

# Historic CCJEF v. Rell Decision A Game-Changer

By Herb Rosenthal and Jim Finley

*This column is the first in a periodic series of editorials by Connecticut municipal leaders on issues of importance to towns and cities.*

The September 7, 2016, decision in *CCJEF v. Rell* is a landmark victory for Connecticut's public school students. The court proceedings showed how school districts, particularly high-poverty school districts, have been getting short-changed by the State. The Court's decision, though now under appeal, has reignited public policy debate and discussion about the need to reform our failed education finance system.

While the Connecticut Coalition for Justice in Education Funding (CCJEF) did not win all its arguments, the trial court found key elements of Connecticut's K-12 public education system unconstitutional.

CCJEF is the largest and most diverse education reform coalition ever organized and established in our state. The coalition is comprised of students, parents, boards of education, municipalities, education stakeholder organizations, and private citizens. CCM has long been an important supporter of CCJEF. CCJEF has been in the trenches for more than 11 years working through the courts and executive and legislative branches to achieve adequacy and equity in Connecticut's failed school finance system.

CCJEF initiated this case back in 2005 to ensure that ALL Connecticut students — particularly our poor and minority students — receive adequate and equitable educational opportunities to become college- and career-ready. Almost 40 years of school finance litigation in our state has proven that it takes judicial power to compel the other two branches of state government to meet state constitutional obligations. With the *CCJEF v. Rell* decision and upcoming appellate review, we are on the path to see that goal realized.

CCJEF called 34 witnesses during our case-in-chief while the State called 18 witnesses. There were 61 days in court from January 12 to August 10, 2016. The decision in the case is 90 pages long and contains 1,060 findings of fact.

CCJEF was represented by the New York law firm of Debevoise & Plimpton, which provided its services pro bono. Attorney Joe Moodhe was the lead litigator. Debevoise was assisted by Attorneys David Rosen and Alex Knopp, and the Yale Law Education Clinic. Students in the Yale Law Clinic initially filed the suit on behalf of CCJEF and successfully argued before the Connecticut Supreme Court that the Connecticut Constitution guarantees public school students the right to an adequate and equitable education and requires the State to provide that education.



Herb Rosenthal (L) and Jim Finley (R) at a press conference held after the CCJEF ruling.

## CCJEF v. Rell: Trial Court Findings in Brief

CCJEF plaintiffs claimed that educational opportunities were inadequate and inequitable.

Superior Court Judge Moukawsher found educational opportunities to be constitutionally inadequate but not inequitable.

### Adequacy

The Supreme Court's 2010 decision in *CCJEF v. Rell* indicated that adequacy of resources was to be judged in part according to a four-factor test laid out in a New York Court of Appeals decision requiring:

- Minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn;
- Minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks;
- Minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies;
- Sufficient personnel adequately trained to teach those subject areas.

Judge Moukawsher interpreted the Supreme Court's 2010 decision to require only that four factors be met. Furthermore, he interpreted those factors to constitute "a fairly easy standard for schools to meet."

According to Judge Moukawsher, the legislature spends enough "to create things recognizable under contemporary standards as schools." In other words the problem is not that more aggregate funding is needed.

Nevertheless he also read into the constitutional adequacy requirement that the state's educational policies be rationally, substantially, and verifiably connected to teaching children.

Applying this rational, substantial, and verifiable test, Judge Moukawsher found Connecticut's educational policies to be unconstitutional in the following areas:

- Funding - Connecticut has no rational, substantial, and verifiable plan to distribute money for education aid and school construction.

The Education Cost Sharing (ECS) formula is not being used.

Every school construction project gets on the priority list without rational criteria for what should be built or shouldn't.

"The court can't dictate the amount of education spending, but spending including school construction spending must follow a formula influenced only by school needs and good practices.

The important thing is that whatever rational formula the state proposes must be approved and followed."

- The State has not rationally, substantially, and verifiably defined what an elementary and secondary education means.

Lack of standards means that children are graduating from high school unprepared.

- Teacher evaluation and compensation systems are not rational, substantial, and verifiable.

