ¶¶ 18, 26, 42.

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the American Federation of Teachers (AFT), Connecticut Education Association (CEA), Connecticut Association of Boards of Education (CABE), Connecticut Association of Public School Superintendents (CAPSS), Connecticut Federation of School Administrators (CFSA), and others resulted in the PEAC guidelines. See Pryor Affidavit, ¶ 18, attachment C, p. 40. The AFT, CEA, CABE, CAPSS, and CFSA are all members of CCJEF. See 2010 IRS Form 990, http://dynamodata.fdncenter.org/990_pdf_archive/562/562518924/562518924_201012_990EZ.pdf.

New assessment tools are in the process of being designed by SMARTER Balanced Assessment Consortia, a consortia of states, of which Connecticut is a governing member. These new assessment tools will be implemented in the school year 2014-2015. Id. at ¶ 45. They will replace the current assessment tools, known as the Connecticut Mastery Test (CMT) and Connecticut Academic Performance Test (CAPT), with a computerized, personalized test that will provide follow up questions to wrong answers in order to ascertain a comprehensive diagnosis of individual student deficits.[22] See id.

While the NCLB law only required students to attain the target of "proficient," the new and higher target under the waiver will be for students to achieve "goal." This is a better indicator of college and career readiness. Measures of school performance will take into consideration, not only increases from "Basic" to "Proficient" as required under the NCLB, but also increases in student scores within and between any of the levels of performance: Below Basic, Basic, Proficient, Goal/Advanced.[23] This will more accurately reflect growth data with respect to all students, and thus, better inform schools about the needs of particular students. Unlike the NCLB's reliance on measuring high school progress only by standardized test scores, high school progress will now also be measured by graduation rates. Id. at ¶ 46.

In addition to the new set of curriculum initiatives and measures for school performance and growth, a new five level classification system for all Connecticut schools and an intervention strategy started July 1, 2012, including financial and other support to the state's lowest performing schools. A new School Performance Index (SPI) measures the status of student

[22] http://www.sde.ct.gov/sde/lib/sde/pdf/curriculum/cali/sbacsummary2010.pdf (last visited Nov. 8, 2012); http://www.courant.com/news/education/hc-mastery-testing-ending-0713-20120713,0,4374753,print.story (last visited Nov. 8, 2012).

[23] See NCLB Waiver relating to reliance on standardized test scores as defining levels of student performance, pp. 72-73, 80, 81 .

achievement and college and career readiness in each district, school and subgroup.[24] Id. at ¶ 26. The state's goal is to have all students

> perform at the Goal level on standardized exams, and at least 96% of students should graduate from high school (94% within four years). The CSDE believes all Connecticut students – including members of historically underperforming subgroups – can and must meet these targets. By 2018, schools, districts, and the state as a whole will achieve increases in student performance and graduation rates such that they are halfway to achieving these state targets.

NCLB Waiver, p. 80; see also id. pp. 32, 81, 88, 90, 100. The state will be identifying focus schools based on high needs subgroups, including English Language Learners (ELLs), students with disabilities, and students eligible for free or reduced price lunches. The state will also be examining whether Hispanic and African-American subgroups perform as low as the identified high needs subgroup, and any schools with equally low-performing Hispanic or African-American students will also be identified as Focus Schools. Id. at 33. Interventions in Turnaround Schools (lowest performing category, including but not limited to Commissioner's Network Schools) and in Review Schools (second lowest performing category, including but not limited to Focus Schools) began in Fall 2012. Id. at 74.

In addition, the Governor has convened a Red Tape Review and Removal Taskforce to eliminate unnecessarily burdensome state regulations and mandates.[25] Initial recommendations

[24] Schools will be classified into one of these five classifications every three years: Excelling, Progressing, Transition, Review, and Turnaround. Exh. 2 - Pryor Affidavit, ¶ 26; NCLB Waiver, pp. 97, 135. Factors considered to determine what category each schools falls into may include: the SPI, change in SPI over time, student achievement growth measured by standardized assessments, and high school graduation and dropout rates overall and for subgroups of students. P.A. 12-116, §18. The new act permits SDE to impose certain requirements on category 3 schools and requires the SBE to impose certain intensive supervision over category 4 and 5 schools. Id. A District Performance Index (DPI) will account for students with disabilities who attend outplacement facilities. NCLB Waiver, p. 106.

by that taskforce will be reported to the Governor and the Commissioner of SDE by April 2013. Exh. 2 - Pryor Affidavit at ¶ 42; NCLB Waiver, p. 34. The SDE will also begin to streamline data collection practices and will endeavor to reduce by one third the number of mandated data reporting requirements for school districts during this academic year. Exh. 2 - Pryor Affidavit at ¶ 42; see also Pryor Attachment F2.

In January 2012, the State Board of Education approved the SDE Commissioner's reorganization plan based on the Governor's strategic priorities set forth in his six principles of education reform. Id. at ¶ 51. This reorganization creates a structure to implement the reform legislation and initiatives included in the NCLB Waiver. Id.; NCLB Waiver, p. 30; see also "State Education Board Approves Appointment of Two for High-Level Posts," http://www.courant.com/news/elections/hc-state-board-of-education-20121107,0,5855807,print.story (last visited Nov. 9, 2012).

3. Additional Reforms To Be Implemented

Other initiatives are underway to improve public education in Connecticut. The Achievement Gap Task Force is a legislative task force designed pursuant to P.A. 11-85 to create a master plan with recommendations and approaches to eliminate the achievement gap by January 1, 2020.[26] This is to be done in consultation with the U.S. Department of Education, the Connecticut State University System, the Interagency Council for Ending the Achievement Gap

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[25] This reduction of red tape reform is not found in legislation. It is the Governor's sixth principle of reform and is based on executive policy. It is also articulated as SDE's fourth principle in its waiver obligations.

[26] The plan must be submitted to the joint standing committee of the General Assembly having cognizance of matters related to education and the Interagency Council for Ending the Achievement Gap by January 15, 2013, and annual progress reports must be submitted to the joint standing committee of the General Assembly having cognizance of matters related to education starting July 1, 2013. P.A. 12-1 § 235 (JSS).

and the joint standing committee of the General Assembly having cognizance of education matters.

Connecticut is one of five states selected to participate in a collaborative effort by state leaders, the Ford Foundation, and the National Center on Time & Learning (NCTL) to develop high-quality and sustainable expanded-time schools. This effort will assist in adding 300 hours of instruction and enrichment to the school year in the following Connecticut schools starting 2013: Thomas S. O'Connell Elementary School in East Hartford, Casimir Pulaski Elementary School (implementation began earlier this school year) and John Barry Elementary School in Meriden, Jennings Elementary School, Winthrop Magnet Elementary School, Nathan Hale Elementary School, and Bennie Dover Jackson Middle School in New London. Pryor Affidavit, ¶ 47. Plaintiff student Ricardo Figuero attends Nathan Hale Elementary School and plaintiff student Ra'Anaa Clark attends Jennings Elementary School. See Corrected Third Amended Complaint, ¶¶ 25 and 46.

At the request of the Governor, the Educator Preparation Advisory Council, a joint initiative of the SDE and the Board of Regents for Higher Education, was created to advise the State Board of Education in developing a system for the approval, quality, regulation, oversight, and accreditation of Connecticut educator preparation programs. Exh. 2 - Pryor Affidavit, ¶ 22.

The High School Graduation Task Force was created by P.A. 11-135, § 8, and its purpose is to examine issues arising from new high school graduation requirements and mandatory courses taking effect with the Class of 2020.[27] Task force members include the Education Commissioner or his designee; two appropriate people appointed by the Education

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[27] SDE is to develop or approve end of year exams (in algebra I, geometry, biology, American history, and 10th grade English) over two years starting by July 1, 2014 to July 1, 2016. P.A. 11-135, § 4.

Commissioner, including teachers; and one member each designated by the (1) Connecticut Assoc. of Boards of Ed (CABE), (2) Connecticut Association of Public School Superintendents (CAPSS), (3) Connecticut Association of Schools (CAS), (4) Connecticut Federation of School Administrators (CFSA), (5) Connecticut Education Association (CEA), and (6) American Federation of Teachers-Connecticut (AFT). P.A. 11-135 § 8.

In addition to the appropriations money set out above totaling $100 million dollars, bond authorizations have been made related to education reforms. Pursuant to P.A. 11-57, § 2(c)(2) and § 21(c)(2), the legislature has authorized $4 million and $2 million (in bonds) to the Office of Policy and Management (OPM) for FY 2012 and 2013, respectively, related to the design and implementation of state and local benchmarking systems, to include technology development. Such systems will encompass both municipal and board of education revenue and expenditure reporting, with the education component to be known as a uniform chart of accounts. See P.A. 12-116, § 15.[28] These OPM bonds are linked to a cooperative undertaking with SDE, which will develop and implement the uniform chart of accounts at the school and district levels. Exh. 3 - Mahoney Affidavit, ¶ 21.

Pursuant to P.A. 12-189, § 9(e), the following dollar amounts for grants-in-aid bonds have also been authorized by the legislature to SDE effective July 1, 2012: (1) $13,645,000 to assist the state in meeting its goals under Sheff v. O'Neill, for the purpose of capital start-up costs related to the development of new interdistrict magnet school programs (purchasing a building or portable classrooms, leasing space, renovating space, and purchasing equipment, including, but not limited to, computers and classroom furniture); (2) $25,000,000 for alterations,

[28] http://www.cga.ct.gov/2012/ACT/PA/2012PA-00116-R00SB-00458-PA.htm (last visited Dec. 21, 2012).

repairs, improvements, technology, equipment and capital start-up costs, including acquisition costs, to expand the availability of high-quality school models; (3) $16,000,000 to assist targeted local and regional school districts for alterations, repairs, improvements, technology and equipment in low-performing schools; (4) $10,000,000 to municipalities and organizations exempt from taxation under sec. 501(c)(3) of the Internal Revenue Code of 1986 for facility improvements and minor capital repairs to that portion of facilities that house school readiness programs and state-funded day care centers operated by such municipalities and organizations. Id. at § 20; http://www.cga.ct.gov/2012/ACT/PA/2012PA-00189-R00sB-00025-PA.htm (last visited Nov. 8, 2012).

