DOCKET NO. X07 HHD-CV-14-5037565-S

CONNECTICUT COALITION FOR : SUPERIOR COURT

JUSTICE IN EDUCATION FUNDING :

INC., et al. :

*Plaintiffs* : COMPLEX LITIGATION DOCKET

: AT HARTFORD

v. :

:

M. JODI RELL, et al. : JULY 15, 2016

**DEFENDANTS' POST TRIAL BRIEF**

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of June 3, 2016

• The Connecticut constitution makes the state directly responsible for education. It is responsible for what happens in all of its school districts. Itis responsible for the agents it uses to carry out this responsibility and these agents are unconditionally subject to its authority over education.

See Doc. #291.00, pp. 1-7; Defs. Post Trial Brief, pp. 19-21.

• Beyond the minimum amounts needed under contemporary standards to recognize them as primary and secondary schools, the total amount of money that must be spent on the state's primary and secondary schools cannot be dictated by judicial fiat because the judiciary is constitutionally unfit to determine appropriate overall spending amounts against competing constitutional priorities.

See Doc. #291, pp. 12-14, Doc. #296; Defs. Post Trial Brief, pp. 96-100.

• The constitution's education provision read together with its equal protection provision means the constitution requires a funding formula rationally designed to deliver adequate funding for children's educational needs in every district. Enactments unconnected to a rationally designed formula are impermissible even if on the whole they direct more money to poorer towns then to richer towns.

See Doc. #291.00, pp. 8-14; Defs. Post Trial Brief, pp.37-38.

• Connecticut spends billions of dollars on primary and secondary education without a rational standard for what it means to get a primary and secondary education. A standard can't be rational if it contains criteria so subjective and so variable as to render the standard meaningless.

See Defs. Post Trial Brief, pp. 52-55.

• Connecticut spends most of its education money on professional salaries without compensation and performance measures rationally related to the education of children.

See Defs. Post Trial Brief, pp. 56-62.

• Connecticut spends a very substantial portion of its education funds on special education without rationally ensuring that the children who need special educational services are getting them and while being certain that children who cannot profit from educational services are getting services at the expense of those who need them.

See Defs. Post Trial Brief, pp. 69-75.

**INTRODUCTION**

The State of Connecticut funds public education generously and fairly, easily exceeding its obligations under the state constitution. In Fiscal Year 2015, the state alone spent about $4.538 billion on public school education (pre-k to 12).  DTX 6318; see also DTX 5681, 5682 (total ECS and Alliance grants); DTX 4716; DTX 6461, DTX 3814 (Pension Funding).  The federal government spent another $427 million, for a total of nearly $5 billion for education in Connecticut in FY 2015.  Id.  These funds are in addition to the funds raised on the local level through property taxes and spent on education.  Equally important, beginning in 2012 the State has increased funding, support and oversight to the neediest Connecticut school districts, including spending an additional $548 million on the worst 30 performing school districts as measured by standardized test scores.[[1]](#footnote-1) [http://www.sde.ct.gov/sde/lib/sde/PDF/dgm/report1/ ecs-alliance-nonalliance.pdf](http://www.sde.ct.gov/sde/lib/sde/PDF/dgm/report1/%20ecs-alliance-nonalliance.pdf), DTX 6488, DTX 5682. See infra Sections III.H and IV.B (Alliance District and Commissioner's Network programs).

While public education spending in Connecticut has steadily increased over the years, virtually all other aspects of Connecticut government have been or are about to be significantly reduced.  Most of state government's core governmental functions, other than support for education, have been affected much more heavily by these cuts.[[2]](#footnote-2)

I. JURISDICTIONAL DEFICIENCIES

A. Individual Plaintiffs Who Lack Standing

The right to sue to enforce the state constitution's educational provisions belongs to the students. See Sheff v. O'Neill, 238 Conn. 1, 25 (1996) citing Horton v. Meskill, 172 Conn. 615, 648-49 (1977) (Horton I). However, a minor may bring suit only through a guardian or next friend and parents commonly serve as next friend. Collins v. York, 159 Conn. 150, 153 (1970); Shockley v. Okeke, 92 Conn. App. 76, 81 (2005). Parents whose interests are not adverse to their child’s have standing as “next friend.” Carrubba v. Moskowitz, 274 Conn. 533, 550-2 (2005). Where a plaintiff lacks standing to sue, the court is without subject matter jurisdiction to determine the cause. Id. Defendants hereby renew their requests to dismiss individually named plaintiffs who lack standing as explained in more detail below.

1. Stipulations

Both parties agreed at the end of the plaintiffs' case in chief that certain plaintiffs should be dismissed from the case. See Doc. # 308.00, dated 4/12/16; Trial Tr., 3/30/16, p. 2. These plaintiffs include: Merrill Gay, Gregory Gay aka Gregory Rose; Hernan and Stephanie Illingworth; Donna Johnston aka Donna Finnemore and Brian Wisniewski; Zenitra Wolfe and Brandon Wolfe; Jacob Hall; Dharan Velasquez; and Jennifer Lemus. Jennifer Lemus is the same person as Jennifer Rodriguez, as plaintiffs stated in their stipulation. She was withdrawn as a plaintiff by Doc. # 271.00, dated 1/13/16, but the docket still shows her as Jennifer Rodriguez (Pl-36). All claims of these plaintiffs must be dismissed.

1. Students No Longer in Public School

Students who are no longer in Connecticut public schools have no standing as their claims are moot. Plaintiffs stipulated to the dismissal of several plaintiffs who are no longer CT public school students because they have graduated from high school, but apparently overlooked the fact that Emily Black (Pl-29) graduated in 2014 and went on to attend UCONN. See Appendix 4, Pls.' Amended Responses to Defs.' Interrogatories dated 1/9/15, # 8. Accordingly, she must be dismissed from the case.

1. Non-Parent Adults

Richard Molinaro (Pl-07) is listed in the complaint as "on his own behalf and as next friend of his minor granddaughter" Jada Mourning. CTAC, ¶ 8. Jada Mourning lives with her mother. CTAC, ¶ 9. Mr. Molinaro clearly has no standing in his own right and his derivative claim based on his granddaughter fails as there has been no evidence as to whether his interests are aligned or adverse with the minor child. There has also been no evidence establishing any significant relationship between the grandfather and the child or exceptional circumstances as to why he should act as "next friend;" nor any evidence as to why the parents have not come forward as next friend. See Whitmore v. Arkansas, 495 U.S. 149, 163-4 (1990).[[3]](#footnote-3) Since the minor cannot bring suit on her own, both plaintiffs should be dismissed.

Similarly, Hector Tirado (Pl-46) claims standing not as "next friend," but "on his own behalf and on behalf of his step-children" Yasiel (Pl-48) and Alanis Flores (Pl-47) CTAC, ¶ 32. He clearly has no standing on his own and his derivative claim similarly fails. Even if a "next friend" allegation had been made, there is no evidence establishing a significant relationship and interests aligned with the children. There is also no evidence establishing why a parent has not brought suit as next friend. These three named plaintiffs should be dismissed for the same reasons as stated in the prior paragraph.

1. No Evidence of Standing for Any Individually Named Plaintiffs.

It is plaintiffs' burden to establish standing. Emerick v. Town of Glastonbury, 145 Conn. App. 122, 128 (2013). Plaintiffs have failed to put on any evidence at trial to establish standing as to any of the individually named plaintiffs. Defendants have objected to the plaintiffs' use of undisputed Requests for Admissions (RFAs) ## 20-80 as a means of satisfying their burden to establish standing on behalf of the students. See Doc. # 253.00. The use of RFAs was a court-mandated process, not a discovery tool invoked by either party. The defendants objected to its use specifically because it had the effect of shifting the burden of proof away from the plaintiffs to establish standing for the individually named plaintiffs by deriving a forced admission from the defendants. Id. Defendants further objected to these RFAs as an attempt to circumvent the necessity of presenting testimony by witnesses who were never on the witness list and, therefore, not subjected to deposition, as they would have been if they had been so listed. See Defs.' Motion to Preclude Doc. # 253.00, denied Doc. # 253.86.

1. Plaintiffs Have Failed to Establish Any Harm to Any Specific Plaintiffs.

Without a Specific Injury, the Plaintiffs Lack Standing.

Thus, to have standing to bring this action, the plaintiffs necessarily must establish that they are classically aggrieved. In other words, they must demonstrate a specific, personal and legal interest in the subject matter of the controversy and that the defendants' conduct has specially and injuriously affected that specific personal or legal interest.

Andross v. Town of W. Hartford, 285 Conn. 309, 324 (2008). Individual plaintiffs have put on no evidence, as the law requires, that any of them has been specially and injuriously affected in any way. "The determination of aggrievement presents a question of fact for the trial court and a plaintiff has the burden of proving that fact." Id. at 340 [citations omitted.] Because there is no evidence establishing standing for the individual plaintiffs, their claims must be dismissed. Id. citing Warth v. Seldin, 422 U.S. 490, 501-02 (1975). Plaintiffs' claims are akin to those of a personal injury claimant who asserts standing because he drove on a dangerous highway, but fails to show that he suffered any specific personal injury.

Similarly, with regard to plaintiff CCJEF's claim of associational standing, there is no evidence that any CCJEF member students in Connecticut public schools or parents of those students – who are the only members able to provide standing to CCJEF – have been specially and injuriously affected. Thus, CCJEF lacks standing on this basis as well.

B. Plaintiff CCJEF Lacks Standing.

Plaintiff CCJEF lacks associational standing for all of the reasons articulated in defendants' previous motion and accompanying briefs. See Docket No. HHD-CV05-4050526-S, ## 103.00, 106.00, 164.00 (motion to dismiss), 165.00 (memorandum in support of motion to dismiss), 180.00 (reply) denied in part # 206.00;[[4]](#footnote-4) see also Docket No. HHD-CV14-5037565-S, Doc. # 265.00. Regarding the Hunt/Worrell three part test discussed in those documents, a few points bear further elaboration.

First, at the time of the original (or January 2006 amended) complaints, plaintiff CCJEF did not have parent members and did not plead that it had student members.  See  Docket No. HHD-CV05-4050526-S, Complaint of November 21, 2005, ¶ 29; Amended Complaint dated January 20, 2006  ¶ 31; # 107.00 (Affidavit of Robert Solomon).   No later amendment can cure those defects.  See Docket No. HHD-CV05-4050526-S, # 165.00 at 42-43.

Second, under CCJEF's Articles of Incorporation and by-laws, the only "members" of CCJEF who could have standing in this case (parents and students) lack voting rights in CCJEF. See DTX6026; see also Docket No. HHD-CV05-4050526-S, Doc. # 180.00 at 22. Because these members lack the ability to control CCJEF or direct CCJEF's litigation supposedly brought on their behalf, they are not "members" in any legally cognizable sense. For example, if all parents wished to discuss individual settlement of CCJEF's claims supposedly brought on their behalf, or if every single parent wanted to block a settlement approved by CCJEF's voting members, they would be powerless to do either.

Third, this court should follow Judge Stevens's carefully considered decision in Fairfield Co. Medical Assn. and what he referred to as the "majority position" of other jurisdictions that have held that an association must satisfy a "lack of conflict" requirement as part of either the second or third prong of the Hunt/Worrell test. Fairfield Co. Medical Assn. v. CIGNA Corp., 45 Conn. L. Rptr 200 (August 8, 2008)(Stevens, J.). This "lack of conflict" requirement does not require the court to police or parse the inner workings and decisions of an organization. It simply precludes associational standing for an association such as CCJEF that is made up of and controlled by various interest groups, see DTX 6460, with overwhelming inherent conflicts. It is self-evident that teachers' and administrators' unions, local school boards, and local municipalities each have obvious important interests on which they are structurally at odds. Further, the court heard evidence of a few examples of those conflicts.

For example, Danbury Superintendent Pascarella testified that the Connecticut Association of Public School Superintendents -- a dues paying member of CCJEF – is opposed to Connecticut's laws on binding arbitration regarding teacher pay. DTX 6026; Pascarella Tr., 2/2/16, p. 199. The Connecticut Education Association ("CEA") and the American Federation of Teachers ("AFT") are both dues paying members of CCJEF and this position is squarely at odds with the interests of their dues paying members. DTX 6026. Similarly, Superintendent Rabinowitz of CCJEF member Bridgeport testified that she would change teacher termination laws and due process requirements to make it easier to terminate ineffective leaders or teachers. Rabinowitz Tr., 6/2/16, pp. 47-50. She would terminate "many more" if the process was easier; it is incredibly complicated and takes a great deal of time, effort and money. Id. She would also change the certification process, which is "too stringent." Id., p. 63. Again, these positions are contrary to those of the CEA and AFT. Rabinowitz also testified that she has pushed for union concessions on teacher salary increases but that the unions refuse to consider it, despite that she believes teachers would not leave Bridgeport if they did not receive annual pay increases.  Id., pp. 115-20.

Fourth, even if CCJEF's parent and child members were "real" members of that organization, the organization alone would not have standing to make the claims it seeks to make in this case. This is because CCJEF cannot satisfy the third prong of the Hunt/Worrell test (that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."). Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 617 (1986).

Subsequent to the trial court's pretrial decision with respect to CCJEF's associational standing in this case (Docket No. HHD-CV05-4050526-S, Doc. # 206.00), another trial court directly and accurately analyzed whether the individual participation of association members in a constitutional challenge of a similar nature is required under the part Hunt/Worrell test for associational standing. See Disabled Americans for Firearm Rights, LLC v. Malloy, No. CV136016992, 2014 WL 1012285 at \*5 (February 6, 2014)(explaining that the association's challenge to state law based on the state constitutional right to bear arms "would clearly require the participation of individual members of [the association]. In their complaint, the plaintiffs allege that disabled persons, including members of [the association], require certain features [of firearms] prohibited by Public Act 13–3 in order to exercise their rights. A determination of this allegation would require evidence of the specific physical disabilities of each individual.") (hereafter "DAFR"). DAFR, like this case, involved an association seeking to challenge state law on the basis of the Connecticut Constitution. And, as in DAFR, this court cannot determine whether the pertinent members of CCJEF have been denied their constitutional right to a substantially equal and minimally adequate public education without considering specific evidence as to those individuals. Every student's education and educational experiences are obviously different, and this court has **no evidence at all about those individual personal experiences for even a single CCJEF member**. Accordingly, CCJEF fails to meet the third prong of the Hunt/Worrell test.