The evaluation system does not provide meaningful information because almost every teacher is rated Proficient or Exemplary.

It is irrational for compensation to be based "solely" on years of experience and degrees earned given evidence that those factors bear little relationship to good teaching.

- Special education spending is not rational, substantial, and verifiable.

Defendants' expert testified that children are both

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under- and over-identified for special education.

Special education is largely an unfunded mandate imposed on districts.

Although the judge addressed certain other issues such as Pre-K that he found to be worthy of attention as policy matters, he concluded that they did not rise to the level of constitutional concern.

### Equity

Judge Moukawsher's decision gave only cursory attention to CCJEF's equity claims.

He did not apply the test for equity prescribed by *Horton v. Meskill*, which focuses on disparities in educational resources across districts.

Instead of considering whether disparities in resources existed between rich and poor districts, Judge Moukawsher concluded that there was no equity violation because overall the State provides more money to poor districts than rich ones.

### Remedy

Judge Moukawsher ordered the State to submit proposals to correct deficiencies identified within 180 days, with plaintiffs having 60 days to comment and a hearing to follow.

He ordered responses from the State in the following areas: (1) The relationship between the State and local government in education; (2) An education aid formula; (3) A definition of elementary and secondary education, including an objective and mandatory statewide graduation standard; (4) Standards for hiring, firing, evaluating, and paying education professionals; and (5) Funding, identification, and educational services standards for special education.

## Decision Now Under Appeal

The State applied for permission from the Connecticut Supreme Court for review of Judge Moukawsher's interlocutory (non-final) decision.

The State identified the following areas as grounds for review:

- Whether Judge Moukawsher incorrectly found educational opportunities to be constitutionally inadequate because state educational policies were not "rationally, substantially, and verifiably" linked to teaching children.
- Whether plaintiffs lacked standing to bring the lawsuit.

CCJEF plaintiffs opposed the application for review, arguing that the remedy process ordered by Judge Moukawsher should be allowed to play out before the Supreme Court took up review of the case.

In the alternative, plaintiffs argued that if the Supreme Court took up review now, it should also review issues including:

- Whether Judge Moukawsher erred in determining the constitutional standard for adequacy of educational resources and in applying that standard.
- Whether Judge Moukawsher erred in determining that plaintiffs failed to prove their claim of constitutionally inequitable resources.

On September 20, 2016, Chief Justice Chase Rodgers granted defendants' application for appellate review as well as plaintiffs' request in the alternative for review of the additional issues. The chief justice also approved the State's request to stay the 180-day timeline for the State to propose remedies.

This means that the Supreme Court will consider all of the findings and conclusions of law made by Judge Moukawsher, including those regarding the standard for the State's responsibility to fund and provide all public school students with an adequate education.

## Supreme Court Schedule

- Plaintiffs filed cross-appeal on October 3, 2016.
- The parties' proposed schedule would wrap up briefings by April 12, 2017.
- The State would have to submit the first brief staking out its position on the issues by December 12, 2016.
- CCJEF plaintiffs will have the last word (get to submit the last brief) prior to oral argument.
- While it is possible that argument before the Supreme Court could occur in late spring, it is possible that argument would be carried over to the fall term.

## Conclusion

So the almost 11-year-old *CCJEF v. Rell* case is back in the hands of the CT Supreme Court. During this litigation a generation of students have been denied their state constitutional right to an adequate and equitable education. CCJEF is hopeful that these rights, too long denied to many of our public school students, will soon be returned and guaranteed.

And last, Connecticut owes a debt of gratitude to the late Dr. Dianne Kaplan deVries. The CCJEF founder, long-time project director, and guiding light is the reason Connecticut's schoolchildren of today and tomorrow finally got their day in court.

*{About the authors: Herb Rosenthal is president of CCJEF and a past president of CCM. Herb currently serves on the CCM Board of Directors and as a Selectman in Newtown. Jim Finley is president of Finley Government Strategies and principal consultant to CCJEF. Jim spent more than 34 years with CCM, including seven years as executive director and CEO.}*