Pursuant to P.A. 12-189 § 2(a), there were additional bond authorizations of $50 million to OPM for a statewide, coordinated information technology capital investment program. These funds are part of a comprehensive initiative, which the SDE will pursue through FY 2015: $6 million for identifying and developing the Tiered Quality Rating System, $1.75 million related to parental involvement, and $5 million for teacher effectiveness. Id. at §18.

Also, for the school year 2012-2013, an additional $1.3 million is available to establish or expand at least 20 school based health centers in the Alliance districts to be administered by the Department of Public Health. See Office of Fiscal Analysis Summary on SB-458, P.A. 12-116, § 8; http://www.cga.ct.gov/2012/SUM/2012SUM00116-R01SB-00458-SUM.htm (last visited Nov. 8, 2012).[29] Exh. 3 – Mahoney Affidavit, ¶ 17; Exh. 2 - Pryor Affidavit, ¶ 32.

[29] The Connecticut State Budget FY 13 Revisions for each state agency can be found at http://www.cga.ct.gov/ofa/documents/year/BB/2013BB-20120720_FY%2013%20Connecticut%20Budget%20Revisions.pdf (last visited Nov. 8, 2012).

The above discussion demonstrates that **the state authorized over $206 million in 2012 to begin implementing education reforms**. Moreover, much of this money is tied to substantially greater oversight by the state in the lowest performing school districts.

4. The Practical Impact Of Reform Legislation And Initiatives On This Litigation.

The above referenced educational reforms and initiatives provide for new oversight and a partnership between the state and the lowest performing districts for Connecticut public school students, including student-plaintiffs in this lawsuit. Dramatically different assessments and accountability procedures are to be implemented throughout the state resulting in new student performance data. However, the plaintiffs' Corrected Third Amended Complaint relies on the old CMT and CAPT scores, as well as on the outdated NCLB requirements, in their claim of an unconstitutional education system. See Corrected Third Amended Complaint, ¶¶ 95-107.[30] Furthermore, plaintiffs' experts have based their opinions on these now obsolete Connecticut educational models and student performance data. For example, the 2005 Palaich cost study submitted as one of plaintiffs' expert reports is based on data from 2003 and 2004 derived from a Connecticut model of education that has since changed significantly due to the new reforms. See n. 2, supra. In addition, plaintiffs' 2011 expert report by Bruce Baker relies extensively on the 2005 Palaich study. Data from 2003 and 2004 cannot be used to determine the equity and adequacy of the educational opportunities students will be receiving under the new reforms at

[30] The plurality in CCJEF counsels against excessive reliance on test scores in assessing whether the state has fulfilled its constitutional obligation agreeing with Justice Zarella and others that "student achievement is influenced by economic, social, cultural and other factors, some unknown and perhaps unknowable, beyond the control of the educational system." 295 Conn. at 266 n. 23 quoting Zarella, J. n. 20 (dissenting) and citing Zarella, J. n. 20 President Barack Obama's Address to Joint Session of Congress (February 24, 2009), available at http://www.whitehouse.gov/the-press-office/remarks-president-barack-obama-address-joint-session-congress (last visited Dec. 21, 2010).

time of trial, currently scheduled for the summer of 2014.[31] None of the plaintiffs' experts, even those who disclosed their expert reports as of July 16, 2012, and later – after these reforms were signed into law -- has offered any opinion on the impact of the new reforms. This underscores the futility and waste of resources in defendants' deposing the plaintiffs' experts before the impact of the reforms can be properly understood and measured by the parties, their experts, and the court.

All Justices in the 2010 CCJEF v. Rell decision agreed that even if the courts were to find some constitutional infirmity, the courts should defer, in the first instance, on the matter of remedies, to the elected branches of state government. 295 Conn. at 261-63, 314, 318, fn. 59 (plurality); 329, 335-38 (Palmer, J. concurring); 398 (Vertefuille, J. dissenting); 410, 413, 416-17 (Zarella, J. dissenting). The Governor and General Assembly have commenced the most significant and comprehensive education reforms in decades. Time is now required to allow the reforms to be fully implemented and to measure the extent of the beneficial results of the new legislation and the NCLB waiver. Connecticut's reforms are on the cutting edge for their innovative content, holistic and measured approach, and more importantly, for targeting intervention at low performing schools and districts with a phased-in implementation scheme emphasizing program evaluation and a joint state and local partnership. Exh. 5 – Affidavit of

[31] Even CCJEF recognizes that the Palaich report is based on obsolete data. In its Feb. 22, 2012 testimony before the Education Committee on the Governor's proposed Bill No. 24. CCJEF stated: "Unless and until the state commissions an up-to-date adequacy cost study (preferably with CCJEF collaboration so that its results are accepted by all), no foundation level or student need weights can be assumed to be legitimately reflective of what it takes to meet the state's constitutional obligation to adequately and equitably fund the public schools …." http://www.cga.ct.gov/2012/EDdata/Tmy/2012SB-00024-R000222-Connecticut%20Coalition%20for%20Justice%20in%20Education%20Funding-TMY.PDF (last visited Nov. 7, 2012). Thus, even plaintiffs appear to recognize that requiring defendants to depose plaintiffs' experts now would result in a waste of the state's resources and not advance the litigation toward trial. Defendants continue to dispute the validity, reliability, and relevance of so-called educational cost studies.

Richard Seder, dated December 14, 2012, (hereafter "Seder Affidavit"), ¶ 5. The reforms are in line with well-known research by the non-profit organization, Mass. Insight, on successful turnaround strategies used in other states, including Massachusetts. Id. at ¶ 10. Connecticut's comprehensive interventions are directed to the lowest performing schools. The requirements for early evaluation and accountability, along with the joint state and local partnership underlying these interventions, will assist in determining the effectiveness of the reforms for future replication. At the same time, these requirements will allow the state the flexibility to provide modifications and redirect funding as necessary. Id. at ¶ 6. Accordingly, at the very minimum, two to three years is needed before the experts can properly assess, and the court can properly consider, the benefits that may be realized from Connecticut's significant reform initiatives. Id. at ¶¶ 7, 8; see also Exh. 2 - Pryor Affidavit, ¶ 52.

B. PLAINTIFFS' CLAIMS ARE NOT RIPE.

The rationale behind the ripeness requirement is "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements...." Esposito v. Heather Specyalski, 268 Conn. 336, 346 (2004) (internal citation omitted.) The case must not "present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire." Id. A declaratory judgment action "is limited to solving justiciable controversies.... Invoking § 52-29 does not create jurisdiction where it would not otherwise exist...." Liberty Mutual Ins., 290 Conn. at 813. Connecticut courts have for decades routinely dismissed actions, including actions seeking declaratory, injunctive, and quo warranto relief, that depend on future, contingent, or uncertain events.[32]

[32] See, e.g., Sherman Liberty Center v. Williams, 52 Conn. Supp. 118 (J.D. Hartford 2011); Lehrer v. Davis, 214 Conn. 232 (1990) (challenge to constitutionality of statute was unripe because it turned on unknown facts); Milford Power Co, 263 Conn. 616 (claim seeking

The court must determine the plaintiffs' constitutional claims in this case based on the model of education and educational funding existing at the time of the trial. CCJEF, 295 Conn. at 318-19 (plurality), 321 (Palmer, J. concurring); see also Edward Balf Co. v. Town of E. Granby, 152 Conn. 319, 323 (1965) (in "actions praying for a declaratory judgment or injunctive relief, since the remedy sought is prospective, the right to such relief is determined by the situation at the time of trial and not by that existing at the time the action was begun."); Holt v. Wissinger, 145 Conn. 106, 115 (1958) ("equitable relief, whether injunctive or otherwise, is to be granted, if at all, only on the situation as it exists at the time of trial"); Town of Preston v. Connecticut Siting Council, 21 Conn. App. 85, 89 (1990) ("[i]n an action seeking a declaratory judgment, the sole function of the trial court is to ascertain the rights of the parties under *existing law*") (italics in original). Therefore, plaintiffs' case must be tried based on the implementation and effects of new legislative reforms and the obligations set out in the approved waiver application.

Plaintiffs' claims are not ripe, and therefore nonjusticiable, because the new educational reforms have yet to be fully implemented, but they have unquestionably altered the opportunities

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declaratory judgment regarding insurance coverage was unripe because no demand for payment had been made and thus the issue was "hypothetical" and "too speculative for resolution"); Harris v. Mulcahy, UWY-CV-09-5015698S, 2009 Conn. Super. LEXIS 3226 (Conn. Superior Ct. Nov. 27, 2009) (quo warranto action dismissed as unripe because candidate being challenged had not yet assumed office); Hamilton v. U.S. Services Automobile Association, 115 Conn. App. 774 (2009) (declaration of defendant insurer's obligation to indemnify insured was hypothetical and unripe in advance of judicial determination whether insured was liable); Swiss Cleaners, Inc. v. Danaher, 129 Conn. 338 (1942) (court improperly issued declaratory judgment that corporation was subject to criminal law limiting hours that women could work because there was nothing in the record to show that the corporation had violated, or intended to violate, the law); Lovell v. Town of Stratford, 7 Conn. Supp. 255 (1939) (declaratory judgment action dismissed because plaintiff contractor had no existing contract with the defendant town and his grievances involving contractual issues were "based upon contingencies that may never happen"). In each case, events that had not yet occurred, or facts that were uncertain, rendered the claims unripe for adjudication.

and assessments provided to Connecticut students. The CCJEF plurality opinion, as well as Justice Palmer's concurring opinion, recognize that the question of constitutional adequacy rests not on the level of achievement, but rather on what opportunities the state makes available to students. 295 Conn. at 316, 19, 345 fn. 19 citing Sheff, 238 Conn. at 143 (Borden J., dissenting) (constitutional adequacy determined not by "what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system."). The effects of those reforms will not be known for at least 2-3 years. Exh. 5 -- Seder Affidavit, ¶¶ 7, 8; see also Exh. 2 -- Pryor Affidavit, ¶ 52; Until that process is complete, any adjudication of plaintiffs' claims would improperly embroil the court in an "abstract disagreement," concerning the adequacy of educational opportunities provided by an as-yet fully implemented education system. Milford Power, 263 Conn. at 626.