Finally, while CCJEF's actual voting membership includes local boards of education and municipalities, it is beyond dispute that those entities do not have standing to sue the defendants in this case. See Docket No. HHD-CV05-4050526-S, Doc. # 163.00 at 15-16, ¶ 47. The local board of education, in providing educational services, is actually an arm of the state – the defendants in this case. See Pereira v. State Bd. of Educ., 304 Conn. 1, 33, 44-45; R.A. Civitello Co. v. New Haven, 6 Conn. App. 212, 218 (1986). With respect to municipalities, the Connecticut Supreme Court has long held that "[t]owns ... are creatures of the state, and though they may question the interpretation, they cannot challenge the legality of legislation enacted by their creator." Conn. Ass'n of Bds. of Educ. v. Shedd, 197 Conn. 554, 558-59 (1985). And, of course, municipalities and boards of education enjoy no constitutional rights under Article Eighth, § 1. Horton v. Meskill, 187 Conn. 187, 195-96 (1982) (Horton II). Plaintiffs make no claim that their union and other organizational members have standing to raise claims regarding the rights of students. See Sheff, 238 Conn. at 25; Carrubba v. Moskowitz, 274 Conn. 533, 550-2 (2005); Horton II, 187 Conn. at 195-96. Accordingly, plaintiff CCJEF should be dismissed from this case for lack of standing.

C. This Lawsuit Should Be Dismissed Based on Both Mootness and Ripeness.

The defendants hereby incorporate their arguments made in Defendants' Memorandum in Support of Motion to Dismiss: Docket No. HHD-CV05-4050526-S, Doc. ## 164.00 (motion to dismiss), 165.00 at 8-38 (memorandum in support of motion to dismiss), 180.00 (reply) denied in part #206.00. That Motion to Dismiss was filed on January 9, 2013, when the 2012 targeted reform efforts had just begun. Since then, reforms have brought about promising gains. See Focus Districts FOF, 7/15/16, pp. 1-38 (attached hereto as Appendix 1). For example, the CK3LI program was first piloted in 2012 in a few districts, and has now expanded in Windham, East Hartford and several other districts, with plans to continue further expansion in those and other districts, including Bridgeport.  DTX 6474 (K-3 literacy gains in Windham using CK3LI); Quesnel Tr., 6/1/16, p. 104; Rabinowitz Tr., 6/2/16, p. 72.  All schools that have used the CK3LI model have made gains in K-3 literacy.  Cohn Testimony, 5/24/16, p. 94.  Because the evidence shows that the 2012 reforms were well thought out, serious, substantial and substantially funded, the court must give them time to demonstrate their full potential, as virtually all witnesses recognized that the effects of many reforms take several years to show meaningful results. E.g.*,* Hakuta Tr., 2/9/16, pp. 40:15-42:23 (ELs may take 3-8 years to acquire proficiency in English); Levin Tr., 2/19/16, p. 83:6-9 (it generally takes a while for educational reforms to produce results); Rice Tr., 3/3/16, p. 125:5-7 (educational reforms take time to germinate); Garcia Tr., 3/4/16, p. 80:19-22 (aside from some immediate gains already seen, it can take 5-10 years to see results after a structural change occurs in a school district); Rabinowitz Tr., 6/2/16, p. 178:15-22 (don't expect to bring everyone up to grade level in one or two years, but we see solid growth towards those goals); Quesnel Tr., 1/15/16, pp. 125:11-26 (in the long term, these CN strategies can turn schools around; 3 years not enough); Thompson Tr., 2/18/16, pp. 29:20-32:3 (transformational change will take time, but with continued support NLHS expects to see growth each year moving forward); see also Gopalakrishnan Tr., 5/18/16, pp. 92-3 (cannot yet measure growth on SBAC because only one year of data available). See Focus Districts FOFs, 7/15/16, for more evidence of beneficial educational reforms.[[5]](#footnote-5) See also Defs.' Demonstrative Exhibit 7 indicating a positive increase in statewide adjusted cohort graduation rates from 2010 through 2014.

D. Sovereign Immunity Bars this Lawsuit.

“Sovereign immunity relates to a court's subject matter jurisdiction over a case.” Columbia Air Servs. v. DOT, 293 Conn. 342, 349 (2009). “[T]he sovereign immunity enjoyed by the state is not absolute." While "there are [three] exceptions," only the second – "when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights" -- Id. (internal citations omitted) is even arguably relevant. In the absence of a statutory waiver of sovereign immunity, a plaintiff may not bring a monetary action against the state without authorization from the claims commissioner

to do so. Miller v. Egan, 265 Conn. 301, 317 (2003). With respect to this second exception, our supreme court has ruled that in determining the nature of relief sought, *i.e.,* whether the relief sought is *actually* declaratory or injunctive, a court must look beyond the manner in which the plaintiffs have worded the complaint. See DaimlerChrysler Corp. v. Law, 284 Conn. 701, 723 (2007) (“The plaintiff’s request for relief – an order that the defendant refund all sales taxes for which the plaintiff had submitted a claim for refund – must be characterized as a claim for damages.”)

The plaintiffs here request 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.” Docket No. HHD-CV05-4050526-S, #163.00 at 46. While these prayers for relief seem to sound in equity and do not explicitly request the court increase state education funding, a thorough and fair reading of the entire complaint makes clear that plaintiffs really seek an increase in state funding of education. 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.”); 37 ¶ 125 (“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.”); 38 ¶ 120 (complaining that the state funded 39% of education statewide in 2003 and asserting that number should have been 50%; such an increase would require an increase in state funding); 38 ¶ 134 (“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.”); 39 ¶ 144 (complaining that in October of 2003 the "foundation" amount of the ECS formula should have been $2,009 more than the current "foundation" amount). Plaintiffs also argued explicitly that “[t]he irrational, underfunded ECS formula ... is at the core of the Plaintiffs' case.” Doc. #HHD-CV05-4050526-S, #174.00 at 12. Put another way, plaintiffs seek no structural changes to the public educational system other than an increase in state funding to certain (or all) school districts.

The evidence at trial confirms that just as the plaintiffs in DaimlerChrysler really sought refunds, the plaintiffs here really seek more state monies directed to municipalities. The record is clear that plaintiffs are solely seeking more state money for education and not a court order requiring that the defendants "create and maintain a public education system" by restructuring non-financial aspects of the state's educational system. No witness or other evidence from plaintiffs claimed or sought anything else. The bylaws of plaintiff CCJEF, describing the nature of CCJEF's activities, also make this monetary goal clear:

(a) engage in activities that promote the adequate funding of education in the State of Connecticut;

(b) engage in activities that relieve the burdens of Connecticut municipalities in funding education;

. . .

DTX 6026 (emphasis added). In fact, the second goal of CCJEF – to "relieve the burdens of Connecticut municipalities in funding education" – bears no connection whatsoever to "creat[ing] and maintain[ing] a [constitutional] public education system." This goal relates to property tax "relief" for the municipal members of CCJEF and by extension municipal taxpayers, which is akin to the relief actually sought in DaimlerChrysler. In fact, witnesses testified to the obvious: the source of funds for a child's education is irrelevant to the child's education. A dollar is a dollar. See, e.g., Pascarella Tr., 2/2/16 pp. 156-57. Additionally, various witnesses said they were testifying in this case in order to secure more state money for the district that employed them. For example, Superintendent Pascarella said he was testifying in order to get "more resources for all of the youngsters." Pascarella Tr., 2/2/16, p. 157.

Put simply, the plaintiffs are seeking more money in this lawsuit and no other changes to the state's system of public education. Accordingly, sovereign immunity bars their claims.

1. APPLICATION OF LEGAL STANDARDS
2. Justice Palmer's Concurring Opinion is the Legal Standard for Adequacy (Counts One, Two and Four)

Counts one, two and four of the Corrected Third Amended Complaint contain, inter alia, "adequacy" claims.[[6]](#footnote-6)  As the defendants have consistently argued, Justice Palmer's concurring opinion regarding the definition of a "minimally adequate education" and his view of the deference owed to the political branches of government constitute the ruling of the Connecticut Supreme Court as to the scope of the constitutional right guaranteed by article eighth, § 1.  CCJEF v. Rell, 295 Conn. 240, 320-47 (Palmer, J., concurring); see also Doc. #265.00 at 10-12; Docket No. HHD-CV05-4050526-S, ## 144.00 and 153.00.  Whether the state has met its constitutional obligations must be judged by the educational opportunities provided to the plaintiffs, rather than by the plaintiffs' educational outcomes.[[7]](#footnote-7)  See Doc. #265.00 at 18-19.  Those arguments are incorporated here by reference.

1. The Horton III Decision is the Legal Standard for Equity (Counts One, Three and Four)

Counts one, three and four of the Corrected Third Amended Complaint contain, inter alia "equity" claims.  Such claims are made pursuant to the equal protection clause of the Connecticut Constitution, article first, §§ 1 and 20, and Horton v. Meskill, 172 Conn. 615 (1977).  See CCJEF, 295 Conn. at 251 n.14 (plurality).

The court previously directed the parties to brief several issues, including the legal standard to be applied to plaintiffs' equal protection claims.  Doc. #270.00.  Defendants hereby incorporate those arguments here.  See Doc. #291.00 at 8-14; see also Benjamin v. Bailey, 234 Conn. 455, 462, 465-6, 472, 477-8 (1995) ; Campbell v. Bd. Of Ed., 193 Conn. 93 (1984) (same).

Simply put, the elected branches' decision to provide the most state aid for public education to districts that are less wealthy or lower performing is entirely rational and consistent with the mandate of Horton.  "Rational" does not mean perfect or strictly mathematical.  Circuit-Wise Inc. v. Comm'r of Revenue Servs., 215 Conn. 292, 301-02 (1990).

1. Plaintiffs Have Failed to Allege or Establish an Equal Protection Violation (Count Four)

Plaintiffs allege in their fourth count: "The State's failure to maintain a public school system that provides plaintiffs with suitable and substantially equal educational opportunities has disproportionately impacted African-American, Latino, and other minority students, in violation of Article Eighth, § 1 and Article First, §§ 1 and 20 of the State Constitution, and 42 U.S.C. § 1983."

“It is well settled that, as a general matter, this state's constitutional equal protection jurisprudence follows that of the federal constitution.”  Abdullah v. Comm'r of Corr., 123 Conn. App. 197, 202 (2010) cert. denied, 298 Conn. 930 (2010); see also Kerrigan v. Commissioner of Public Health, 289 Conn. 135, 149 n. 13 (2008).  An equal protection challenge must establish intentional or purposeful discrimination to succeed.  Reynolds v. Barrett, 685 F. 3d 193, 201-02 (2d Cir. 2012) (plaintiffs cannot proceed under a disparate impact theory of liability under an equal protection claim) citing, among others, City of Cuyahoga Falls v. Buckeye Cmty. Hope Found., 538 U.S. 188, 194 (2003); Accord, Golab v. New Britain, 205 Conn. 17, 26 (1987).  The court in Abdullah followed the court’s holding in Wendt v. Wendt, 59 Conn. App. 656, 685–86 (2000), cert. denied, 255 Conn. 918 (2000),[[8]](#footnote-8) and confirmed that Sheff v. O’Neill, 238 Conn. 1 (1996) (en banc) “did not intend to allow state constitutional challenges on the basis of disparate impact,” explaining that the holding in Sheff was premised, not on the equal protection clause, but on the segregation clause in article first, § 20, that declares that Connecticut citizens shall not be subjected to segregation  Abdullah, 123 Conn. App. at 202.  Plaintiffs have alleged no such claim of segregation in this case.  Accordingly, the court should dismiss Count Four.

Also with respect to Count Four, plaintiffs' invocation of 42 U.S.C. § 1983 is unavailing.  That is because “[i]t is well settled that § 1983 does not create any new substantive rights, but merely provides a federal cause of action for violations of certain federal rights.”  Mrs. W. v. Tirozzi, 832 F.2d 748, 754 (2d Cir. 1987)(emphasis added).  Plaintiffs' claims here are entirely premised on state constitutional and statutory law.  Accordingly, § 1983 is inapplicable.

1. Plaintiffs' Claims Are a Facial Challenge and Fail on All Counts

            As defendants have previously argued, because plaintiffs seek to invalidate entire portions of state law affecting all Connecticut public school students (the vast majority of whom are not parties to this case), their claims must be viewed as a facial challenge.  See Doc. #265.00 at 12-15.

The evidence presented at trial fails to meet plaintiffs' heavy burden of proof beyond a reasonable doubt in making such a facial challenge on the basis of adequacy claims.[[9]](#footnote-9)  State v. Breton, 212 Conn. 258, 269 (1989).  First of all, despite seeking statewide relief, plaintiffs chose to make their claims at trial using select evidence from six "focus districts."  Even assuming that the "focus district" approach is acceptable, evidence at trial demonstrated that at least some students in the focus districts were receiving an adequate education and went on to college and careers.  See, e.g., Quesnel Testimony, 1/15/16, pp. 171-72 (East Hartford); Pascarella Testimony, 2/2/16, pp. 157-59 (Danbury).  Indeed, no witness for the plaintiffs testified that all students in their district were not receiving a constitutionally adequate educational opportunity.   This state of the evidence obviously falls far short of the requirement that a facial challenge can succeed only when there are no facts or circumstances where the law could be constitutional.  State v. Long, 268 Conn. 508, 522 n.21 (2004).

Regarding plaintiffs' equity claims, plaintiffs presented statistical and anecdotal evidence about some "wealthy" districts located in Fairfield County.  Plaintiffs apparently assert that this evidence supports their claim of inequitable educational opportunities in comparison to the six focus districts.  As previously argued by the defendants, plaintiffs' evidence is insufficient to meet the three part test for educational equity claims made under the Connecticut Constitution.  See Doc. # 291.00 at 8-14; see also Horton v. Meskill, 195 Conn. 24 (1985) (Horton III).