The court should hold that the constitutionality of Connecticut's educational statutes is not ripe for judicial review because:

> A party mounting a constitutional challenge to the validity of a statute must provide an adequate factual record in order to meet its burden of demonstrating the statute's adverse impact on some protected interest of its own, in its own particular case, and not merely under some hypothetical set of facts as yet unproven.

Lehrer, 214 Conn. at 234-35 (internal quotation marks omitted). Here, Plaintiffs' claim that the state is not providing constitutionally equal and adequate educational opportunities is at best speculative and will remain so until recent reforms are implemented and measured for their effectiveness. "The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity....This court has implicitly recognized this doctrine by previously deferring to the legislature for a reasonable length of time." Nielsen v. State, 236 Conn. 1, 16-17 (1996) (Citation and internal quotation marks

omitted.) (Berdon, J., concurring). It is inappropriate to determine the constitutionality of legislation "in advance of its immediate adverse effect...." Lehrer, 214 Conn. at 235-6; see also Hall v. Gilbert and Bennett Mfg. Co., 241 Conn. 282, 307 (1997); Sherman Liberty Ctr., 52 Conn. Supp. at 125 ("The doctrine of ripeness prudentially requires sufficient deference to the legislature in order to allow that separate and coordinate branch of government a reasonable time in which to act.").

> The ripeness requirement focuses on the timing of the lawsuit. To be 'ripe,' a lawsuit must be sufficiently well developed and specific to 'be appropriate for judicial resolution.' Toilet Goods Ass'n, Inc. v. Gardner, 387 U.S 158, 162, 18 L.Ed. 2d 697, 87 S. Ct. 1520 (1967). 'Ripeness...shares the constitutional requirement of standing that an injury in fact be certainly impending.' National Treasury Employees Union, 101 F. 3d at 1427. Courts may not decide cases that 'involve[] uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all.' Metzenbaum v. Federal Energy Regulatory Commission, 219 U.S. App. D.C. 57, 675 F. 2d 1282, 1289 (D.C. Cir. 1982).

Valeria G. v. Wilson, 12 F. Supp. 2d 1007, 1015-16 (N.D. CA 1998). In Valeria G., the plaintiffs' challenge to California's bilingual educational programs was held not to be ripe for judicial review because the statutory programs had yet to be implemented, making the alleged injuries speculative in that they had not yet occurred or may never occur. The court in Valeria G. explained:

> Courts regularly deny anticipatory review when further development by state officials may reduce or avoid constitutional problems, or change the nature of the issues presented. See, e.g., Wheeler v. Barrera, 417 U.S 402, 426-27, 41 L. Ed 2d 159, 94 S. Ct. 2274 (1974) (constitutional issue not ripe until a specific plan is before the Court); Young v. Klutznick, 652 F. 2d 617, 625-26 (6th Cir. 1981) (issue not ripe where anticipated injury would not occur until state officials acted, and might not occur at all). This is particularly so where relevant programs have not yet been adopted or applied....'Passing upon the possible significance of the manifold provision of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case.' Nixon v. Administrator of General Services, 433 U.S. 425, 438 (1977) (quoting Watson v. Buck, 313 U.S. 387, 402, 85 L. Ed 1416, 61 S. Ct. 962 (1941).

12 F. Supp. 2d at 1026.

Plaintiffs make no claim that the terms of the new statutes or new waiver obligations – which will take years to assess -- will produce the unconstitutional result they alleged under the old framework. See Id. at 1015, 1026. Significantly, all but one of the student-plaintiffs here attend schools in Alliance Districts.[33] As discussed above, the Alliance Districts are the main targets of the legislative reforms. The elected branches of government have targeted these districts for dramatic improvement and have focused new energies and new resources upon them. Given the broad changes made to those districts as detailed above,[34] the plaintiffs are unable at this time to meet their burden of providing an adequate factual record of an adverse impact in their allegations or at trial.[35] Lehrer, 214 Conn. at 234-35.

As a result of the new reforms, none of the plaintiffs' claims are ripe for an adjudication of liability as they must be tested based on the educational system existing at time of trial. Thus, because such reforms were enacted prior to a finding of liability, this case is on a trajectory very different from other significant education cases involving the state constitution brought against the State of Connecticut where a finding of liability occurred prior

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[33] This case is not a class action. The only plaintiffs are individual students and their parents and an association.

[34] In addition, Bridgeport's Roosevelt School is one of eight schools selected by the President's Committee on the Arts and the Humanities to participate in a new arts initiative designed to help turn around low-performing schools. This federal School Improvement Grant award will add $50,000 to $75,000 a year to support this 2 year endeavor. http://www.ctpost.com/news/article/Bridgeport-school-in-Obama-arts-program-3503188.php (last visited Nov. 8, 2012). This award is not reflected in plaintiffs' allegations about Roosevelt school. See Corrected Third Amended Complaint, ¶ 70. It will take two years to assess the success of this program.

[35] Indeed, the AFT, which is a member of CCJEF, has praised these reforms. See n. 9, supra, and 2010 IRS Form 990, http://dynamodata.fdncenter.org/990_pdf_archive/562/562518924/562518924_201012_990EZ.pdf (last visited Dec. 21, 2012).

to legislative reforms. See e.g., Sheff, 238 Conn. at 46 ("We have decided...to employ the methodology used in Horton....We direct the legislative and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas."); Horton, 172 Conn. at 653 (further judicial intervention should be stayed "to afford the General Assembly an opportunity to take appropriate legislative action."). While the defendants continue to deny the plaintiffs' liability claims, the elected branches have enacted sweeping public policy educational reforms. The parties may not effectively litigate the constitutionality of Connecticut's education system before these reforms are in place long enough to be properly assessed. To do otherwise, would inject the court proactively into educational matters entrusted to the co-equal elected branches in the very manner cautioned against in CCJEF and Sheff. Id.; Sheff, 238 Conn. at 4; Sheff v. O'Neill, 45 Conn. Supp. 630, 667 (1999) (on remand). Consistent with the principle of deference to a co-equal branch underlying these Supreme Court dictates, the court would not be able to award any meaningful relief upon any finding of liability. CCJEF, 295 Conn. at 317 n. 59 (plurality) (court recognizes the elected branches' constitutional responsibilities informed by the wishes of their constituents and the judicial branch's deference to the elected branches' approaches to meeting these responsibilities.).

The Sheff court, on remand, provides persuasive authority supporting defendants' position that plaintiffs' claims are not ripe due to legislative changes.[36] Shortly after new

[36] In Sheff, 238 Conn. 1, the Connecticut Supreme Court held that students in the Hartford public schools were racially, ethnically and economically isolated and that, as a result, Hartford public school students had not been provided a substantially equal educational opportunity under the state constitution, article eighth, § 1, and article first, §§ 1 and 20. "The state's response to the Supreme Court's decision was swift." Sheff, 45 Conn. Supp. at 634. The Governor issued an Executive Order creating an education improvement panel designed to address the decision. Id. Several months after receiving the final report of that panel, the Connecticut legislature passed

legislation was enacted, but before most of the legislative measures had gone into effect, the Sheff plaintiffs returned to court claiming not that the elected branches "took no action" but that "the state has not done enough fast enough." Id. at 656-57. In support of this belief, plaintiffs noted – and the state defendants did not dispute – that racial imbalance in the Hartford schools had actually worsened since the supreme court decision. Id. at 657. The trial court issued judgment for the defendants, holding that "the plaintiffs failed to wait a reasonable time and … their return to court was premature." Id. Most importantly, that plaintiffs "returned to court well before any reasonable efforts could possibly have had any discernible effects." Id.

In the instant case, the elected branches have in the last legislative session passed comprehensive educational reforms that directly address plaintiffs' claims prior to any adjudication of the merits of plaintiffs' claims. As in Sheff, many of the reforms have yet to go into effect and it would be impossible to assess their efficacy for several years. See Exh. 2 - Pryor Affidavit, passim; Exh. 5 - Seder Affidavit, ¶¶ 7-9, 12, 14. At most, plaintiffs here could claim that the elected branches have failed to act with enough force.[37] But, such an argument was raised and failed in Sheff. The court explained the importance of the doctrine of separation of powers:

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legislation designed to address the decision; that is, it was aimed at, inter alia, "reducing racial, ethnic and economic isolation." Id. at 635.

[37] It is worth noting that -- as was the case with the Sheff plaintiffs, 45 Conn. Supp. at 658 ("plaintiffs do not disagree with the measures the state has taken….") -- the legislative reforms have the support of members of plaintiff CCJEF. See n.35, supra and n. 9, supra (AFT); "[Connecticut Education Association] Names Former Teacher And Union Leader As Executive Director," July 10, 2012, Hartford Courant, available at http://www.courant.com/news/education/hc-teachers-union-leader-0711-20120710,0,6133862,print.story (last visited Dec. 21, 2012) (noting support by the CEA for the recent reforms and explaining that the CEA would play a role in implementation); see also Exh. 8 (CEA executive director: "Connecticut's new law has the potential to be a model for the nation.")

> The plaintiffs have sought court intervention before the state has had an opportunity to take even a 'second step' in the remedial process. The state has acted expeditiously and in good faith to respond to the decision of the Supreme Court in this case. It has devised a comprehensive, interrelated, well funded set of programs and legislation designed to improve education for all children, with a special emphasis on urban children, while promoting diverse educational environments. The legislative and executive branches should have a realistic opportunity to implement their remedial programs before further court intervention. This will not only satisfy the Supreme Court's desire to be sensitive to the 'constitutional authority of coordinate branches of government;' Sheff v. O'Neill, supra, 238 Conn. at 46, 678 A.2d 1267; but will also allow any educational reform plan to gain grassroots popular support which is crucial to the success of any plan. The best way to achieve popular support is not to impose a judicially mandated remedial plan, but to encourage Connecticut's populace as a whole, both directly and through their elected representatives, to solve the problems facing the state's schools.

Sheff, 45 Conn. Supp. at 667.

The reasoning set out in Sherman Liberty Ctr. is equally applicable to our case. There, plaintiffs alleged that the legislature had violated the state constitution by failing to pass a balanced budget, as constitutionally required. Defendants sought dismissal based on, inter alia, the doctrine of ripeness. The court agreed and dismissed plaintiffs' complaint concluding: "the plaintiffs' claims are unripe because they present a claim contingent upon future events that have not, and may never, occur.... The final shape of the budget is unclear. Accordingly, this court lacks subject matter jurisdiction over the plaintiffs' claims because they are not ripe for adjudication." 52 Conn. Supp at 127. Similarly here, the scope and efficacy of the state's 2012 educational reforms is not yet known, and thus not ripe for adjudication.

The court's rationale set out in Hancock v. Commissioner of Education also supports the defendants' position in this case. 443 Mass. 428 (2005). There, the Massachusetts Supreme Court reversed the trial court and held that there was no constitutional violation because the state enacted substantial education reforms and was continuing to make education a priority. Id. at 433.

> Here, the legislative and executive branches have shown that they have embarked on a long-term, measurable, orderly, and comprehensive process of reform 'to provide a high quality public education to every child.' G.L. c. 69, § 1. They are proceeding purposefully to implement a plan to educate all public school children in the Commonwealth, and the judge did not find otherwise. They have committed resources to carry out their plan, have done so in fiscally troubled times, and show every indication that they will continue to increase such resources as the Commonwealth's finances improve. While the plaintiffs have amply shown that many children in the focus districts are not being well served by their school districts, they have not shown that the defendants are acting in an arbitrary, nonresponsive, or irrational way to meet the constitutional mandate.

Id. at 433-34.[38]

Unlike Sheff and Horton, where the legislative reforms came after findings against the state by the court, the legislative reforms detailed above have been enacted into law prior to any finding or judgment against the state. Thus, the elected branches have seen fit already to take steps in order to drastically alter the public education system in Connecticut. The defendants' motion to dismiss is wholly consistent with the Connecticut Supreme Court plurality's instruction to avoid separation of powers conflicts:

> We are cognizant of the risks and separation of powers concerns attendant to intensive judicial involvement in educational policy making; see footnote 22 of this opinion; and emphasize that our role in explaining article eighth, § 1, is to articulate the broad parameters of that constitutional right, and to leave their implementation to the expertise of those who work in the political branches of state and local government, informed by the wishes of their constituents. So long as those authorities prescribe and implement a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education as set forth herein, then the judiciary should stay its hand.

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[38] Accord, Columbia Falls Elem. Sch. Dist. v. State, 2008 Mont. Dist. LEXIS 483 *76 (2008) where the court cited the Hancock decision and concluded that '[t]he legislative and executive branches have shown that they have embarked on a long-term, orderly, and comprehensive process of reform, and have shown every indication they will continue to do so. Courts are reluctant to become involved in the legislature's determinations. See Hancock v. Comm'r of Educ, 443 Mass. 428." See also, Campbell County Sch. Dist. v. State, 2008 WY 2, 79 (2008) ("While perfection is not required or expected, a good faith effort to preserve and protect our constitution's commitment to a sound public education system is…the state has met that standard and will continue to do so in the future.").

CCJEF, 295 Conn. at 318, fn. 59; see also Id. at 313-14. Given both the Connecticut Supreme Court's plurality explanation that upon a finding of liability it would in the first instance "stay its hand," and that the elected branches have already taken action to which the courts would defer, it is clear that this court cannot properly provide any remedy plaintiffs seek in their Corrected Third Amended Complaint.

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS BECAUSE THEY ARE MOOT.

Just as it is too early to adjudicate Connecticut's newly reformed education system, it is too late -- i.e., moot -- to adjudicate the very different system in place when the lawsuit was filed in 2005. "The mootness doctrine is founded on the same policy interests as the doctrine of standing, namely, to assure the vigorous presentation of arguments concerning the matter at issue." Putnam v. Kennedy, 279 Conn. 162, 168 (2006) (quotation marks omitted).

> The test for determining mootness is whether a judgment, if rendered, would have any practical legal effect upon an existing controversy. Thus, the central question in a mootness problem is whether a change in the circumstances that prevailed at the beginning of the litigation has forestalled the prospect for meaningful, practical, or effective relief.

Statewide Grievance Comm. v. Burton, 282 Conn. 1, 13 (2007). "[T]he test for determining mootness is not 'whether the [plaintiff] would ultimately be granted relief....The test, instead, is whether there is any practical relief this court can grant the [plaintiff]....If no practical relief can be afforded to the parties, the [case] must be dismissed." (Internal quotation marks omitted.) In re Jeremy M., 100 Conn. App. 436, 441-42, cert. denied, 282 Conn. 927 (2007); see also CHRO v. Bd. of Ed., 270 Conn. 665, 684 (2004). This is particularly true in cases seeking injunctive relief "where the issue before the court has been resolved or has lost its significance because of intervening circumstances." Conn. Coalition Against Millstone v. Rocque, 267 Conn. 116, 126 (2003); Wilcox v. Ferraina, 100 Conn. App. 541, 547 (2007). Because "it is not the province of

. . . courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow," a case that is moot must be dismissed for lack of subject matter jurisdiction. Private Healthcare Sys. v. Torres, 278 Conn. 291, 298 (2006).

Constitutional adequacy case law from other courts is instructive and counsels for dismissal of this case on mootness grounds. In Londonderry Sch. Dist. v. State, the New Hampshire Supreme Court declared New Hampshire's statute governing education funding unconstitutional and retained jurisdiction over the case. 157 N.H. 734 (2008). Thereafter, the legislature enacted new legislation to address the constitutional infirmities. The New Hampshire Supreme Court requested the parties to file memoranda in light of the new laws. The plaintiffs' challenge, seeking only prospective or declaratory relief, was declared moot by the court. The court presumed that in enacting the new laws, the legislature acted in good faith and crafted legislation intended to address the problems in the old laws. Id. at 737. "Although we are mindful of the petitioners' claims that the new legislation presents new problems, it is precisely for this reason that the controversy before this court is now moot." Id. The court went on to explain that retaining jurisdiction would not cure "continued uncertainty in the law" because the prior relevant statutory provisions were no longer in effect. Id. (citations omitted). Accord, Maryland Highways Contractors Ass'n. v. Maryland, 933 F.2d 1246 (4th Cir. 1991) (new legislation enacted between the district court's decision and the appeal resulted in the dismissal of the case based on mootness).

Here, plaintiffs' claims have been rendered moot by passage of the comprehensive education reform legislation detailed above and receipt of the NCLB waiver. As noted, plaintiffs' Corrected Third Amended Complaint is entirely premised upon a public education

system that recent legislation has significantly altered, with even more changes to come. The plaintiffs have alleged that the statutory public education system violates their constitutional rights to a "suitable and substantially equal education." Corrected Third Amended Complaint, ¶ 1. All legislative enactments are "presumed to be constitutional." Batte-Holmgren v. Commissioner of Public Health, 281 Conn. 277, 299 n. 12 (2007). A significant portion of the recent legislation targets the very districts in which most of the plaintiff-students attend school. Plaintiffs' lawsuit alleging constitutional violations is premised on a statutory public education system the elected branches of state government have changed significantly, thereby permitting the court no practical ability to address the now no longer existent system. Accordingly, plaintiffs' claims are moot.

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER CCJEF'S CLAIMS BECAUSE CCJEF LACKS STANDING.

Less than two weeks prior to the May 15, 2006 oral argument on defendants' motion to dismiss CCJEF for lack of standing, CCJEF's counsel, Robert A. Solomon, filed a sworn affidavit dated May 3, 2006 stating that the complaint and amended complaints describing CCJEF's membership were not accurate in that CCJEF did not have parents as members at the time of the filing of these complaints. (Doc. # 107) In its August 17, 2006 decision, the court specifically found that CCJEF lacked standing because at the time the complaints were filed CCJEF -- by its own admission -- did not have parents in its membership and because the complaint did not allege that its membership included parents of Connecticut public school students. (Doc. #110.00 at 3)

On September 22, 2006, plaintiffs filed a "Request for Leave to File Amendment to Complaint," with proposed language, Doc. # 112.00, in an attempt to allegedly "cure" the noted

associational standing defects.[39] The trial court granted plaintiffs' motion for leave to amend their complaint on April 23, 2007 to include this language. The plaintiffs filed their Second Amended Complaint on November 19, 2010. However, this Second Amended Complaint did not allege CCJEF's membership included parents of Connecticut public school students; it simply reiterated the language found in the original December 2005 and amended January 2006 complaints. See Doc. #135.00 at 16, ¶ 31. Plaintiffs have now filed a Corrected Third Amended Complaint that includes, among other changes, allegations that CCJEF's members include parents of Connecticut public school students and other changes to its membership not included in the motion to amend approved by the court. Despite these amendments, plaintiffs still have not -- and cannot -- demonstrate standing to maintain this lawsuit.