At the court's request, the defendants have already briefed other issues relating to the legal standard, including why the plaintiffs' "equity" claims must fail.  See Doc. # 291.00 at 8-14.  The evidence at trial overwhelmingly demonstrated that the poorer a district and its school population, the more state aid it receives.  See, e.g., DTX 6488. Additionally, the 2012 Reforms have directed $548 million in additional funding and special support solely to the 30 state school districts most in need of help.  <http://www.sde.ct.gov/sde/lib/sde/PDF/dgm/report1/ecs-alliance-nonalliance.pdf>; DTX 6488; DTX 5682.

1. Plaintiffs' Use of Six "Focus Districts" is Incoherent and Insupportable

This action was originally filed as a limited class action[[10]](#footnote-10) on December 12, 2005 (amended January 20, 2006) by public school students from various Connecticut cities and towns, suing by and through their parents as "next friends," and CCJEF. Following remand from the Connecticut Supreme Court, on November 19, 2010, the plaintiffs filed a Second Amended Complaint. Docket No. HHD-CV05-4050526-S, Doc. # 135.00, which dropped the class action allegation. Although plaintiffs sought declaratory and injunctive relief as to "the plaintiffs," they also sought broader relief. Specifically, plaintiffs asked the court to declare the entire state education funding system "unconstitutional, void and without effect." Id. at ¶ 169(iii). They also sought to "enjoin defendants from operating the current public education system…." Id. at ¶ 169(iv). Notably, however, plaintiffs sought an order that defendants "create and maintain a public education system that will provide suitable and substantially equal educational opportunities" only as "to plaintiffs." Id. at ¶ 169(v).

Plaintiffs ultimately filed a Corrected Third Amended Complaint, which is the operative complaint here. This complaint also does not contain class allegations and makes the same requests for relief as the Second Amended Complaint. See Docket No. HHD-CV05-4050526-S, # 163.00 ¶ 180. It was not until the first day of trial when plaintiffs made their opening statement that defendants learned of plaintiffs' plan to use six "focus districts" as the core of their case. Tr., 1/12/16, p. 10. The plaintiffs have failed to provide a legal explanation as to the significance of these "focus districts" and how they impact the broad relief sought by plaintiffs. Plaintiffs have also provided no evidence that these districts are typical of all or even any other districts in the state.

The evidence presented by plaintiffs indicated that each of the six districts has had some successes and some schools that are doing well or improving and some schools that may not be. See Focus Districts FOF, 7/15/16, pp. 1-41. The evidence did not demonstrate that any of the six districts was failing to provide at least some students with minimally adequate educational opportunities. Plaintiffs have failed to explain how such evidence can be the basis for judicially imposed statewide declaratory and injunctive relief, and common sense dictates that it cannot. Statewide injunctive relief cannot possibly be granted on the basis of scattered evidence as to six school districts chosen by plaintiffs without any explanation in the evidence of how or why they were selected. Was it because they are the worst districts by some measure? Was it because all of them pay dues to CCJEF? Are they claimed to be representative of all Connecticut districts? If so, on what basis? It is also important to note that thousands of students (both in and out of the six focus districts) not a part of this case and not represented by plaintiffs' counsel have a constitutional right to minimally adequate and equitable educational opportunities. Any orders reaching beyond evidence about constitutional harm to individual plaintiffs would unconstitutionally impact the rights of those countless parties not before the court.

1. Local Control of Education is a Constitutional Part of Connecticut's System, and It Would be Undermined by Any Conclusion That the State is Ultimately Responsible for All Actions of Local Boards.

On June 3, 2016, the court directed the parties to address six statements, the first of which reads:

The Connecticut constitution makes the state directly responsible for education. It is responsible for what happens in all of its school districts. It is responsible for the agents it uses to carry out this responsibility and these agents are unconditionally subject to its authority over education.

The court previously asked the parties to brief the issue of the relationship between state and local governments with respect to education. Doc. # 270.00. Defendants' brief addressed this issue and in the course of that brief discussed the role of local control over education in Connecticut. See Doc. # 291.00 at 1-7. Those arguments are hereby incorporated by reference. As our Supreme Court recently noted, there is a "long-standing policy in Connecticut of local, rather than state, control over schools and school districts." Pereira v. State Bd. of Educ., 304 Conn. 1, 30 (2012). The overall import of local control to the claims raised here by plaintiffs is simply that local school districts are both tasked with "maintain[ing] good public elementary and secondary schools" and "implement[ing] the educational interests of the state." Conn. Gen. Stat. § 10-220(a). Several other statutes[[11]](#footnote-11) make clear the leading role that school districts take in Connecticut with respect to public education.[[12]](#footnote-12)

Pereira also illustrates that the State Board of Education's powers with respect to local school districts are not plenary. The SBE does not, absent specific statutory authority, have the inherent power to reconstitute or take over control of a local school district. Pereira, 304 Conn at 35 ("the reconstitution authority … is an exception to the general rule that local educational matters are managed by local boards of education comprised of locally elected members"). Rather, the SBE has "broad and general power" whereas the local and regional boards of education "provide and administer" public education. Id. at 33 (internal citations omitted). Any judicial conclusion that the state bears essentially all responsibility for the decisions and actions of local boards would be contrary to the state's policy, clearly approved by our Supreme Court, of local control.

1. Plaintiffs Failed to Prove Their Case Re Inadequate Educational Opportunities

1. Plaintiffs Failed to Prove that the Palmer Standard is not Satisfied in Their "Focus Districts."

Plaintiffs have failed in their burden to establish inadequate opportunities in plaintiffs' six focus districts under the applicable Palmer standard.  See supra Section II.A.  Plaintiffs have not proven that the six focus districts do not have “minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn."  See Palmer Standard FOFs, 7/15/16.    Plaintiffs have also not proven that the six focus districts do not have “minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks" or that learning was impeded by any such shortfalls.  See id.  Moreover, the use of technology in classrooms has become increasingly important, and accordingly the state has made significant financial investments to upgrade facilities and technological infrastructure as well as to provide Chromebooks, iPads, laptops, carts, SMART Boards and other devices in schools across Connecticut, particularly in low-performing schools including the six focus districts.  See infra Section IV.P; Focus Districts FOFs, 7/15/16.

Plaintiffs have also not proven that the six focus districts do not have “minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies."  See Palmer Standard FOFs, 7/15/16.   In fact, superintendents and other witnesses from each of the six districts testified that, at a minimum, their core curricula are aligned to the Common Core State Standards (CCSS) adopted in 2010.  Finally, plaintiffs have not proven that the six focus districts do not have “sufficient personnel adequately trained to teach those subject areas.”  See id.   Witnesses for each of the six focus districts testified that teachers and administrators received extensive free trainings from the state, local RESCs and consultants in such areas as CCSS, CELP standards for EL students, SBAC, SAT and benchmark assessments testing, and SRBI and PBIS interventions.  See Section IV.H.  Furthermore, plaintiffs failed to demonstrate that the classrooms in the six focus districts are inadequately staffed with qualified teachers.  In fact, teacher hiring and retention in the focus districts, as well as average class sizes, compare favorably to other districts in the state.  See infra Sections III.F and G.

Even under the more expansive plurality standard, plaintiffs failed to prove broad and pervasive failings across the six focus districts. See supra Sections III.C-L; Focus Districts FOFs, 7/15/16.

1. The Focus Districts Receive Numerous and Extensive Special Grants and Other

Supports.

Plaintiffs have failed in their burden to establish inequitable funding in the plaintiffs' six focus districts. Not only does the state distribute substantially more ECS funding to these districts than to most other districts, with the effect of equalizing total per pupil spending across all districts; see Section III.H.; but all of the six focus districts are both Alliance Districts and Priority School Districts, and are accordingly allocated substantial additional funding, targeted support and free trainings from the state. See supra Section IV.B. Further, as of the close of trial in June 2016, the focus districts have seven Commissioner's Network schools among them, with applications for additional schools currently pending, with additional state funding and targeted support. DTX 6226, pp. 6-7; Rabinowitz Tr., 6/2/16, p. 97 (Columbus School); Cohn Tr., 5/26/16, p. 11 (New Britain High School). The Alliance District and Commissioner's Network plans are specifically tailored to the needs of each district and reflect the priorities of the district and school leadership. See, e.g., Reforms FOFs, 7/15/16; Rabinowitz Tr., 1/22/16, p. 113 (Alliance District funding is used for what the individual district determines are its highest priority needs); Quesnel Tr., 1/19/16, pp. 33-4 (Commissioner's Network plan at O'Brien STEM Academy is a classic example of a really incredible plan because it is based on the organic needs of the district).

Since 2011, the focus districts also have had seventeen School Improvement Grant (SIG) schools between them that are administered through the CSDE's Turnaround Office, which provides support and monitoring to those schools. DTX 6226, pp. 10-12; Cohn Tr., 5/25/16, p. 3. As Alliance Districts and lower wealth districts, the six focus districts also receive priority with regard to, among other things, technology grants and low-performing bond funds; Section IV.P.; PSD summer school and extended learning grants; DTX 6226, pp. 3-5; student supports and wraparound funding; Section IV.O., Defs' Demonstrative 6; preschool funding; Section IV.L.; professional development and LEAD CT opportunities; Sections IV.H. and N.; and favorable school construction and adult education reimbursement rates. Sections IV.O. and R. Further, as detailed infra, certain metrics that plaintiffs raised at trial actually demonstrate that the six focus districts are favorable or comparable in relation to state averages, undermining any claim that these districts are not equitably funded. See infra, Sections III.F (teacher and administrator compensation) and III.G (class size).

1. By Any Reasonable Measure, Connecticut Compares Favorably to Other States in per Pupil Spending on Education and on the Fairness of the Allocation of that Spending.

By any reasonable measure, Connecticut compares favorably to most other states in per pupil spending on education and on the fairness of the allocation of that spending. Although there are many different possible comparisons to consider, a compelling starting place is the authoritative book, now in its fourth edition, written, as first author, by **plaintiffs'** expert witness Professor Bruce Baker. In this book, DTX 6054, Is School Funding Fair? A National Report Card (4th Ed, Spring 2015), on page 2, and at trial, Tr. 6/27/16, pp. 120-121, Professor Baker explains

Before we can effectively analyze how well states fund public education, we must answer one critical question: What is fair school funding? ***In this report, "fair" school funding is defined as a state finance system that ensures equal educational opportunity by providing a sufficient level of funding distributed to districts within the state to account for additional needs generated by student poverty.***

In conducting his analysis of the fairness of school funding, Baker reports that his first "fairness measure," called "funding level," measures the overall level of state and local revenue provided to school districts and compares each state's average per-pupil revenue with that of other states, while adjusting to reflect differences in regional wages, poverty, economies of scale and population density. According to Baker's book and testimony, Connecticut ranks number five out of all fifty states on this measure, outranked only by New York, Alaska, New Jersey and Wyoming, and ahead of Massachusetts. DTX 6054, pp. 4, 7, Tr. 6/27/16, pp. 122-124. Baker calls his second fairness measure "funding distribution," and he explains that it addresses the "key question" of whether a state's funding system recognizes the additional resources required for students in settings of concentrated student poverty. By this measure, he rated Connecticut as "progressive," and ranked it number fifteen out of all the states. DTX 6054, pp. 4, 9, Tr. 6/27/16, pp. 124-125. It is important to note that this rating, as the text shows, DTX 6054, p. 8, is based on data from 2012, **before** Connecticut's major reform efforts, including the large boost in funding to the poorest districts through Alliance District funding and other efforts, was in effect. In addition, because Baker simply used the state's officially reported per pupil expenditures per district, his measure fails to consider the substantial undercounting of real per pupil expenditures in many of the poorest districts. See infra, Section III.I, pp. 39-41. Baker calls his third fairness measure "effort," and says the "effort index" takes into account each state's local and state spending on education in relation to the state's economic productivity, combining the two elements into a ratio to provide a sense of the level of priority state and local budgets assign to education. By this Baker measure, Connecticut ranks number ten out of all states, and merits a letter grade of "A" for its effort. DTX 6054, pp. 18-19, Tr. 6/27/16, p. 125. Baker also notes, in regard to the "effort" measure, that Connecticut is one of only four states in the nation that actually **increased** its effort during the Great Recession years from 2008 to 2012. DTX 6054, pp. 21, Tr. 6/27/16, p. 126. See also DTX 6387 (Reschly Update), p. 7 (showing that from FY 08 to FY 15, Connecticut ranks third in the nation in change in per pupil spending [9.1% increase], and that per pupil spending remains more than 10% lower than 2008 in 14 states). It is hard to square plaintiffs' expert Baker's evaluations of the fairness of education funding in Connecticut with plaintiffs' claims in this case.

Other experts confirmed the picture of Connecticut as a leading state in generously and fairly supporting public education. Professor Michael Podgursky reviewed various national data and reported that CT was among the very top states in teacher salaries, that teacher salaries in Connecticut were significantly higher than salaries for other broadly comparable professions in Connecticut, that Connecticut has smaller student to teacher and student to staff ratios than most states, and that, with the exception of a few nationally recognized shortage areas, qualified applicants for teaching positions far outnumber the available positions. DTX 6393, Expert Report of Michael Podgursky -- Relative Teacher Compensation in Connecticut. Tr., 4/21/16, pp. 45-71. More specifically, Prof. Podgursky noted that Connecticut teacher salaries were the third highest in the nation, after Massachusetts and New York, for 2012-13, and that Connecticut ranked near the very top in its relative relationship of teacher salaries to salaries in non-teaching professional positions. Id*.*  Similarly, Professor Michael Wolkoff noted that on a per pupil basis, Connecticut has consistently spent far more per pupil than most other states, with a differential from the median in excess of $5,000 in recent years, that the differential has continued to grow, and that Connecticut is consistently ranked sixth, seventh or eighth nationally in per pupil expenditures. He also stated that Connecticut's growth in per pupil expenditures from 2007-08 to 2012-13 was about 16%, or nearly double the growth of the Consumer Price Index over that period. DTX 2435 – Michael Wolkoff -- Connecticut School Finance Expert Report, pp. 2-3, Tr. 4/14/16, pp. 23-35. Moreover, per pupil expenditures in each of the plaintiffs' six focus districts have increased since 2011.  See DTX 5638-8, 5641, 5643-4, 5648 (district expenditure profiles).