A. CCJEF Lacks A Specific and Personal Injury.

"[T]he plaintiff ultimately bears the burden of establishing standing." Seymour v. Region One Bd. of Educ., 274 Conn. 92, 104 (2005). "The declaratory judgment procedure consequently may be employed only to resolve 'a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement.'" Conn. Bus. & Ind. Ass'n. v. Comm. of Hosps. & Health Care, 218 Conn. 335, 347-348 (1991) (quoting Horton, 172 Conn. at 627).

> A party pursuing declaratory relief must therefore demonstrate, as in ordinary actions, a 'justiciable right' in the controversy sought to be resolved, that is, 'contract, property or personal rights ... as such will be affected by the [court's]

[39] The plaintiffs' September 22, 2006 request for leave to amend (Doc. # 112.00) proposed language describing CCJEF's membership to include "adult Connecticut resident parents of students in the public schools of Connecticut" and "Connecticut public school students over the age of eighteen (18) years." Case law, infra, pp. 42-43, holds that, with respect to associational standing, a complaint defective at the time of filing cannot be later cured.

> decision .... ' A party without a justiciable right in the matter sought to be adjudicated lacks standing to raise the matter in a declaratory judgment action.

Conn. Bus. & Ind. Ass'n., 218 Conn. at 348 (quoting McGee v. Dunnigan, 138 Conn. 263, 267 (1951)).

Standing "is not a technical rule intended to keep aggrieved parties out of court," but instead "is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." Worrell, 199 Conn. at 612 (citing Baker v. Carr, 369 U.S. 186, 204 (1962), among others); see also Carrubba v. Moskowitz, 274 Conn. 533, 550-551 (2005). A justiciable interest is "something more than is comprised in the most ardent wish or partial feeling. It implies a *right* in the subject of the controversy ...." Worrell, 199 Conn. at 614 (quoting Crocker v. Higgins, 7 Conn. 342, 346 (1829)) (Italics emphasis in original).

In determining issues of standing, "the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue." May v. Coffey, 291 Conn. 106, 112 (2009)(internal citations omitted). This principal requirement of standing is "ordinarily held to have been met when a complainant makes a colorable claim of direct injury he ... is likely to suffer .... " Maloney v. Pac, 183 Conn. 313, 321 (1981) (emphasis added). Put simply, the "general rule is that one party has no standing to raise another's rights." Delio v. Earth Garden Florist, 28 Conn. App. 73, 78 (1992) (citing State v. Williams, 206 Conn. 203, 207 (1988); see also, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (citing Warth v. Seldin, 422 U.S. 490, 508 (1975)). CCJEF does not claim and cannot demonstrate a specific personal and legal interest in the subject matter, as distinguished from a general interest shared by all members of the community as a whole, or that its specific personal and legal interest has been specially and

injuriously affected by a decision.[40] See Edgewood Village, Inc. v. Housing Auth., 265 Conn. 280, 288 (2003); see also Argument, pp. 41-42 and n. 41, infra. Therefore, the defendants need only address CCJEF's claim of associational standing.

B. CCJEF Lacks Associational Standing under the Hunt/Worrell Three Part Test.

An association may have standing to assert the rights of its members without asserting injury to itself. "An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt v. Wash. State Apple Adver. Comm., 432 U.S. 333, 343 (1977). The Connecticut Supreme Court has expressly adopted this standard in state constitutional cases involving associational standing. Worrell, 199 Conn. at 614-615 ("[W]e adopt the federal standards for association standing that provide for efficient, expeditious and vigorous resolution of controversies affecting similarly situated persons.") (Emphasis added.) As a plaintiff in this action, CCJEF bears the burden of demonstrating that it has standing. Seymour, 274 Conn. at 104. Failure to demonstrate that all three of the Worrell prongs have been met will result in its dismissal from the case. See, e.g., Fairchild Heights, 131 Conn. App. at 583-84.

[40] Indeed, the plaintiffs only invoked associational standing in their opposition to defendants' prior motion to dismiss. See Doc. # 105, p. 1 and Doc. # 106, p. 1. CCJEF's special interest in the subject matter of the litigation alone cannot establish standing. Without any injury to itself as an organization, it can only seek to establish standing as representatives of its members who have been injured in fact and could have brought suit in their own right. Simon v. E. K. Welfare Rights Org., 426 U.S. 26, 40 (1976).

1. Whether the Members of CCJEF Have Standing to Sue in Their Own Right

In order to satisfy the first prong of Worrell, CCJEF must demonstrate that it is made up of persons who "otherwise have standing to sue in their own right." Hunt, 432 U.S. at 343. The state constitutional right to "free public elementary and secondary schools" runs only to the students. Article VIII, § 1 of the Connecticut Constitution. Only public school students, and their parents acting as "next friend," have standing to bring the claims alleged in plaintiffs' complaint.[41] A court must look to the original complaint when determining whether a plaintiff has standing. Fairchild Heights, 131 Conn. App. at 575 n. 8. The court in Fairchild Heights stated:

> The operative complaint for jurisdictional purposes is that included with the writ of summons. 'The lack of subject matter jurisdiction to render a final judgment cannot be cured retrospectively.' Serrani v. Board of Ethics, 225 Conn. 305, 309, 622 A. 2d 1009 (1993).

See also, Connecticut Associated Builders and Contractors v. City of Hartford, 251 Conn. 169, 185-6 (1999) (no standing at the time of filing); Disability Advocates v. N.Y. Coalition for Quality Assisted Living, 675 F.3d 149, 160 (2d Cir. 2012) ("if jurisdiction is lacking at the commencement of [a] suit, it cannot be aided by the intervention of a [plaintiff] with a sufficient claim.").[42]

[41] See Sheff, 238 Conn. at 25("state has an affirmative constitutional obligation to provide all public schoolchildren with a substantially equal educational opportunity"); Horton, 172 Conn. at 648-49 ("in Connecticut, elementary and secondary education is a fundamental right, that pupils in the public schools are entitled to the equal enjoyment of that right...."); Carrubba v. Moskowitz, 274 Conn. 533, 550-2 (2005) (parents, whose interests are not adverse to their child's, have standing as "next friend."). A municipality does not have standing, even though it may gain or lose educational funds. Horton v. Meskill, 187 Conn. 187, 195-96 (1982).

[42] The Second Circuit so held even though it recognized that a party with standing had represented that it would re-file the action in the event of a dismissal. Id. at 162. The Disability Advocates case is very instructive here because, in Worrell, the Connecticut Supreme Court specifically adopted the federal standard for associational standing. 199 Conn. at 614-15.

Plaintiff's original complaint, filed December 12, 2005 alleges:

> 29. Connecticut Coalition for Justice in Education Funding, Inc. (CCJEF) is a Connecticut not-for-profit corporation, which is committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities. CCJEF's membership includes parents, teachers, education advocacy organizations, community groups, teachers' unions, and parent-teacher organizations. CCJEF draws its members from throughout Connecticut, including the towns of Bloomfield, Bridgeport, Danbury, East Hartford, Hamden, Hartford, Manchester, Middletown, New Britain, New Haven, New London, Norwalk, Plainfield, Putnam, Stamford, Stratford, and Windham.

The plaintiff CCJEF admits in the Solomon affidavit (Doc. # 107) that no parents were members at the time of the original (or January 2006 amended) complaints. Furthermore, Judge Shortall previously found that CCJEF lacked standing for this reason.[43] Doc. # 110 at 3. Only after holding that CCJEF lacked standing because it had no legally relevant members at the time of the original (and amended) filing, did Judge Shortall go on to conclude that CCJEF also lacked standing because it did not allege that its members contained any parents of Connecticut public school students. Id. at 5. Any future amendment by plaintiff CCJEF would be futile because the language proposed by CCJEF in its September 22, 2006 Motion to Amend (Doc. # 112) only addresses the second of the court's concern, not the first. Because CCJEF admitted that no parents were members of CCJEF at the time of the original filing, no amendment would be able to cure that defect.

[43] The trial court relied on Connecticut Associated Builders and Contractors, which held that, looking to when the complaint was filed, the association did not have standing because none of its members had standing to challenge the bid process. 251 Conn. at 185-6. The subsequent cases, Fairchild, supra, and Disability Advocates, supra, clearly hold that there is no discretion to ignore the lack of original subject matter jurisdiction.

Furthermore, CCJEF has stated outside of the complaint that currently CCJEF members include local Boards of Education and municipalities. See Doc. #107.00.[44] Aside from the inability to amend a defective complaint, this admission is problematic for CCJEF because local "[b]oards of education, like towns, have no standing to challenge the constitutionality of legislation enacted by their creator, though they may question the interpretation of such enactments." Conn. Ass'n. of Bds. of Educ. v. Shedd, 197 Conn. 554, 563 (1985). As our Supreme Court has recently noted, "[o]bviously, the furnishing of education for the general public is a state function and duty.... By statutory enactment the legislature has delegated this responsibility to the local boards who serve as agents of the state...." Pereira v. State Bd. of Educ., 304 Conn. 1, 33 (2012). (quoting W. Hartford Educ. Assn. v. DeCourcy, 162 Conn. 566, 573 (1972)); Conn. Gen. Stat. § 10-220(a) ("Each local or regional board of education shall maintain good public elementary and secondary schools, [and] implement the educational interests of the state as defined in section 10-4a...."). The local board of education in providing educational services is an arm of the state. See Pereria, at 33, 44-45; R.A. Civitello Co. v. New Haven, 6 Conn. App. 212, 218 (1986); Derfall v. W. Hartford, 25 Conn. Supp. 302, 304-05 (1964) ("In this state, local boards of education are not agents of the towns but are creatures of the state."); see also Original Complaint at 42, ¶ 116 ("Public schools in Connecticut are agencies of the State."). Accordingly, municipalities and local boards of education that are members of CCJEF cannot sue the state here and, therefore, CCJEF cannot bring suit relying on

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[44] CCJEF's website, http://ccjef.org/about-ccjef, (last visited Nov. 8, 2012) also states that CCJEF is made up of municipalities and boards of education: "About CCJEF CCJEF is a broad-based 501(c)(3) nonprofit. Members include municipalities, boards of education, statewide professional education associations, unions, advocacy organizations, parents, high school students who are at least 18 years old, and other concerned taxpayers." And the current President of CCJEF, Herb Rosenthal, has stated that Newtown is a member of CCJEF. http://newtownbee.com/News/News/2012/02-February/2012-02-09__13-05-21/Rosenthal+Is+New+VP+Of+Statewide+Education+Initiative (last visited Nov. 9, 2012).

their membership.[45] See also, Town of Dartmouth v. Greater New Bedford Reg'l Voc. Tech. High Sch. Dist., 461 Mass 366, 379, 380 (2012) (court cites to wide range of cases holding that governmental entities lack standing to challenge the acts of their creator State and concludes: "Dartmouth and Fairhaven, as political subdivisions of the Commonwealth that exist to carry out a public purpose, are not 'persons' for purposes of challenging the constitutionality of the public school funding obligations imposed by the Education Reform Act.") (citations omitted.)

To conclude, CCJEF admits that no parents were members of CCJEF at the time of the original filing. The original complaint does not allege public school students or their parents are members of CCJEF. Therefore, none of the listed members of CCJEF has any right to suitable and substantially equal educational opportunities. None has standing to sue in his own right. Thus, CCJEF fails to satisfy the first prong of the Worrell/Hunt test and its rationale based on judicial economy and efficiency for allowing representational standing. The rationale posits that associational plaintiffs often serve as adequate representatives of the organization's members who are similarly situated, eliminating the need for members to sue on their own, thus promoting judicial economy. Worrell, 199 Conn. at 617-18. However, this rationale is necessarily premised on satisfying the first prong of the Worrell test, i.e., that association members could have brought the claims in their own right in the first place, which is not the case here. Id. at 616. In this case, the parties whose rights have allegedly been infringed -- the students and their parents acting as the students' next friend -- are the only proper plaintiffs. This defect cannot be corrected by amendments to the original complaint.

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[45] Additionally, local boards of education are not endowed with rights under the "Education" Clause of the Connecticut Constitution (Article VIII, § 1). Horton, 187 Conn. at 195-6. Municipalities and local boards of education would have to be dismissed from this lawsuit to the extent they are considered plaintiffs.

2. Germaneness

In order to satisfy the second prong of Worrell, CCJEF must demonstrate that "the interests it seeks to protect are germane to the organization's purpose." Hunt, 432 U.S. at 343. The germaneness prong of the Worrell test has been characterized by our appellate court as "mandating mere pertinence between litigation subject and organizational purpose." Paucatuck E. Pequot Indians v. Indian Affairs Council, 18 Conn. App. 4, 12 (1989). "The germaneness requirement '[e]nsures a modicum of concrete adverseness by reconciling membership concerns and litigation topics by preventing associations from being merely law firms with standing ... It of course also serves the desirable goal of preventing association leaders from abusing their offices.'" Fairfield County Med. Ass'n v. Cigna Corp., 2008 Conn. Super. LEXIS 2078 at *10 (2008) quoting Humane Soc'y of the U.S. v. Hodel, 840 F.2d 45, 58 (D.C. Cir. 1988).

But, the germaneness prong has also been held to contain a requirement that the lawsuit not create an "obvious or direct conflict with or among its members that is serious or profound." Fairfield Co., 2008 Conn. Super. LEXIS 2078 at *11. In Fairfield, while noting that "the cases disagree" the Superior Court (Stevens, J.) adopted "what appears to be the majority position, that the second prong of the [Worrell] test cannot be met when an association's lawsuit creates an obvious or direct conflict with or among its members that is serious or profound, particularly when no evidence is presented indicating that the conflicts have been addressed by the association itself through an authorization of the litigation in accordance with the association's rules or bylaws." Id. at 11-14, 17. Furthermore, as explained below, CCJEF's own description of its diverse membership demonstrates that the alleged constitutional violations are not "affecting similarly situated persons," Worrell, 199 Conn. at 614-15, and its participation in this lawsuit likely pits the interests of some CCJEF members against others.

In Fairfield, Judge Stevens went on to explain "courts considering associational standing should closely scrutinize a lawsuit involving an association suing its members, or … pitting the interests of some members against those of others." Fairfield Co., at *14 (emphasis added). Fairfield involved a lawsuit brought by the Fairfield County Medical Association ("FCMA") against various insurance companies. FCMA described itself as a "voluntary professional membership association representing almost 2,000 physicians in Fairfield County, including specialists in nearly every area of medical practice." Id. at *2. The "central purpose" of FCMA was "to advocate fair and equitable treatment for its member physicians and their patients in response to challenges from the health insurance industry, government regulators and changing economic conditions." Id. at *3. The insurance company defendants sought to unilaterally implement an "elite" physician network and "give financial incentives to insured patients in order to encourage them to use these designated physicians." Id. FCMA brought suit seeking to prevent the defendants from imposing the proposed "elite" physician network.[46] Id. Importantly, FCMA included members who received the "elite designation in issue" and, accordingly, the defendants claimed that FCMA had an "obvious and severe" conflict such that FCMA should not be permitted associational standing. Id. at *10-11.

Judge Stevens ultimately concluded that FCMA "has taken a position [in the litigation] that on its face is unequivocally contrary and detrimental to the financial interests of a clearly identifiable part of its membership." Id. Judge Stevens further explained that "[t]he remedy sought by the representative association would actually deprive some of its own members of an acknowledged benefit, thereby causing them injury." Id. While acknowledging that

[46] The case was brought as a class action and the plaintiffs' class definition excluded "those members of FCMA who have been designated as elite physicians pursuant to the disputed designation programs." Fairfield Co., 2008 Conn. Super. LEXIS 2078 at *5.

"associational standing should not be predicated on unanimity among a group's members or the nonexistence of internal conflicts," Judge Stevens concluded that "the litigation goal itself is plainly and directly at odds with the pecuniary interests of part of the membership under circumstances where the [association] has not offered any evidence indicating that the suit was authorized or approved in accordance with its procedures." Id. at 17; accord, Mass. Med. Soc. v. Group Ins. Comm., 2009 Mass. Super. LEXIS 100, *13-16 (Suffolk 2009) (court found Fairfield case instructive).

The same concerns undermining associational standing exist here, perhaps even more so. To be sure, according to the original complaint, p. 13, ¶ 29, CCJEF exists "to ensur[e] that public school children in Connecticut receive suitable and substantially equal educational opportunities."[47] The original complaint further alleges that CCJEF membership "includes parents, teachers, education advocacy organizations, community groups, teachers' unions, and parent-teacher organizations." Id. The coalition is made up of both the providers of education (teachers) and the consumer-representatives of the educational product (student-parents).[48] The two groups' interests are not identical and may conflict. For instance, parents' positions may differ from teachers or teacher unions with regard to how much property tax should be devoted to teachers' salaries. Likewise, the interests of the teachers' unions and the parents of students may now or in the future diverge with respect to the proper mechanisms for advancing

[47] See p. 57, n. 56, infra (CCJEF has stated it also seeks increased funding for Connecticut public schools.)

[48] And of course, public school teachers and their unions do not have standing to assert the alleged constitutional rights of students giving rise to this case. See p. 41, supra and n. 41.

educational goals.[49] The potential for divisiveness is readily apparent between CCJEF member boards of education and CCJEF member teacher unions, who must negotiate collective bargaining agreements across the table from each other. Conn. Gen. Stat. §10-153a et seq.

Additionally, plaintiffs' have stated that CCJEF is currently made up of "municipalities," Doc. # 107.00, and many of those same municipalities have taken public positions collectively that run counter to the pecuniary interests of teachers. See "Connecticut Conference of Municipalities' 2012 State Legislative Priorities" at 6 ("Modify state-mandated compulsory binding arbitration laws under the Municipal Employee Relations Act (MERA) and the Teacher Negotiation Act (TNA) to make the process fairer for towns and cities and their property taxpayers."), http://advocacy.ccm-ct.org/Resources.ashx?id=8f9138c4-3914-41d2-ba68-621df8429ea8 (last visited Nov. 8, 2012).

And, not surprisingly, Connecticut municipal groups do not even agree with one another on key issues such as whether school funding ought to "follow the child." See Jacqueline Rabe Thomas, On Their Way Out the Door, State Ed Board Members Pass on School Financing Decision, February 9, 2011, The CT Mirror, http://www.ctmirror.org/story/11446/their-way-out-door-state-education-board-members-opt-pass-recommendations-school-financi (comparing the position of the Connecticut Association of Public School Superintendents and that of the

[49] In fact, a recent education lawsuit brought in California by a group of parents and students pursuant to the California Constitution exemplifies the conflict between teachers' unions and parents/students. There, the parents and students allege that their fundamental right to education has been infringed by "the continued enforcement of five California statutes...that confer permanent employment on California teachers, effectively prevent the removal of grossly defective teachers from the classroom, and, in economic downturns, require layoffs of more competent teachers." Vergara v. California, BC 484642, Superior Court of California, County of Los Angeles, complaint filed May 14, 2012, at 3, ¶ 10, http://toped.svefoundation.org/wp-content/uploads/2012/05/Teach-StudentsMatter-Lawsuit051712.pdf (last visited Nov 9, 2012). See also http://www.scpr.org/blogs/education/2012/06/05/6468/lawsuit-would-undo-significant-teacher-job-protect/ (last visited Nov. 9, 2012).