1. NAEP Scores Provide Compelling Evidence of Connecticut's Generally Positive Standing in Comparison to the Rest of the Nation in Regard to Student Achievement and the Achievement Gap.

While plaintiffs have consistently implied that New Jersey and Massachusetts are obtaining better student test results because they spend more money, and that Connecticut's poor and minority students are performing unusually poorly compared to national standards, the facts, taken as a whole, rather than cherry-picked, provide no support for those claims. As the largest nationally representative and continuing assessment of what America's students know and can do in various subject areas, including Reading and Math, at the end of Grades 4, 8, and 12, The National Assessment of Educational Progress (NAEP) is considered the Nation's Report Card. FOF 196, Doc. # 326.00 (attached hereto as Appendix 2). NAEP scores allow states to compare the performance of their students to the performance of students, including subgroups, in other states across the country. FOF 197, Doc. # 326.00, NAEP FOF 1, 7/15/16. Proficiency levels on NAEP differ from that of some state assessments by being intentionally aspirational. This is demonstrated by the 2015 NAEP results for Grades 4 and 8 Reading and Math, in which no states reached the proficiency level, other than Massachusetts in Grade 4 Math. FOF 200, Doc. # 326.00; NAEP FOF 6, 7/15/16. It is also important to note that NAEP does not report performance differences unless there is a statistically significant difference based on an analysis of data using widely accepted statistical standards. FOF 198, 199, 201, Doc. # 326.00; RFA 539-543, Doc. # 301.00.

Connecticut, as well as the rest of the country, often looks to compare its NAEP performance to that of Massachusetts because of the reputation of Massachusetts's highly regarded education system. FOF 206, Doc. #326.00. Although Connecticut does not typically compare itself to New Jersey, defendants have also shown comparisons to New Jersey because of testimony from plaintiffs in this case. Id. The evidence shows that Connecticut compares favorably to Massachusetts, New Jersey, and the nation in terms of overall performance, subgroup performance and achievement gaps.

In the most recent 2013 NAEP assessment for Grade 12, Connecticut outperformed all states and the nation in Grade 12 Reading and is among the top performing states in Grade 12 Math, with Massachusetts and New Jersey. FOF 207, 208, Doc. #326.00. Connecticut was also one of only 2 states to show a statistically significant gain in Grade 12 Reading compared to its 2009 performance and only one of four states to do the same in Grade 12 Math. Id. More importantly, the results show that lower performing students are responsible for the improvement in the NAEP Grade 12 Reading results, although similar improvement is not seen in the distribution for the Math results. FOF 217, Doc. #326.00. In comparison, Massachusetts's and New Jersey's performance in both Grade 12 Reading and Math remained flat between the 2009 and 2013 NAEP assessments. FOF 209, Doc. #326.00.

Not only are Connecticut's overall scores for the 2013 NAEP assessment for Grade 12 favorable, but the Reading scores show a significant narrowing of the Black/White achievement gap. FOF 210, Doc. # 326.00. In addition, the results were positive in showing the lower performing black subgroup increasing at a higher rate than the higher performing white subgroup. Id. Compared to Massachusetts and New Jersey, Connecticut's Black/White achievement gap as well as its other achievement gaps, the Hispanic/White and NSLP (National School Lunch program/economically disadvantaged)/non NSLP gaps are not statistically significantly different on both the NAEP Grade 12 Reading and Math assessments, with the exception of the NSLP/non-NSLP gap for Grade 12 Math for New Jersey. FOF 211, Doc. #326.00; NAEP FOF 23, 24, 30, 31, 35, 36, 37, 7/15/16. Further, Connecticut's Black and NSLP subgroups outperformed the nation (National Public) on the NAEP Grade 12 Reading assessment for the 2013 administration and improved their performances from 2009 to 2013. FOF 212, 213, Doc. # 326.00. The Connecticut NSLP subgroup performance is not statistically different than those of Massachusetts and New Jersey for this assessment. FOF 214, Doc. # 326.00. Likewise, Connecticut's Black subgroup outperformed the nation on the 2013 NAEP Grade 12 Math assessment. FOF 215, Doc. # 326.00. Finally, Connecticut's Hispanic subgroup performed no differently than the nation on the 2013 NAEP Grade 12 Reading assessment while this subgroup and the NSLP subgroup performed no differently than the nation on the 2013 NAEP Grade 12 Math assessment. FOF 212, 215, Doc. # 326.00.

Similar to its Grade 12 overall performance, Connecticut is among the top performing states in Reading for Grades 4 and 8 on the most recent 2015 NAEP assessment. NAEP FOF 2, 3, 7/15/16. New Jersey performed not differently than Connecticut on the Grade 4 Reading assessment while both Massachusetts and New Jersey performed not differently than Connecticut on the Grade 8 Reading assessment. Id.[[13]](#footnote-13) While Connecticut's Math results for Grades 4 and 8 are not as strong, Connecticut, nonetheless, performed the same as 20 other states on the Grade 4 Math assessment with 16 states outperforming Connecticut and 13 states performing lower than Connecticut. NAEP FOF 4, 7/15/16. Similarly, Connecticut performed the same as 21 other states on the NAEP Grade 8 Math assessment for 2015 while 9 states outperformed Connecticut and 19 states scored lower. NAEP FOF 5, 7/15/16.

Connecticut's subgroup performances on the 2015 NAEP Reading assessments for Grades 4 and 8 mirror its overall performance in that all three subgroups, NSLP, Black and Hispanic, made strong performances. Specifically, all 3 subgroups performed not differently than most of the country and, in the case of Grade 8 Reading, not differently than half the country. NAEP FOF 7, 9, 11, 13, 15, 17, 7/15/16. In fact, no state outperformed Connecticut's Black subgroup on the Grade 8 Reading assessment and only one state outperformed its Hispanic subgroup on the Grade 4 Reading assessment, while no state outperformed Connecticut's Hispanic subgroup on the Grade 8 Reading assessment. NAEP FOF 13, 15, 17, 7/15/16. In addition, Connecticut's NSLP subgroup performed not differently than that of New Jersey on the Grade 4 Reading assessment. NAEP FOF 7, 7/15/16. Also, Connecticut's Black subgroup performed not differently than those of both Massachusetts and New Jersey on the Grade 8 Reading assessment and Connecticut's Hispanic subgroup performed not differently than those of Massachusetts and New Jersey on both the Grades 4 and 8 Reading assessments. NAEP FOF 13, 15, 17, 7/15/16.

Connecticut's subgroup performances, like its overall performance, are not as strong on the 2015 NAEP Math assessment as on the Reading assessment. While most of the country outperformed Connecticut's NSLP subgroup on the Grades 4 and 8 Math assessments, the Black and Hispanic subgroups made strong performances. NAEP FOF 8, 10, 12, 14, 7/15/16. The Black subgroup performed the same as more than half the country on the Grade 4 Math assessment and not differently than most of the country on the Grade 8 Math assessment, including Massachusetts. NAEP FOF 12, 14, 7/15/16. The Hispanic subgroup performed not differently than 23 other states on the Grade 4 Math assessment and not differently than most of the country, including Massachusetts, on the Grade 8 Math assessment. NAEP FOF 16, 18, 7/15/16.[[14]](#footnote-14)

Finally, Connecticut's achievement gaps provide further evidence that most of the country, including Massachusetts and New Jersey, struggle with the same gaps. The NSLP/non-NSLP gap is the same as half the country for the Grades 4 and 8 Reading, including Massachusetts and New Jersey[[15]](#footnote-15) NAEP FOF 19, 21, 7/15/16. Likewise, the Black/White gap is the same as most of the country for Grade 4 Math, Grade 8 Reading and Math, and Grade 12 Reading, including Massachusetts and New Jersey. NAEP FOF 26-28, 29, 7/15/16. In addition, the Hispanic/White gap is the same as more than half the country for Grade 4 Reading and almost half the country for Grade 8 Reading, including Massachusetts and New Jersey. NAEP FOF 31, 33, 7/15/16. Connecticut's most serious gaps are the NSLP/Non-NSLP gap for Grade 12 Reading and for Grades 4, 8, 12 Math, the Black/White gap for Grade 4 Reading, the Hispanic/White gap for Grade 12 Reading and for Grades 4 and 8 Math. NAEP FOF 23, 20, 22, 24, 25, 35, 32, 34, 7/15/16. In these instances, most of the country has smaller gaps than Connecticut. Even so, Connecticut's gaps are similar to those of Massachusetts and New Jersey with only 3 exceptions: New Jersey has a smaller Grade 12 Math NSLP gap and both Massachusetts and New Jersey have a smaller Grade 4 Reading White/Black gap. NAEP FOF 37, 7/15/16. Otherwise, the 2015 NAEP assessments demonstrate that Massachusetts and New Jersey have the same achievement gaps as Connecticut. Id.

1. Connecticut's Teacher and Administrator Compensation Compares Very Favorably to

Other States.

The compensation of teachers and school administrators in Connecticut compares favorably to compensation in most other states and the nation as a whole. In spite of a severe recession beginning in 2008, the average pay of Connecticut educators and administrators has risen consistently over the last decade and has kept pace with national measures of inflation and wage growth. DTX 6393 (Podgursky Expert Report, "Relative Teacher Compensation in Connecticut"), Figure 1; Podgursky Tr., 4/21/16, p. 47. Connecticut ranked third in the nation in terms of teacher salary in 2012-13. DTX 6393, Figure 3. In 2012-13, Connecticut ranked 7th in the nation in terms of salaries for teachers with a Bachelor's degree and 5th in the country in terms of salaries for teachers with a Master's degree. Id., Figures 4 and 5. The compensation of Connecticut teachers relative to non-teachers, including all wage and salary workers, medical workers, and management workers, also compares favorably to most other states. Id., 6393. Teacher salaries are keeping up with non-teacher salaries in Connecticut, compared to other states. Podgursky Tr., 4/21/16, pp. 58-9.

Nationally, Connecticut teachers' benefits compare favorably with those of private sector professionals. DTX 6393, p. 4. In Connecticut, benefits as a share of salary for public school teachers are above the national average. DTX 6393, Figure 9; Podgursky Tr., 4/21/16, p. 59. The retirement benefit rate for Connecticut teachers is far above the national rate for private sector professionals. DTX 6393, p. 5. Connecticut's state administered pension system provides a generous retirement for teachers that helps Connecticut hire and retain highly qualified teachers.  See, e.g., DTX 6393, Figures 12 and 13 (showing that in CT teacher applicants far exceed vacancies).

1. Teacher and Administrator Compensation in Plaintiffs' Six Focus Districts Compares Well to Other Districts.

The compensation of teachers and school administrators in the plaintiffs' six focus districts is on the whole comparable to state averages. DTX 6393, Figure 2; PTX 420; Defendants' Demonstrative 16. The average elementary and English Language Arts salaries in plaintiff districts were above those of non-plaintiff districts in 2010-11. DTX 6393, Figure 2.[[16]](#footnote-16) Regarding average salaries in 2012-13 for general education teachers, 3 of the six focus districts (Danbury, East Hartford and New Britain) were above the state average. PTX 420; Defs' Demonstrative 16. New Britain's average salary for general education teachers in 2012-13 was about $4,000-$15,000 greater than each of its five adjoining towns: New Britain ($78,535); Newington ($74,489); Farmington ($71,773); Berlin ($69,067); Southington ($65,570); Plainville ($63,686). PTX 420. Salaries for new teachers in East Hartford are among the top third in Hartford County. Quesnel Tr., 6/1/16, p. 183. Teachers who apply for positions in Bridgeport likely also apply for positions in New Haven County. Rabinowitz Tr., 1/26/16, p. 17. In 2012-13, the average general education teacher salary in Bridgeport was $64,103, compared to nearby New Haven County districts like Orange ($65,695), West Haven ($63,507), New Haven ($59,767), Derby ($59,298), and Ansonia ($55,331). PTX 420. Regarding average salaries in 2012-13 for special education teachers (grades 1-12), 3 of the six focus districts (Danbury, East Hartford and New Britain) were above the state average. PTX 420; Defs' Demonstrative 16. In New London, despite plaintiffs' claims about lower salaries as compared to Groton and Waterford, the special education teachers (grades 1-12) in New London earned on average $67,325 in 2012-13, which placed it 9th out of the 18 towns in New London County, above nearby Norwich ($66,340), Stonington ($63,026), and East Lyme ($61,774), among others. PTX 420. Regarding average salaries in 2012-13 for principals, 2 of the six focus districts (Bridgeport and New Britain) were above the state average. Id. Regarding salaries in 2012-13 for superintendents, all 6 of the focus districts were above the state average. PTX 420; Defs' Demonstrative 16. Bridgeport superintendent's salary was 9th in the state at $234,000, above both New Haven and Hartford. PTX 420. Bridgeport's current superintendent, Frances Rabinowitz, earns about $290,000, consisting of $190,000 from Bridgeport Public Schools and about $100,000 from her state pension. Rabinowitz Tr., 6/2/16, p. 194.

In most Connecticut school districts, about 80-82% of the district budget is comprised of personnel salary and benefits, with salaries alone in the 60-65% range. See, e.g., Pascarella Tr., 2/2/16, p. 173. Through collective bargaining at the local level, teachers and school administrators in the focus districts have consistently received salary increases over the last few years, permitting those districts to hire and retain qualified teachers. See Teacher and Administrator Compensation FOFs, 5/31/16 (##75-79), 7/15/16 (##2, 4); Thompson Tr., 2/18/16, pp. 99-100 (New London teachers recently reached a 3-year collective bargaining agreement effective July 1, 2016, with 9% raises over the three years); Rabinowitz Tr., 1/26/16, p. 16 (2% increases per year for teachers), 6/2/16, p. 119 (all contracts in Bridgeport involve annual salary increases).