Connecticut Conference of Municipalities with regard to whether state money should be given to the school where child attends rather than to the school district in which he resides to the extent the district's costs have been reduced) (last visited Nov. 8, 2012).

The remedies sought by plaintiffs in this case are fraught with potential or actual conflicts for CCJEF members. CCJEF has explicitly requested that this court, inter alia, "declare that the existing school funding system is unconstitutional, void and without effect..." and "order defendants to create and maintain a public education system that will provide suitable and substantially equal educational opportunities to plaintiffs." Original Complaint, p. 54, ¶¶ 170 iii and v (emphasis added). While these prayers for relief sound in equity and do not explicitly request the court increase state education funding, a thorough and fair reading of the complaint and the Palaich cost study plaintiffs submitted as an expert's report make clear that a court ordered increase of more than $2 billion per year in state funding of public elementary and secondary education is exactly what plaintiffs seek. See Id. at 3, ¶ 4 ("The level of resources provided by the State's education funding scheme is arbitrary and not related to the actual costs of providing a suitable education."); Id. at 41 ¶ 113 ("The unsuitability and inequality of the plaintiff's educational opportunities, as well as the subsequent harm suffered, is caused by a flawed educational funding system."); Id. at 42 ¶¶ 120, 121 (alleging that the state funded 39% of education statewide in 2003 and asserting that number should have been 50%); Id. at 43 ¶122 ("The municipalities in which plaintiffs reside do not have the ability to raise the funds needed to compensate for the monetary shortfalls that result from the State's arbitrary and inadequate funding system."); Id. at 44-45, ¶ 132 (complaining that in October of 2003 the "foundation" amount of the Education Cost Sharing Formula should have been $2,009 more than the current "foundation" amount); See also Doc. #112.00, Affidavit of Diane Kaplan deVries dated

September 22, 2006 ("In joining CCJEF these parents have expressed a desire to be a part of an organization that is involved in litigation seeking increased funding for Connecticut public schools.") (emphasis added).

If the court were to take the action requested by the plaintiffs -- eliminate the entire school funding system and implement a new one -- such an order, if granted, would likely pit the interests of CCJEF parents from one district against CCJEF parents of another, each of whom would naturally want an advantageous portion of the new funding. See Doc. #112.00, Affidavit of Diane Kaplan deVries dated September 22, 2006 ("Currently, seventeen parents of thirty-eight students attending twenty-three public schools throughout the state of Connecticut are members in good standing of CCJEF. These parents reside in nine Connecticut cities.") Likewise, the same conflict would exist among municipalities and boards of education.

Additionally, the teachers' union members of CCJEF might, for example, desire that any increased state monies that occur as a result of this lawsuit be used to increase the pay, benefits, and number of teachers. These goals would be consistent with a unions' role with respect to its dues paying members. Contrarily, CCJEF parents of students or certain education advocacy organizations might disagree and believe that some or all the pot of increased money might be better spent on facilities, technology, or even charter schools.[50] CCJEF has alleged that appropriate class size, and highly qualified teachers and administrators, as well as modern and well-maintained facilities, libraries, and textbooks are essential components of a suitable educational opportunity. Original Complaint at 19-20, ¶ 51(b), (d), (e), (f), (g), (j), (k) and ¶ 53.

[50] Also, as reflected in Vergara, Case no. BC484642, filed May 14, 2012, supra n. 49, some parents might even believe that sub-par educational opportunities have occurred as a result of rules advocated for years by teachers' unions regarding tenure, pay, lack of merit pay etc.

Such conflicts undoubtedly "pit [ ] the interests of some members against those of others." Fairfield Co., 2008 Conn. Super. LEXIS 2078 at 14.

Furthermore, the complaint itself contains allegations that are in conflict with some public positions taken by one or more members of CCJEF. For example, the plaintiffs allege that standardized tests are an "educational output" and that student performance can be measured by standardized tests. Original Complaint at 31-36. This argument is contrary to some publicly stated positions of some CCJEF members such as teachers' unions, other educators, and parents who have questioned the validity of reliance on standardized tests to measure teacher efficacy and student achievement. See, e.g., http://www.cea.org/issues/press/2012/news-release-05-29.cfm (last visited Nov. 9, 2012) (Then CEA Executive Director Mary Loftus Levine recognized "how misguided the NCLB focus on testing truly was" and stated that "[t]eachers, students, and schools should be judged on multiple indicators ....").

Examples of divergent interests can be seen when comparing complaint allegations with statements by some CCJEF members. The plaintiffs allege that a school in New Britain "lack[s] .... quality teaching." See Complaint at 21, ¶ 55. If New Britain is or was a member of CCJEF,[51] such public rebukes of the New Britain teachers at that school run counter to those teachers' interests and run counter to New Britain's public representations. In the New Britain City Journal, the President of the Board of Education, Sharon Beloin-Saavedra, writes: "We have a highly qualified workforce with over 85 % of our certified staff having their masters."

[51] See Exh. 7 - New Britain Bd. of Ed. minutes of Oct. 17, 2005 at 6-7 reflecting New Britain as a member of CCJEF (attached); CCJEF's 2010 IRS Form 990, http://dynamodata.fdncenter.org/990_pdf_archive/562/562518924/562518924_201012_990EZ.pdf (listing parent member from New Britain).

The Time is Now, dated July 13, 2012 at http://nbcityjournal.com/archives/5045 (last visited Nov. 6, 2012). Indeed, the New Britain public school's website states: "The Consolidated School District of New Britain is a dynamic system with highly talented and committed educators who are actively engaged in continuous professional improvement working to ensure academic excellence as the standard for all students." Ron Jakubowski, Acting Superintendent of Schools, "Message From the Superintendent," New Britain Board of Education, http://www.csdnb.org/#suprintmesg (emphasis added, last visited Jan. 23, 2012, attached as Exhibit 6). "School faculties include only teachers with college level degrees, many of whom have successfully finished their advanced studies." New Britain Bd. of Education, http://www.csdnb.org/#home (last visited Nov. 7, 2012). Thus, CCJEF's complaint in this case is directly at odds with the public representations made by this member of CCJEF.

The complaint also impugns a school in Bridgeport, alleging that it has an "inadequate curriculum, inadequate library resources, and lack[s] counseling " Id. at 24, ¶ 59. If there are superintendents or town members of CCJEF from Bridgeport this statement would be contrary to their interests as well. The Bridgeport public schools website describes the same school as follows: "Roosevelt is a full service school with a nurse practitioner, a dentist, social workers, and psychologists in addition to the teachers and education staff to assist all the students....We are dedicated to providing the highest quality education for all students through a rigorous academic program, a comprehensive support system, and a philosophy that centers on the child as an individual."
http://bridgeport.ct.schoolwebpages.com/education/school/school.php?sectionid=192 (last visited Nov. 8, 2012). The allegations in the complaint about Roosevelt are "unequivocally

contrary and detrimental to the … interests of" Bridgeport. Fairfield Co., 2008 Conn. Super. LEXIS 2078 at 14.

In addition to the above referenced internal conflicts, there is the stated conflict between CCJEF and the AFT, one of CCJEF's members. CCJEF testified against the Governor's Senate Bill 24 proposing reforms, while Randy Weingarten, the President of the AFT, has publicly shown great support for Governor Malloy's enacted reforms.[52] Compare http://www.cga.ct.gov/2012/EDdata/Tmy/2012SB-00024-R000221-CCJEF-TMY.PDF (Feb. 21, 2012 testimony by CCJEF to Education Committee, last visited Nov. 23, 2012) ; http://www.cga.ct.gov/2012/EDdata/Tmy/2012SB-00024-R000222-Connecticut%20Coalition%20for%20Justice%20in%20Education%20Funding-TMY.PDF (Feb. 22, 2012 testimony by CCJEF to Education Committee, last visited Nov. 30, 2012) with the video in n. 9, supra.)

At the very least these apparent conflicts call into question whether the members of CCJEF have unified interests. These potential conflicts in the diverse membership of CCJEF make abundantly clear why the claimed constitutional violations do not affect similarly situated persons. Although all of CCJEF's members no doubt value and advocate for quality education, their goals, needs, and solutions may be too disparate to be represented by one litigating organization. It must again be noted that the only persons who would have standing to assert violations of the state constitutional provision at issue here are students in Connecticut's public schools and their parents as their "next friend." This court should not find associational standing for a diverse group such as CCJEF that was comprised only of persons who did not on their own

[52] The AFT is running New Haven's High School in the Community and is one of four schools chosen to participate in the Commissioner's Turnaround Network. See Pryor Affidavit, ¶ 14.

have standing at the time the original complaint was filed. Put another way: the court should not allow entities, who otherwise would not have standing, to manufacture it by adding later in the litigation a few persons who would have standing on their own.[53] See Disability Advocates, 675 F.3d 149, 160. ("We have long recognized that 'if jurisdiction is lacking at the commencement of [a] suit, it cannot be aided by the intervention of a [plaintiff] with a sufficient claim.' [citations omitted]....This is no casual observation.")