There is no evidence in the data nor in testimony at trial that teacher compensation is inadequate in the sense of preventing districts from staffing classrooms with qualified teachers. Podgursky Tr., 4/21/16, p. 67. Teacher hiring and retention in the plaintiffs' six focus districts (all are Alliance Districts and all but Danbury are Education Reform Districts) compare favorably to other districts in the state. See, e.g., Quesnel Tr., 6/1/16, p. 168 ("Our retention rates in our district are something we are comfortable with."); Garcia Tr., 3/4/16, p. 69 (teacher turnover has decreased in Windham). For example, from 2012-13 to 2014-15, the Education Reform Districts (the 10 lowest performing Alliance Districts) added 4.3% in additional total certified positions, the remaining Alliance Districts added 2.6% in additional total certified positions, and all other local districts added 0% additional positions. PTX 6334, Table 2, p. 2. From 2012-13 to 2014-15, even though they increased their position counts, unlike the average of the remainder of districts, the Education Reform Districts filled 91% of their available positions by Oct 1, the remaining Alliance Districts filled 92.2% of their available positions by October 1, and all remaining local districts filled 94.3% of their available positions by October 1, so that all groups filled over 90% of their available positions by October 1. PTX 6334, Table 2, p. 2. For 2014-15, both the Education Reform Districts and the remaining Alliance Districts received a median number of 23 applications per available position, while all other districts received a median of 20 applications per position. In other words, the Education Reform Districts and the remaining Alliance Districts were slightly more popular with applicants than the remaining districts, on average. PTX 6334, Table 2, p. 2. Additionally, though the total number of certified positions statewide (excluding approved private special education programs) declined slightly (less than one half of one percent) from 53,484 in 2014-15 to 53,225 in 2015-16, some districts evidenced modest increases in certified positions. For example, in the Education Reform Districts, the total number of certified positions increased by 1.6 percent (173 positions). DTX 6155, p. 4. Also, the number of vacancies that districts sought to staff prior to the start of the school year decreased from 5,145 in fall of 2014 to 4,836 in fall of 2015 - a 6 percent decline. The number of vacancies declined for all districts except Other LEAs and Approved Private Special Education Programs. DTX 6155, p. 4. See also DTX 6393, Figures 12 and 13 (showing that in Connecticut, applicants for teaching positions far exceed vacancies).

1. Class Size in Plaintiffs' Six Focus Districts Compares Well to Other Districts.

Contrary to anecdotal evidence from some of plaintiffs' witnesses, the average class sizes in the plaintiffs' six focus districts are comparable to the state averages. For example, in the 2014-15 school year, the CSDE data on average class sizes in grades K-8 statewide and in the focus districts showed that in general there are only small and inconsistent variations in class size in the plaintiffs' focus districts as compared to the state average. Defs' Demonstrative 10; DTX 6444; Gopalakrishnan Tr., 5/18/16, pp. 124-32.[[17]](#footnote-17) See also Teacher and Admin. Compensation FOFs, 5/31/16, # 89 (student to staff ratios in CT compare favorably to other states). This was also true for Bridgeport, in spite of Superintendent Rabinowitz's anecdotal testimony about class size. Defs' Demonstrative 10 (showing K-8 class sizes in Bridgeport ranging from 21.0-23.7 students, contrary to Superintendent Rabinowitz' testimony about class sizes ranging from 24-29 students); Rabinowitz Tr., 6/2/16, p. 13. See also Capasso Tr., 2/23/16, pp. 66-7 (8th grade math teacher at Tisdale School in Bridgeport has 18-20 students in each of her classes this year, and had 20-21 in her classes last year, which is a "very nice class size"); Simmons Tr., 1/28/16, pp. 94-7, PTX 358 (in 2012-13, Edison School in Bridgeport had an average of 22 students per class in kindergarten, 20 students per class in 2nd grade, 15 students per class in 5th grade; and in 2014-15, the averages were 22 in kindergarten and 18 in 5th grade); Pascarella Tr., 2/2/16, pp. 161-2 (Danbury High School had a student to teacher ratio of 16:1). Overall, class size averages in grades K-8 were lower than the state average (20.4 average across all grades) in East Hartford (20.3), New Britain (20.2), and Windham (19.0), while they were slightly higher in Bridgeport (22.5) and Danbury (20.9).[[18]](#footnote-18) Defs' Demonstrative 10.

Additionally, research on the effects of class size on student achievement is inconclusive. See Baker Tr., 1/27/16, pp. 148-50 (Hoxby study of class size data in CT middle schools found no evidence of any correlation between lower class size and gains on academic measures); DTX 6415 (Hanushek Expert Report), pp. 1-2; Hanushek Tr., 5/3/16, pp. 105-7 (STAR study showed that, while the results showed some small improvements during kindergarten, the small classes did not continue to have an impact on achievement in the later grades of the experiment, even though that would have been expected if small classes had an impact across grades; also, the reductions in class size were very large [moving from 23 to 15 students per class], making it an extraordinarily expensive policy; no comparable studies even exist for later grades); Seder Tr., 4/26/16, pp. 84-7 (research shows that class size is very poor predictor of improved student achievement); Pascarella Tr., 2/2/16, pp. 51-2, 191-2. What is more important is the skill level of the teacher, *i.e.*, how the teacher is planning for and instructing the class. Pascarella Tr., 2/2/16, pp. 51-2, 191-2; Thompson Tr., 2/18/16, p. 118 ("You can have a lousy teacher with 4 or 28 kids, but usually the outcome is going to be the same. So it starts with a real highly skilled teacher."); Rabinowitz Tr., 6/2/16, p. 15 (small class sizes, even as low as 15 students, won't make a difference without an effective teacher). Moreover, class sizes in schools are typically a result of individual decisions made by school leaders. See, e.g., Quesnel Tr., 6/1/16, p. 80 (using school schedule to improve class size efficiency); Capasso Tr., 2/23/16, pp. 70-1 (stating that the principal at Tisdale School in Bridgeport wanted smaller class sizes so she managed her available funding in such a way that provided an additional teacher at the middle school); Hanushek Tr., 5/3/16, pp. 99-100 (noting that good principals will give their best teachers the larger classes and the poorer teachers the smaller classes).

H. By Any Reasonable Measure, the State's Distribution of Funds to School Districts is Fair

and Rational.

Plaintiffs' core complaint appears to be an assertion that the state's distribution of funds to local school districts is not fair or rational. The facts are entirely to the contrary. Dr. Michael Wolkoff, an expert in school finance issues, carefully analyzed state aid and school districts' expenditures in Connecticut as they related to two variables – percentage of students receiving free or reduced price lunch ("FRPL"), a proxy for poorer students, and the state's measure of property wealth in each school district. Prof. Wolkoff divided the K-12 districts in the state into ten roughly equal groups, or deciles, as measured separately by each of these two variables. His findings, in summary, were that while there was relatively little variation in per pupil expenditures across the various deciles, there was an enormous variation in the amount of state aid, and in the proportion of total education spending that came from the state and the federal government, as compared to the funds coming from the local district, and that the variation directed by far the most aid to the districts with the largest percentages of poor students and the least property wealth. DTX 2435– Michael Wolkoff -- Connecticut School Finance Expert Report, and DTX 2434 (Charts and data), Tr. 4/14/16, pp. 36-37, 56-67.[[19]](#footnote-19)

In fact, when comparing deciles by proportion of FRPL children, the state aid going to the decile with the highest percentage of those poor children is about **eight times** the state aid going to the decile with lowest FRPL percentage, representing a difference in state aid of over $8,000 per pupil. DTX 2434, Chart 11, Tr. 4/14/16, p. 56. Similarly, when comparing deciles by district property wealth, state funding provides a much greater share of revenues to those districts with lower wealth than those with higher wealth, so that the wealthiest decile is almost entirely funded with local funds, and the poorest decile is primarily funded with state and federal funds. DTX 2434, Chart 15, 16; Tr. 4/14/16, pp. 57-60. Overall, as shown in DTX 2434, there is relatively little (and inconsistent) variation in per pupil expenditures among the various deciles divided by percentage of FRPL children, DTX 2434, Chart 6, or by district property wealth, DTX 2434, Chart 14, but, by a very wide margin, the greater the percentage of FRPL students or the lower the level of property wealth per district, the more state (and federal) aid the district receives, greatly equalizing differences among districts. DTX 2434, Charts 7, 8, 9, 15, 16, 17. This distribution is obviously both fair and rational, as it has a consistent and entirely appropriate result – the more poor students in a district, and the poorer the district is in terms of property wealth, the more state aid it receives. For a confirmation check, Prof. Wolkoff also reviewed the data through use of regression analyses that considered each individual school district, without regard to deciles. In that analysis, also, he found that less property wealth in a district was strongly correlated with more state aid received, and that percentage of FRPL students in a district was strongly correlated to increased state aid. DTX 2435, pp. 6-7; Tr. 4/14/16, pp. 61-67. The plaintiffs, who bear the burden of proof on all issues, have provided no evidence to the contrary. While they maintain that certain districts do not receive enough state aid, or that certain specific aspects of the formula or appropriation do not give them enough aid, they have provided no witness and no evidence to contradict this basic point – the poorer the district, the more state aid it receives, by a long shot.

1. Funding and Accounting for Magnet School Students Result in per Pupil Expenditure Figures for the Plaintiff's Focus Districts which are Inaccurately Lower than the Actual Numbers by a Significant Amount, Creating an Appearance of Unfairness to Those Districts which is not Accurate.

One of plaintiffs' consistent complaints has been that per pupil expenditures in some of the plaintiffs' focus districts are comparatively low compared to many other districts. At least a major part, if not all, of this discrepancy is a result of distortions in the way the per pupil expenditure data is calculated, created by the ways in which students who attend interdistrict magnet schools in and out of the plaintiffs' focus districts are counted and funded. In other words, a substantial part of the claimed discrepancies is not real.

In her testimony, SDE Chief Financial Officer Kathleen Demsey, with the aid of DTX6306, explained the anomalies and their effect, using New Britain and Bridgeport as illustrative examples, Tr., 4/1/16, pp. 141-157; DTX 6306. First, she explained that because the statutory definition of Net Current Expenditure Per Pupil has not been updated in relation to magnet schools, the definition counts students as being educated in the district where they live, even though a magnet school elsewhere may be educating them. Tr., 4/1/16, pp. 118-119. In addition, as an examination of the applicable statutes reveals, the extra payments a district receives from the state for students attending its interdistrict magnet schools do not count as part of its ECS grant, further distorting the per pupil expenditure number.[[20]](#footnote-20) Turning first to New Britain, that district sent 869 students to out of district magnets for which it paid **no** tuition, and 13 students (Great Path) plus 444 students (various CREC schools) plus 22 students (Goodwin College schools) to schools to which it paid tuition ranging from $3330 to $5400 per pupil, amounts which are always less than the per pupil ECS grant New Britain receives for them, DTX 6306. Although New Britain counts all of these students as part of its average daily attendance upon which its ECS grant is calculated, it does not pay for educating 869 of them at all (except for very limited transportation costs and for special education costs, which are likely minor, as students with very severe disabilities would be unlikely to be able to benefit from magnet schools), and pays well less than its per pupil ECS grant for those for whom it pays tuition. Reviewing the ECS calculation document, DTX 3356, page CF1C, shows that New Britain was counted as having 11,061.5 students, including 1348 students who were educated at out of district magnets, but for each of whom New Britain received a full ECS grant. Further, DTX 3356, page CF7A, Column 1 for New Britain, shows that it received a total ECS grant of $81,027,680, or roughly $7325 per reported pupil. However, 1348 of those reported pupils were being educated out of district, but New Britain received roughly $9.8 million, or roughly 12% of its ECS funding, for students it wasn't educating. Tr., 4/1/16, pp. 148-153. Because these students are included in New Britain's student count, even though New Britain pays nothing for most of them, and far less than it receives per student for the others, New Britain's reported per pupil expenditure is artificially and inaccurately deflated. Tr., 4/1/16, pp. 152-153.

Ms. Demsey's illustrative testimony about the effects of magnet schools on funding calculations for Bridgeport explains similar and additional anomalies that affect the per pupil expenditure calculations. As Ms. Demsey explained, Bridgeport receives $7,085 for each of the 478 students from other districts whom it educates in its own interdistrict magnet schools, for a total of almost $3.4 million, Tr. 4/1/16, pp.141-144, but that money does not count, per Conn. Gen. Stat. § 10-261(3)(E), as part of Bridgeport's per pupil expenditures. Bridgeport also receives $3000 in additional funding per student for its own students in its interdistrict magnets, for 1106 students, DTX 6306, for a total of about $3.3 million, that does not count as ECS funding. In addition, Bridgeport sends 460 students to out of district magnets, DTX 6306, but still counts those students, as explained above, in its ECS student count.

While the precise details vary from district to district, it is apparent that the overall effect of the anomalies described above is to inaccurately reduce the reported per pupil expenditures for each of the plaintiffs' focus districts, often by a substantial sum.

1. The Credible Reliable Scientific Evidence Establishes that Within Connecticut, There is No Correlation Between Educational Expenditures and Standardized Test Results, or, More Importantly, Growth in Standardized Test Results.

Two well-recognized experts in education and the economics of education conducted separate scientific analyses of the performance of Connecticut students on standardized tests and searched for correlations between per pupil expenditures and educational achievement. Each of them, independently, came to the same conclusion: there is no such correlation, whether for all students, poor students, English learners, or minorities. The plaintiffs, who bear the burden of proof on every issue in this case, produced no witnesses to challenge the methodology or accuracy of these analyses, nor the qualifications of the experts. They simply produced anecdotes, or stories, or speculation about how more money might improve test scores, in spite of this scientific evidence which they did not challenge.

Additionally, the witnesses who offered this testimony for the plaintiffs were, in almost all cases, currently employed by districts that have a vested interest in this case by virtue of both their employment and the fact that their employers are dues paying members of plaintiff CCJEF.  See DTX 6460.  In fact, many of these witnesses said they were testifying in an attempt to increase the amount of state money their employing district receives.  See*,* e.g., Quesnel Tr. 1/15/16, pp. 160-61; Rabinowitz Tr. 1/22/16, pp. 97-98; Pascarella Tr., 2/2/16, pp. 156; Garcia Tr., 3/4/16, p. 102; see also DTX 6043 (email from New Britain Superintendent Paul Salina to staff indicating that when staff discusses the CCJEF case with the defendants they "may discuss positive programs and success, but with the caveat that we could do so much more with better funding").  Other credible testimony explained why superintendents must always insist that they need more money. For example, Commissioner Wentzell testified that a superintendent never says that she has enough resources to do her job, in part because one of the central roles of a superintendent is to bring as many resources to the district as possible in order to offset the local contribution. Wentzell Tr., 4/13/16, pp. 16-17. If a superintendent were not to seek additional monies from the state and other sources, it would have an adverse impact on her evaluation before the board. Id. Further, if student performance results are not what the community would like, it is easier for a superintendent to claim that if the district had more resources, then there would be better results. Id. Similarly, Dr. Villanova testified credibly that no superintendent would ask for less resources from the state, particularly when they know the municipal contribution is often fixed. Villanova Tr., 5/13/16, p. 119. Accordingly, the directly interested testimony of superintendents deserves less weight than scientific evidence that shows a consistent and persistent lack of relationship between dollars spent and growth of student achievement.

Professor Michael Podgursky first analyzed the standardized test scores, on an individual basis, for every student in Connecticut for whom data was available who took the Connecticut Mastery Test, or CMT, in 2011 and 2012 (the most recent years available when he did his analysis) and compared those scores to the per pupil expenditures of the districts where the students attended school. He found, in a nutshell, no relationship between per pupil expenditure and student achievement on this test, and he found that this result obtained equally for all students, for poor (FRPL) students, for minority students and for English learners. DTX 6394 – Podgursky Expert Report, pp 1, 16-19, Tr. 4/21/16, pp. 10-24. In other words, students did no better in higher spending districts and did no worse in lower spending districts. Recognizing that it was possible that some or many students had received some or all of their education in districts other than the one where they were in school at the time of the tests, and because achievement scores are tied to many factors, Dr. Podgursky conducted a second set of analyses to look solely at **growth** in student achievement for students in the same district from one year to the next. Common sense suggests that comparing growth of students who remain in the same district from one year to the next is a good way to isolate the value that the district brings to each student's growth. Dr. Podgursky used a well-recognized and accepted statistical approach, known generally as value-added analysis, to compare growth in test score achievement for students who remained in the same district over two consecutive years. The results of this approach were virtually the same as those of the first approach: among Connecticut students, there was simply no discernible correlation between growth in student achievement and district per pupil expenditures. DTX 6394 – Podgursky Expert Report, pp 1, 20-40, Tr., 4/21/16, pp. 24-43. Professor Podgursky noted in summary that there is no evidence of a positive relationship between spending and student achievement and that there is therefore also no statistically credible way to determine how much spending is required to reach a specified level of student achievement. DTX 6394 – Podgursky Expert Report, p. 1, Tr., 4/21/16, pp. 10-11.

Dr. Podgursky was not alone in coming to these conclusions. Professor Eric Hanushek, an internationally renowned and extensively published expert on the economics of education, DTX 6490 – Hanushek CV, and also a scholar recognized and relied upon by the United States Supreme Court, see "Defendants' Opposition to Plaintiffs' Motion in Limine," filed 10/15/15, Doc. # 230.00, pp. 3-4, conducted independent analyses of student achievement in Connecticut and came to similar results. While Prof. Podgursky analyzed test score performance on an individual student basis, Dr. Hanushek conducted his analyses of the relationship of student test scores and year over year growth in student test scores to per pupil expenditures on a district by district basis. Although his approach was thus somewhat different, his results and conclusions were almost exactly the same. He, too, found little or no relationship between student achievement and growth in student achievement and per pupil expenditures. DTX 6415 – Hanushek Expert Report, pp. 1, 3-4, 23-38, Tr., 5/3/16, pp. 13-58.

1. The Lack of a Relationship Between Student Achievement or Growth in Student Achievement and Expenditures per Student is a Consistently Repeated National Finding.

Both Dr. Podgursky and Dr. Hanushek noted that they consistently found a lack of a relationship between spending and achievement across the United States and over time. DTX 6394, p. 1, DTX 6415, pp. 1-3. Tr., 5/3/16, pp. 110 -121. In fact, as Dr. Hanushek noted, the state with the largest or among the largest test score gains from 1992 to 2011 was Florida, which had the lowest increase in per pupil expenditures (near zero) of any state in the country over that time. Tr., 5/4/16, pp. 95-97, PTX 1184, 4th page, Fig. 7.1. See also Reschly Tr., 4/20/16, pp. 117-19 (noting that with "very meager" resources Alabama successfully implemented SRBI and showed "remarkable growth" in achievement from 1992 to 2011, going from being one of the lowest states to being 1 point under the national average).

Moreover, plaintiffs' superintendent experts agreed that (1) there is an achievement gap within their districts and within schools in their districts, and (2) there is no reason to believe that students who are performing on the lower end of the achievement gap within a school or district have fewer resources available to them than students who are performing at a higher level in that same school. See, e.g., Salina Tr., 1/13/16, p. 80; Pascarella Tr., 2/2/16, pp. 126-7; Garcia Tr., 3/4/16, p. 61; See also Podgursky Report, DTX 6394 (finding achievement gaps exist within school districts and schools in other states as well). This testimony, too, supports the proposition that the achievement gap, and poor student performance, are not caused by lack of financial resources and will not be cured by an infusion of money.

1. Compelling Testimony of Highly Experienced School Leaders Shows that Leadership, Rather than Money, is the Key to Student Growth.

Three of the four most experienced school and district leaders who testified, Commissioner Wentzell, Deputy Commissioner Cohn, and former Superintendent Villanova, stated clearly and unequivocally, based on their training, study and vast personal experience, that leadership, rather than funding, is the key to educational success. Their testimony, unlike that of Interim Superintendent Rabinowitz, is also fully consistent with the essentially unchallenged testimony of Dr. Podgursky and Dr. Hanushek that there is no discernible correlation between spending and growth in student achievement, in Connecticut or almost anywhere else. While presently serving superintendents have overwhelming incentives to insist that they need more funding, both because that is their job and because it is a way to lay responsibility for unimpressive results elsewhere, the more credible evidence is to the contrary.

While defendants cannot begin to summarize the testimony of these three key witnesses within the confines of this brief, their testimony was consistent. Commissioner Wentzell noted, for example, that "leadership is a lot more important than the money," and that "I've seen schools in very challenging contexts with very few resources be very successful, more successful than the other schools in the same district. And it was leadership." Tr. 3/31/16, p. 155, 4/13/16, p. 75. As the court noted in conversation with former Supt. Villanova, "The Court: So your point is . . . that you see leadership as the linchpin -- The Witness: Absolutely." Tr. 5/11/16, p. 25. Similarly, Deputy Commissioner Cohn noted that "leadership is key," and that "systems don't always need more money." Tr. 5/24/16, p. 18; see also Tr. 5/13/16, p. 59 (leadership and allocation of resources are most important factors).

The conclusion that leadership requires more effective use of existing funds contrasts with the testimony of various superintendents that they failed to use data to identify less successful initiatives in order to focus on those proven most effective. Superintendents (or Assistant or Associate Superintendents) Salina, Locke, Rabinowitz, Johnson and Carver could provide no examples of their use of comparative data in their systems to prioritize more cost-effective initiatives and eliminate less successful ones. Salina Tr. 1/13/16, p. 84; Locke Tr. 1/13/16, p. 115; Rabinowitz Tr. 1/26/16, p. 42; Johnson Tr. 1/26/16, pp. 76-77; Carver Tr. 2/4/16, p. 84.

While some superintendents insisted they needed more funding specifically for Scientific Research Based Interventions (SRBI), compelling evidence showed that they should focus their efforts on improving their existing classroom instruction when facing classrooms where many or most students were performing below standard. The state's official statement on using SRBI, DTX 4344, (for which, as the second page states, Supt. Rabinowitz was a member of the Advisory Panel), notes that "Implementation of SRBI largely involves finding more effective ways to deploy *existing*  resources," p. 10 (numbered p. 5)(emphasis in original). The document goes on to note that effective teaching in the classroom should be meeting the needs of at least 80% of the students, and if it is not, schools should begin with "analysis of core general education practices" as "a necessary first step to improving student outcomes." DTX 4344, p. 11 (numbered p. 7). The report also notes that both Tier II and Tier III interventions should be "short-term (e.g., 8 to 20 weeks)," DTX 4344, p. 13 (numbered p. 8). Commissioner Wentzell and Deputy Commissioner Cohn both explained that proper application of SRBI did not require extensive resources. Wentzell Tr. 4/20/16, pp. 159-160; Cohn Tr. 5/24/16, pp. 38-9, 98.

IV. THE 2012 REFORMS PROVIDE SUBSTANTIAL ADDITIONAL SUPPORT TO

PROVIDE ADEQUATE AND EQUITABLE EDUCATIONAL OPPORTUNITIES

1. The 2012 Reforms Provide Effective Targeted Assistance to Support Adequate Equitable Educational Opportunities.

Plaintiffs’ claims must be tried based upon the education system in effect at the time of trial. CCJEF v. Rell, 295 Conn. 240, 318-19 (plurality) and 321 (Palmer, J. concurring) (2010). The educational landscape in Connecticut comprehensively and significantly changed with the 2012 enactment of Public Act 12-116 and its subsequent utilization. These educational reforms increase funding and enhance educational opportunities for students in low performing school districts in fundamental and innovative ways in an appropriate research-grounded effort to improve educational opportunities in the neediest districts. Two of the most significant new programs are the Alliance Districts, and the Commissioner's Network, along with the continued availability of the Priority School District Grants. Wentzell Tr., 3/31/16, pp. 147:1-148:1, 92:15-26. Under P.A. 12-116, Connecticut has also expanded early childhood educational opportunities, focused on early literacy programs, and developed new teacher evaluation and support guidelines and a related data collection system. Id. at 81:11-22, 128:1-8; Wentzell Tr., 5/5/16, p. 47:14-19; Barzee Tr., 4/22/16, pp. 81:11-82:14.

Dr. Richard Seder described Connecticut's specific reforms as "leading edge," with the state targeting where the most work needed to be done, and concluded that the state's reforms were a rational and systematic approach to improvement. Seder Tr. 4/26/16, p. 83:1-24, 96:7-97:24: See also DTX 2432 (Seder Report – CT's Rational Approach to Systemic Change), pp. 33-40 (discussing CT's early childhood intervention and child-centered services, targeted assistance to low-performing schools and districts, efforts to ensure effective teachers and school leaders, and the state as a service agency.) Dr. Seder also noted that more money is not the answer. Tr., 4/26/16, p. 88. In addition, Dr. Rice testified that Connecticut's approach in its Equity Plan, DTX 3888, is "focused on the right sets of priorities with respect to teacher and leader quality in poor schools." Rice Tr., 3/3/16, p. 139:2-8. Accord, DTX 2430 (Seder – School Site Visit Report Conclusion), p. 63 (leadership matters along with a systematic approach to change); DTX 2432 (Seder – CT's Rational Approach to Systemic Change), pp. 37-41; Seder Tr., 4/26/16, pp. 104:8-105:11, 122:11-19 (leadership matters in school climate as well as instructional issues).

1. Alliance District (AD) and Priority School District Grants (PSD) Provide Major New Support for the Poorest Districts, Including All of Plaintiff's' Focus Districts.

The AD program provides additional ECS money and important other supports to the 30 lowest performing districts after SDE approval of a reform plan proposed by each district designed to increase student outcomes. Cohn Tr., 5/25/16, p. 3:20-4:2; DTX 6451 (AD/PSD application), p. 3. Continued approval of a plan is predicated on district progress and alignment between use of funds and strategy set out in the plan. DTX 6451 at 3. SDE provides feedback in an iterative process before approving the plans, monitors the plans and requires the districts to produce evidence that their plans are effective. Cohn Tr., 5/25/16, p. 6:8-24; Wentzell Tr., 3/31/16 p. 77:16-19. Alliance District Convenings are used to share best practices and provide professional development amongst primarily superintendents, central office staff and principals. Cohen Tr., 5/24/16, pp. 62:2-19; 5/25/16, pp. 45:24-48:6. [[21]](#footnote-21)

The PSD grants provide additional funds to the districts with the greatest academic need for 8 approved reform areas, including, but not limited to extended school hours and summer school programs. Id.; Cohn Tr., 5/24/16, pp. 72:6-9; 5-25-16, pp. 80:19-81:21; DTX 6451, p. 3 (lists 8 uses). At least 20% of the PSD funding must support early reading interventions. Id. at p. 4. Fourteen of the 30 ADs, including Bridgeport,[[22]](#footnote-22) Danbury,[[23]](#footnote-23) East Hartford,[[24]](#footnote-24) New Britain,[[25]](#footnote-25) New London,[[26]](#footnote-26) and Windham,[[27]](#footnote-27) also qualify for PSDs during 2016-17. Id.

The reform framework in the AD/PSD application process centers on 4 turnaround strategies: Talent, Academics, Culture and Climate, and Operations (TACO). DTX 6451, p. 5; Cohn Tr., 5/25/16, pp. 7:15-11:27. SDE works with districts to plan sustainability of their AD plans, which may take a few years, may involve realignment of other priorities, and may come about with job-embedded professional development. Cohn Tr., 5/25/16, pp. 12:1-16:11, 40:20-42:24 (the state pays the lion's share the first year and the district pays a minimal amount and then those amounts decrease and increase respectively over the subsequent plan years). Instructional coaching should not be a priority that lasts forever, as teachers retain the skills sets they develop. Id. at 45:3-15.