Finally, in addition to the Fairchild and Mass. Medical Society cases, supra, other courts have found that where the face of the complaint reflects a conflict between the interests of its members, associational standing requirements are not satisfied. See e.g., Retired Chicago Police Assoc., 76 F. 3d at 863-867 (under second prong court found several conflicts of interest existed, sufficient to preclude germaneness); New Haven Firefighters Local 825 v. New Haven, 2005 U.S. Dist. LEXIS 38139 * 6-9 (D. Conn. 2005) (Kravitz, J.) (court addressed the conflict issue under the third prong of the Hunt test and found that diametrically opposed interests of significant subsets would require individual participation by aggrieved members) citing Juvenile Matters Trial Lawyers Ass'n v. Judicial Dept., 363 F. Supp. 2d 239, 248 (D. Conn. 2005).

In Retired Chicago Police Association v. City of Chicago, the court recognized the plaintiff's burden when a defendant claims a conflict of interest:

> The plaintiff bears the burden of proof that it meets the required elements of standing. Lujan, 504 U.S at 561, 112 S. Ct at 2136. Consistent with that burden, where a defendant asserts that a direct-detriment conflict of interest precludes an organization from asserting associational standing, the organization bears the burden of coming forward with competent proof to rebut that challenge. See McNutt, 298 U.S. at 179, 56 S. Ct. at 785. In light of our discussion above, a plaintiff can defeat a direct detriment conflict challenge by showing that the

[53] It deserves reiteration that at the time of the original complaint, the plaintiffs alleged that parents were members of CCJEF. CCJEF later conceded that this was inaccurate. Doc. # 107.00.

> litigation, if successful, will not cause a direct detriment to any of its members or that the litigation was properly authorized.

76 F. 3d 856, 865 (7th Cir. 1998), reh'g denied 1996 U.S. App. LEXIS 6820 (1996). Plaintiffs have failed in their burden to allege necessary facts demonstrating that CCJEF has followed its own procedures and obtained consent from its members to bring this litigation in order to resolve the above referenced conflicts of interest within its membership.[54] Warth v. Seldin, 422 U.S 490, 518 (1975) (In finding a lack of associational standing, the Court stated: "It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers."); Seymour, 274 Conn. at 103-4.[55]

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[54] Plaintiffs have a heavy burden to overcome a conflict. See e.g., Bailey v. Pres. Rural Rds. Of Madison County, 2011 Ky. LEXIS 175 (2011) (the Supreme Court of Kentucky held that a member of an association must consent in writing or by testimony to be represented by the association. (internal citations omitted)); Retired Chicago Police Assoc., 76 F.3d at 868 (vote of hands by membership insufficient to establish authorization to litigate; plaintiff should have offered affidavit stating whether or not quorum of members were present for vote); Maryland Highways Contractors Ass'n., 933 F.2d at 1253 (Fourth Circuit held that Association Board lacked standing; it made decision to litigate on its own and "took the unusual position of not telling the members of its decision to litigate until after the suit had already been filed"); Mountain States Legal Foundation on behalf of Ellis v. Dole, 655 F. Supp. 1424, 1431 (D. Utah 1987) (association lacked standing as it failed to establish that members had authorized suit; decision to sue had been made by association's Board of Directors rather than by members as a whole.)

[55] After the filing of the complaint in this action, CCJEF submitted an affidavit, signed and dated September 22, 2006, by CCJEF Consultant Diane Kaplan DeVries, in which she alleged that the seventeen parents who joined CCJEF after the lawsuit was filed "have expressed a desire to be a part of an organization that is involved in litigation seeking increased funding for Connecticut public schools." Doc. # 112. Such a vague representation, in no way satisfies the concerns and requirement for written authorization expressed in Fairfield Co. and the other cases cited in n. 54 supra, under prong #2 of the Hunt/Worrell test.

3. Whether Plaintiffs' Claims or Relief Requested Require the Participation of Individual Members

In order to satisfy prong number three of Worrell, CCJEF must demonstrate "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt, 432 U.S. at 343.

> Representational standing depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured .... Associational standing is particularly appropriate ... where the relief sought is a declaratory judgment....

Worrell, 199 Conn. at 616 (citations omitted).

The claims raised by plaintiffs here, under Art. 8, § 1 of the Connecticut Constitution, demand the participation of individual association members. On its face the complaint does not assert that all public school students in Connecticut are being deprived of their education, only some. Plaintiffs allege that "[t]he State is failing to provide suitable educational opportunities in that the educational inputs listed in paragraph fifty-one have not been made available to all students...and quality of the inputs listed in paragraph fifty-one vary significantly across schools throughout the state." Original Complaint at 20 ¶ 52, 53. And of course, plaintiffs' complaint, which defendants move to dismiss, is not pled as a class action. Additionally, throughout the complaint plaintiffs refer to and compare at least two sets of students. The complaint refers to these Connecticut students as "non-plaintiff students" and repeatedly compares them to the named student-plaintiffs. Such comparisons are set out by referencing different schools and school districts. See, e.g., Original Complaint at 29- 43, ¶¶ 75, 78, 81, 90, 98, 106, 111, 123; see also p. 43, ¶ 122 ("the municipalities in which the plaintiffs reside"). Finally, the complaint does not even allege that all student-plaintiffs suffer equally. See, e.g., Complaint at 29-41, ¶¶ 74, 90,

91- 95, 99, 100, 107, 108, 112. Thus, plaintiffs' complaint itself individualizes the nature of the constitutional claims.[56] Testimony from the different members of CCJEF as well as the students will be necessary to ascertain whether certain students in different school districts have received an adequate or suitable educational opportunity. Such claims require "first-hand knowledge of [alleged] violations and how [the individual association members] were damaged." Fairchild Heights, 131 Conn. App. at 584. Thus, following plaintiffs' own complaint, the parents, teachers, teachers' unions, and parent-teacher organizations of the different schools and school districts would have to testify as to their first hand knowledge of their students' educational opportunities and outcomes. As a result of the need for first-hand testimony by association members, the court in Fairchild held the association lacked standing under the third prong. Id. See also, United Food & Commercial Workers Union Local 751 v. Brown Group, 517 U.S. 544, 554 (1996) (generally, seeking damages would require participation of association's members precluding associational standing).

The different municipalities and boards of education within CCJEF will need to testify about their individualized economic harms through the application of the ECS funding and lack of resources, Bano v. Union Carbide Corp., 361 F.3d 696, 715 (2d Cir. 2004) (where individualized proof of economic damages is necessary, the third Hunt prong is not satisfied.) Courts in addition to the Second Circuit's decision in Bano, supra, have also recognized the lack of standing when association members testify about individual injuries. E.g., Sun City Taxpayers' Assoc. v. Citizens Utilities Co., 45 F.3d 58, 61 (2d Cir. 1995) (no standing because

[56] Should CCJEF demonstrate successfully its associational standing, plaintiffs' evidence should be limited to the individual plaintiffs' claims because this is not a class action lawsuit. The plaintiffs should not be allowed to present evidence on a statewide basis as that would pose an end-run around the class certification requirements. Evidence received and relief requested must be limited to named plaintiffs.

individual members would be required to testify about each resident's injuries that differed depending upon the amount of utility services consumed and the uses to which those services were put.); Kansas Health Care Association v. Kansas Dept. of Social and Rehabilitation Services, 958 F.2d 1018, 1023 (10th Cir. 1992) (proof of plaintiffs' claim that rates are not adequate and reasonable, that certain facilities are efficiently and economically operated, and to identify costs incurred by such facilities will necessarily require individual participation of the associations' members).

To conclude, CCJEF cannot satisfy any of the three prongs of the Hunt/Worrell standing test. CCJEF had no parents or students as members at the time of the original filing. In addition, CCJEF's members are not similarly situated so as to avoid conflict of interest issues, and its members will likely have to testify as to the individualized harm incurred.

CONCLUSION

For the reasons discussed above, the defendants move this court to dismiss the plaintiffs' complaint in its entirety because it is not ripe for adjudication in light of the comprehensive legislative and executive changes taking place in Connecticut that will take years to assess fully, and because the complaint is moot due to the obsolete nature of the educational model pled by plaintiffs. Additionally, the defendants move this court to dismiss plaintiff CCJEF for lack of standing.

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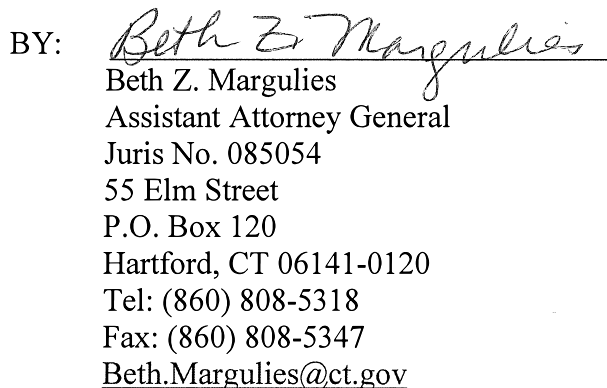
BY: 
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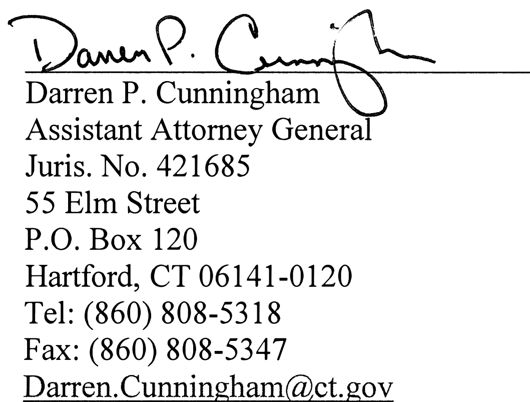
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CERTIFICATION

This will certify that a copy of the foregoing has been mailed this 9th day of January 2013, to the following:

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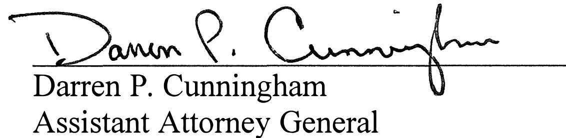

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