Although it is good fiscal practice to spend grant money in the year for which it was allocated, Cohn Tr., 5/25/16, pp. 14:18-16:11; 5/25/16, pp. 21:5-10), about one-third of the ADs carry over grant funds, including all of the plaintiffs’ six focus districts in 2015-16, except Windham. Id. at 25:10-13; DTX 6461, p. 2. The following are the AD amounts the plaintiffs’ focus districts had not spent for SY 2015-16 as of May 2, 2016: Bridgeport $5,918,992; Danbury $1,047,221; East Hartford $452,667; New Britain $3,413,366; New London $647,602; Windham $0. DTX 6461, p. 2. Not spending available money in the designated year obviously deprives that year's students of the benefits of the funds.

1. Commissioner's Network Grants (CN) Provide More Targeted Support.

The CN program provides substantial funding as well as intensive supports and monitoring for schools to engage in school level turnaround for up to 5 years. Cohn Tr., 5/25/16, p. 4:3-17, 76:2-4; DTX 2110 (CN Support Handbook).[[28]](#footnote-28) There are currently 14 schools participating and there will be 17 in the fall of 2016. Id. at 18-21. There is no evidence that any school has ever been turned down for the CN because of a lack of available funding. The TACO framework is used as well within the CN context. Id. at 71:20-23. NetStat meetings are used to share best practices and provide professional development within the CN schools. Cohen Tr., 5/24/16, p. 62:2-19; 5/25/16, p. 74:19-75-5; DTX 2110, pp. 11-13. SDE also works with the CN schools to support sustainability goals. Cohn Tr., 5/25/16, pp. 76:26-77:10; DTX 6471 (CN update), p. 3. The SY 2015-16 is the first year that sustainability is a requirement to join the CN. Cohn Tr., 5/25/16, p. 60:1-16. Like AD plans, CN plans can also be revised as needed with SDE approval. Id. at 71:12-19.

Numerous schools within the CN have had significant unspent carry-over amounts in SY 2015-16 as of May 2, 2016. DTX 6461, p. 4. The following are the amounts each of the CN schools found within the plaintiffs’ six focus districts had been approved and amounts not spent as of May 2, 2016: Bridgeport - Curiale $352,000 approved/$73,804 unspent, Dunbar $500,000 approved/$79,007 unspent, Marin $1,000,000 approved/$259,158 unspent; New Britain – DiLoreto $800,000 approved/$249,000 unspent. East Hartford Middle School spent all of its $900,016 CN funds as did East Hartford's O’Brien with regard to its $550,000. Likewise, Windham Middle School spent all of its $587,840. Id.

1. School Improvement Grants (SIG) Provide More Targeted Support.

There are two types of these federal grants: SIG 1003(a) and 1003(g). The SIG 1003(a) grants are about $4 million this year, spread across 27 or 30 AD schools directed at a specific group of students, such as high needs students, special education or chronically absent students. Cohn Tr., 5/25/16, pp. 82:13-27. SIG 1003(g) is about $3.6 million directed at a small number of schools for a whole school turnaround effort for 3 years under ESSA. Id. at 83:1-9.

For additional information including budgets for earlier years of grants and bonds targeted to neediest districts and schools, see DTX 6226 (Demonstrative) (AD/PSD, CN, low-performing, SIG, and schools of distinction).

1. The Next Generation Accountability System is Well-Designed to Support and Increase Accountability of Leaders, Schools and Districts.

Connecticut's Next Generation Accountability System (NextGen System) is the next iteration of its school and district accountability plan that was outlined in its 3rd ESEA Flexibility Request, which was ultimately approved on August 6, 2015 by the U.S. Department of Education. Gopalakrishnan Tr., 5/18/16, p. 3. See PTX 204 (ESEA Flexibility Request, revised 8/3/15, Principle 2); DTX 5718 (9/22/15 Letter from Commissioner to Superintendents re: Highlights from ESEA Flexibility Request). The NextGen System describes the indicators, methods and approach that Connecticut will use to hold schools and districts accountable, and makes public and transparent which schools and districts are doing a good job on delivering a quality education to students. DTX 6111; Gopalakrishnan Tr., 5/18/16, p. 3; Wentzell Tr., 3/31/16, p. 19; PTX 1141 (2014-15 School Categories in NextGen System). It is also tied to supports from the state and consequences at the state level. PTX 1141; Wentzell Tr., 3/31/16, p. 19. Moreover, the CSDE provides technical assistance to districts concerning root-cause data analyses, and offers opportunities for districts to share best practices, such as at Alliance District convening meetings and Commissioner's Network "NetStat" meetings, and by publishing a guide for superintendents to use the accountability data to improve and replicate high-performing strategies, particularly for high needs students. Wentzell Tr., 4/13/16, p. 22, 24-5.

The NextGen System has 12 indicators, each weighted differently on an accountability index. DTX 6111, pp. 5-6. For example, indicators 1 and 2, academic achievement and growth in achievement on state mastery examinations for all students and high needs students, are weighted 300 and 400 index points, respectively (starting in year 2). Id. The separate weighting of high needs students demonstrates the state's commitment to reducing the achievement gap in schools and districts between high needs students and their counterparts. Gopalakrishnan Tr., 5/18/16, pp. 34-5. In elementary and middle schools, indicators 1 and 2 comprise 700 of the 850 points on the index (82%), demonstrating the state's emphasis on growth in achievement in schools and districts, particularly for grades 3 to 8. Id..; Gopalakrishnan Tr., 5/18/16, pp. 12-13, 17 (growth in achievement is "a very solid indicator of which schools are helping students grow academically").

In high school, where there is only one standardized assessment (and so there can be no growth component), standardized academic achievement indicators account for 600 of 1250 points on the index (48%). Id.; Gopalakrishnan Tr., 5/18/16, pp. 9-10. Other indicators at the high school level focus on college and career readiness. DTX 6111, p. 5. These indicators provide safeguards that militate against adulterating graduation standards. Gopalakrishnan Tr., 5/18/16, pp. 53, 60. See also Graduation Standards FOFs, 5/31/16, ## 125-95, 7/15/16, ## 1-32 (graduation standards). Districts are rewarded for exposing students to college and career coursework and exams. For example, indicators 5 and 6 (50 points each) relate to participation in college level coursework such as AP (advanced placement), IB (international baccalaureate), dual enrollment, and career and technical education courses (indicator 5), as well as the percentage of students reaching college readiness benchmarks on examinations such as the SAT, ACT, AP and IB exams (indicator 6). DTX 6111, p. 5; Gopalakrishnan Tr., 5/18/16, pp. 48-50. Additionally, indicator 7 (50 points) awards points to schools and districts for the percentage of 9th grade students earning at least 5 full year credits in the year and no more than one failing grade in English, math, science or social studies. DTX 6111; Gopalakrishnan Tr., 5/18/16.

Graduation rates are weighted relatively low compared to other indicators, providing a safeguard against districts lowering graduation standards in order to increase graduation rates. DTX 6111, pp. 5-6; Gopalakrishnan Tr., 5/18/16, p. 60 (noting that, under the NextGen System, if a district's 4-year graduation rate is, for example, 75%, the district does not get 0 points for indicator 8; instead, it would get 75 out of 94 (state's 4-year graduation rate target)). Instead, as the Court recognized, the NextGen System places greater emphasis on academic achievement and academic growth than it does on graduation rates. Gopalakrishnan Tr., 5/18/16, p. 61.[[29]](#footnote-29) This emphasis on achievement and growth in achievement is supported by superintendents, including plaintiffs' expert Nathan Quesnel. Quesnel Tr., 6/1/16, p. 133 (noting that a good thing about the new accountability system is it is focused on achievement and growth between years). The 4-year graduation rate (indicator 8) and the 6-year graduation rate for high needs students are each weighted at 100, which is only 8% of the total index for a high school. Id. The inclusion of the 6-year graduation rate for high needs students was the result of a concerted effort by the CSDE to respond to the concerns of superintendents, such as Dr. Pascarella in Danbury, about the needs of certain students such as English learners who may require more time to reach grade level. Gopalakrishnan Tr., 5/18/16, pp. 32, 51-2. This factor encourages districts to retain and reengage high needs students to ensure that they are ready academically before graduating. Id.

The NextGen System also provides flexibility for recently arrived English learners with regard to student achievement and growth; see DTX 6111, p. 15 (ELs newly arriving in US are not counted in indicator 1 in first year but are counted in indicator 2 in second year and both indicators 1 and 2 in third year); as well as any student who arrives in a school or district during the course of the school year. Gopalakrishnan Tr., 5/18/16, pp. 45-6 (the NextGen System only measures students who are full-year students, *i.e.*, were in the school on October 1 of that same school year). Other indicators include postsecondary entrance (indicator 10; high school only), physical fitness (indicator 11), chronic absenteeism, DTX 6111, pp. 5, 17, and arts access (indicator 12; high school only). DTX 6111, p. 5.

In March 2016, the CSDE published the first NextGen accountability reports for districts and schools. See DTX 6111, p. 29. Under these index results, several high needs groups in plaintiffs' focus district schools are outperforming the statewide high needs group average in one or more subjects, including 10 schools in Bridgeport, 6 schools in New Britain, 4 schools in East Hartford, and 2 schools in New London. DTX 6215 (high needs outperforming district and state); Wentzell Tr., 4/13/16, pp. 19-26; Gopalakrishnan Tr., 5/18/16, pp. 80, 103-4. See also DTX 6216 (schools exiting turnaround or focus status).

1. Connecticut has Created and Implemented More Objective and Uniform Teacher Performance Measures As Evidenced by PEAC, SEED, and CT Core Rubrics, That Are Rationally Related to the Education of Students**[[30]](#footnote-30)** (addresses Judge Q # 5).

The Performance Evaluation Advisory Council (PEAC) created new educator evaluation and support guidelines, adopted by the State Board of Education in 2012, DTX 6305, and updated in 2015 after receiving stakeholder feedback. DTX 6328. PEAC members include, among others, the heads of SDE, AFT-CT, CT-CEA, CAPSS, CAS, CFSA, CABE, RESC Alliance (EASTCONN and CREC), and the Chair of the Education Department of the Board of Regents. DTX 6328, p. 26. Many of these organizations are also dues-paying members of CCJEF. DTX 6460 (CCJEF membership list). Districts may develop their own evaluation and support plans consistent with the PEAC core requirements or use the 2015 state model, known as SEED (System for Educator Evaluation and Development), which is also aligned to PEAC's core requirements. Barzee Trial Transcript, (hereinafter Barzee "Tr.") 4/22/16, p. 30:4-31:5. SEED is grounded in CT Core Standards, CT’s Professional Standards, the Common Core of Teaching (CCT), the Common Core of Learning (CCL), the CT School Leadership Standards, the CT Framework K-12 Curricular Goals and Standards, the SBAC, and locally developed curriculum standards. DTX 3715, (SEED) p. 4. SEED is informed by a large body of research-based standards for educator effectiveness, including the Gates Foundation’s Measures of Effective Teaching (MET). Id. at 2, 4.[[31]](#footnote-31)

Multiple sources of information and evidence are used to evaluate educators. DTX 6328, p. 8-13. Teachers are evaluated based on both student outcomes and teacher practice. These two categories are further broken down as follows: (1) student growth and development (45%) and whole school student learning indicators or student feedback (5%)[[32]](#footnote-32); and (2) observation of teacher performance and practice (40%) and parent or peer feedback, including surveys (10%). Id. Similarly, the multiple sources used to evaluate administrators include: multiple student learning indicators (45%) and teacher effectiveness outcomes (5%); leadership practice (40%) and stakeholder feedback (10%). DTX 3715, pp. 3, 8.[[33]](#footnote-33) “Accordingly, the [SEED] model aims to minimize the variance between evaluations of practice and support fairness and consistency within and across schools.” Id. at 4. Scoring from the 4 components results in performance levels defined as Exemplary, Proficient, Developing, and Below Standard. Id. at 8.

The measure of Student Growth and Development is based on carefully planned, long-term academic objectives reflecting high expectations for learning and improvement, and aims for mastery of content or skill development. DTX 3715, p. 25. The Student Learning Objectives (SLOs) are measured by Indicators of Academic Growth and Development (IAGDs) which include specific assessments or measures of progress and targets for student mastery or progress. Id. The final determinations of SLOs and IAGDs are reached at through mutual agreement between the teacher and the evaluator and can be adjusted mid-year. Id. at 9, 26; Barzee Tr., 4/22/16, p. 53:2-12, 54:8-10.

The state assessment (SBAC) will be used for the 22.5% of the student growth and development component beginning in 2017-18. Barzee Tr., 4/22/16, p. 35:22-23. Until then, the districts use another appropriate standardized assessment where one exists. Id. at 33:16-22; See DTX 6328, pp. 9-10. And each of the six focus districts does utilize another appropriate standardized assessment: Bridgeport – AIMSWEB, (Rabinowitz Tr. 1/21/16, pp. 76:26-77:1); Danbury - STAR (Pascarella Tr., 2/2/16, pp. 69-71); East Hartford - STAR (DTX 6479 EH Report; Quesnel Tr., 1/15/16, pp 114:26-115:5); New Britain - NWEA (Salina Tr., 1/13/16, pp. 25:26-26:4); New London - NWEA (Thompson Tr., 2/18/16, pp. 30:10-17); Windham - DIBELS (DTX 6474 Ck3Li Report), and Riverside HMH1 replacing NWEA (Garcia Tr., 3/4/16, p. 70:8-19).

The other 22.5% is made up of a maximum of one other standardized assessment and a minimum of a non-standardized indicator. DTX 6328, pp. 9-10. Where non-standardized assessments are based on student performance, rubrics must be used. Id. at 10. See DTX 6328, p. 10. Thus, the use of non-standardized indicators is limited in use and weight, to no more than 22.5% of the growth and development component where districts use standardized assessments other than the state assessment, and non-standardized indicators may be used for even less than 22.5% of the growth and development component. Id. at 9. See also DTX 3715, pp. 26-29.

Teacher Performance and Practice (40%) includes multiple observations by trained evaluators, also evaluated against a standards-based rubric to identify strong practice, development needs, and to inform support to meet those needs. DTX 3715, p. 16. Barzee Tr. 4/22/16, p. 45:10-27 (the 40% observation of practice is made more objective through the use of rubrics, tools, and processes); 71:27-72:25 (proficiency trainings by external expert partners); 80:17-27 (evaluators must demonstrate own proficiency in evaluating). The CCT Rubric for Teaching, 2014 (DTX 5949) aligns with Conn. Core of Teaching (CCT) and Connecticut Core State Standards (CCSS) and reflects skills and knowledge teachers need to demonstrate. DTX 3715, p. 16. Barzee Tr. pp. 133:26 – 134:2. CCT Rubric for Teaching is organized into 4 domains of essential practice, each of equal weight and each with 3 indicators. Evaluators average indicators within each domain to a tenth of a decimal to calculate domain-level scores. DTX 3715, p. 21. This rubric was revised through collaborative efforts of SDE, RESCs, CAS, two statewide teachers’ unions, teachers and school leaders with experience in using the observation instrument. Id. at 16. Rubrics have also been created to provide objective standards for evaluations and support for administrators and support specialists. See DTX 5953 (Leaders' Rubric), 5950 (SESS Rubric) respectively; Barzee Tr., 4/22/16, pp. 65:15-71:26 (new rubrics have significantly reduced the variation with which we observe; much less subjectivity than in the absence of a rubric), 68:12-19.[[34]](#footnote-34)

Connecticut's PEAC core requirements that districts must satisfy when adopting evaluation plans for teachers and administrators are consistent with what Dr. Hanushek testified constituted effective elements of evaluation. See Hanushek Tr., 5/3/16, pp. 61-78. More specifically, Dr. Hanushek stated that evaluations should include both objective and subjective elements. Id. at 61:26-62:6; 63:4-64:13. Growth in student performance as measured by standardized tests is a very important element, but should not be used exclusively. Id. at 64:1-13. In Washington, D.C., "the most finely developed system today," this value-added score counts for 35% of the overall evaluation of teachers who are in tested grades. Id. at 65:8-17, 67:10-12. In D.C., the other 65% of the evaluation is done by full time district employees (including the principal) trained in evaluation, and is based on objective rubrics that take into account a variety of different factors of both classroom and outside the classroom factors. Id. at 66:6-13, 66:23-67:9. For the other teachers who aren't in tested grades, the evaluators use an objective rubric-based system instead of test scores. Id. at 67:12-27. An objective rubric consists of "a list of factors that they are grading people on in terms of their interactions with students, in terms of how well prepared they are for all the lessons that they're teaching." Id. at 69:13-19. Hanushek testified that the results of these systems have proven to be very positive. Id. at 69:24-26. He further explained that effective teacher evaluation in Connecticut could occur if the state "could declare some broad guidelines on how much attention had to be given to test scores of students, how much attention had been given to other measures….You have to have at least 40 percent of the evaluation of teachers has to use test score information if it's available." Id. at 71:25-72:18. Since 2012, Connecticut has in fact already taken this approach by developing core requirements through the work of PEAC that require 45% of teacher evaluations be based on growth and development from multiple indicators of standardized assessments. DTX 6328, pp. 8-11; DTX 3715. Hanushek also noted the importance of details of evaluation being founded in agreement between the local teachers and principals. Hanushek Tr., 5/3/16, p. 73:16-20; 77:16-19. This, too, is exactly what CT is doing. DTX 6328, p. 8. Hanushek approves of the use of parent surveys, another tool that CT makes available for use in evaluation. Hanushek Tr., 5/3/16, p. 77:14-15; DTX 6328, p. 13 (10%).

SDE provides, free of charge extensive training with regard to the district’s evaluation and support model, whether or not the district uses SEED. DTX 6328 at 16; DTX 3715 at 11; Barzee Tr. 4/22/16, pp. 72:4-25, 78:23-83:10. In addition to training for evaluators, there is training relating to calibration for fairness and accuracy across the districts, which eliminates a large degree of subjectivity. Barzee Tr., 4/22/16, 79:25-80:13; 112:25-113:4 144:2-7. At the request of a district or district employee, SDE will audit the summative rating when its components are significantly dissimilar (e.g., below standard and exemplary) to determine a final summative rating. SDE also performs an annual audit on two educators rated exemplary and two educators rated below standard, one of whom must be a teacher, in a random selection of 10 districts. DTX 3715 at 12.

The evaluation process informs the professional learning opportunities identified for individual teachers so that educators obtain the support they need. DTX 6328 at 13, 23; DTX 3715 at 13-14; Barzee Tr. 4.22.16, p. 84:1-90:3. Districts must create a differentiated plan of support for teachers rated developing or below standard. DTX 3715 at 14. Rewarding exemplary performance is also a part of this new plan. DTX 3715 at 15.

CT uses other performance measures rationally related to the education of students as well. For example, with regard to Connecticut's entrance and exit standards for educator preparation programs, there are new Praxis Core entry cut scores, aligned with CT Common Core standards testing basic skills in reading, writing, and math, which are in line with the multi-state recommended cut scores. And as to teacher qualifying standards testing content knowledge, 13 of the teacher qualifying Praxis II cut scores are above the multi-state recommended cuts. Barzee Tr., 4/14/16, p. 136:4-8. Id. at 123:8-24. In addition, based on the work of EPAC, which is comprised of many of the testifying plaintiff district members and CCJEF members, DTX 6315 (EPAC membership list), a new educator preparation program standards (CAEP) and accountability system will be presented to the State Board of Education for adoption in September 2016. DTX 3862 (EPAC update to SBE) at 4-6 and Appendix H-1; DTX 6316 (EPAC Accountability); Barzee Tr., 4/14/16, pp. 145:16-20; 146:18-147:14.

SDE's Talent Office budget to further talent development and thereby benefit students for the years 2012-2016 is seen in Def's Demonstrative 6396 and explained in Barzee's Tr., 4/22/16 pp. 108:6-114: 24. (2012-13: $7,277,523; 2013-14: $10,405,135; 2014-15: $9,475,887; 2015-16: $7,041,173).

1. Connecticut Uses A Multitude of Effective Incentives and Opportunities to Resolve

Teacher Shortage Areas.

There are shortages of teachers in certain subject areas nationwide, including in Connecticut. DTX 6155 (SBE update re 2016-17 shortage areas), p. 4; Barzee Tr., 4/14/16, pp. 151:23-152:2. The SDE Talent Office has a manager and a consultant devoted to working on shortage areas and exploring strategies to provide more opportunities to fill teacher shortage areas. Barzee Tr., 4/14/16, p. 152:5-11. As one example, to enhance the number of people obtaining cross-endorsements in TESOL and Bilingual through the Alternate Route to Certification for ELs (ARCTELL),[[35]](#footnote-35) SDE has used Title III dollars to offset some of the tuition cost for candidates who could not afford to participate in the ARCTELL program. Id. at 152:12-23. DTX 6155, p. 2 (over 100 ARCTELL participants have received tuition assistance).[[36]](#footnote-36) SDE also relaxed the usual three year ARC teaching prerequisite for the Advanced ARC cross-endorsement in Special Ed and Tesol/Bilingual. Id. at 152:24-153:10. These incentives resulted in such an increase in the availability of TESOL teachers that the category dropped out of the top ten in the shortage list for 2016-2017. DTX 6155; Barzee Tr., 4/14/16, pp. 151:14-22, 153:3-10.

SDE encourages educator preparation programs to provide more programs addressing shortage areas. A new program at Sacred Heart in speech language pathology, a long time designated shortage area, has recently been approved by the SBE. Id. at 153:21-154:2. SDE and the RESCs have also provided scholarship money to shortage area candidates attending educator preparation programs who need financial assistance. Barzee Tr. 4/14/16, pp. 11-22.

The state also publishes to the education community opportunities for shortage area teachers for federal loan forgiveness or deferral incentives; mortgage interest rate reduction; and no income cap restriction for rehiring of retired teachers. DTX 6334 (data bulletin), p. 1; DTX 6155, pp. 4-5; Barzee Tr., pp. 154:11-155:24. An extensive list of SDE proactive measures to reduce vacancies is found in DTX 6155, pp. 2-5.

1. SDE and its Partners Offer Free Professional Development to All Types of Educators on a Multitude of Topics.

Professional Learning spans the career of an educator. DTX 6222, (Managing Educator Talent) p. 7. It begins with the TEAM mentoring program provided to new teachers. A teacher is provided a district mentor, who is paid $500 per mentee for multiple years. Barzee Tr., pp. 132:14-133:5 ($2.1 million supports mentor stipends). TEAM funding annually has been $3 million, which includes training, technical assistance to district facilitators, cooperating teachers and data management to track progress through TEAM. Id.

During 2010-2012, SDE provided guidance to districts about how to implement the Common Core (CC). Cohn Tr., 5/24/16, pp. 102:2-103:8; DTX 4033 (10-2013 implementation letter to district leads). In 2012-13 SDE used $8 million to support CC implementation, and $6 million in each of the following two years. Cohn Tr., at 103:10-14, 111:9-12. In the spring of 2014 through the fall of 2015, SDE was running 42 CC workshops per month all around the state focused on math and English Language Arts, broken down by grade and informing educators of the changed standards requiring changes to instructional practices. Id. at 103:22-105:9, 106:7-13 (11,000 attendees). Teachers raved about a "Teachfest" event on the CC. Id. at 105:10-106:6. SDE provided a CC professional development series focused on K-3 reading. Id. at 106: 14-16. Professional development related to CC is available through SDE's website. Id. at 106:16-17.[[37]](#footnote-37) SDE's website also houses a Library of Professional Learning Materials that holds every printed handout or material from workshops and an on-demand professional learning site that includes any kind of electronic learning. Id. at 121:14-26. SDE created a monthly webinar series during 2014-15SY designed for principals and district-level administrators based on a 25 page book they created called "The Principal's Look-for Book" to be used during walk-throughs to guide instructional leadership. Cohn Tr., at 106:21-107:24. SDE also sends teams of consultants out to the districts to provide technical assistance. Id. at 108:2-109:4. SDE contracts with the RESCs to deliver professional development statewide, including free in-district coaching days. Id. at 109:19, 110:4-12. SDE always gives priority registration to the AD and PSDs. Id. at 109:20-26. Three times a year an Alliance District Convening occurs, which includes different forms of professional learning. Id. at 111:21-112:11 (sharing of best practices; SDE presentations, external experts).

SDE provides professional development for both the implementation (technical support) and instructional side of SBAC (teach to the standards). Id. at 115:26-118:6. Extensive professional development is also provided for teacher evaluation and support, Id. at 129:27-130:4, ESL/Bilingual, Id. at 130:6-7, general ed and ESL teachers related to the new CELP standards, Id. at 134:24-135:2; for special ed, Id. at 130:5-6, the Next Generation Science Standards, Id. at 127:18-129:21, DTX 6110, p. 2; and K-3 Reading ($1 million per year for each of 5 years), Cohn Tr., 5/24/16, pp. 79:17-80:10. Professional Development for SRBI is available in different ways: CALI modules, embedded SRBI for Common Core State Standards, State Personnel Development Grant, and SRBI webpage (DTX 4333).[[38]](#footnote-38) Cohn Tr., pp. 98:27-102:1.[[39]](#footnote-39)

In addition, the Academic Office and each of its subunits, Turnaround Office and Talent Office, send regular newsletters to interested educators, entities, and others. Cohn Tr., 5/24/16, pp. 131:20-132:9, 133:1-3, 135:23-136:21; 5-25-16, pp. 65:12-67:3. In addition to the work of LEAD CT,[[40]](#footnote-40) SDE is working to provide a professional development series for Superintendents related to community and parent engagement, and the Commissioner talks with CAPSS on a weekly basis. Cohn Tr., 5/25/16, pp. 54:13-57:16. The state's leadership training also includes training school leaders, particularly in urban districts, to develop community support for reforms.  Wentzell Tr., 3/31/16, pp. 34-5.

1. Connecticut Provides Adequate and Equitable Opportunities to English Learners.

Roughly 6.6% of CT students are English Learners (ELs), and they speak over 160 languages. Flick Tr., pp. 26:25-27, 37:6-7, 138:13-15 (approximately 35,000 ELs). Plaintiffs' Exhibit, PTX 1102 (data bulletin), indicates that 76.8% of ELs in 2014-15 were also FRPL eligible. See also Flick Tr., p. 27:4-6; Hakuta Tr., 2/9/16, p. 96:15-98:6 (most ELs are poor; poverty and EL status are highly related.). Accordingly, a state that provides weight for poverty is effectively also providing weight for ELs. Id. at 97:4-13. In CT's ECS formula, districts are given a 30% credit for each student enrolled in free and reduced lunch, resulting in every free and reduced-priced lunch student being treated as 1.3 of a child. Demsey Tr., 4/1/16, pp. 22:19-23:4.

Classroom teachers who are well trained in current methods can and should meet most of the needs of most ELs in their regular classrooms. Wentzell Tr., 4/3/16, pp. 49:9-50:1 (SDE has provided a lot of training to general ed teachers on meeting the needs of ELs in their classrooms); Flick Tr., 4/6/16, pp. 66:19-67:14 (CELP (DTX 5690) explicitly addresses how general ed teachers can help to support ELs in their classrooms).  SDE manages the Title III and state bilingual grants for English Learners (ELs), including review of the districts' annual evaluation reports,[[41]](#footnote-41) and oversees a new additional bilingual grant related to a pilot program in 4 districts. Flick Tr., pp. 24:8-17, 31:16-23, 95:11-18. SDE monitors the Title III recipients' use of funds and approves any necessary revisions to those budgets. Id. at 31:12 – 33:27. SDE reports Title III data to the federal government. Id. at 28:9-11. In addition, SDE provides educators working with ELs professional development and answers district questions by phone and email. Id. at 24:26-25:4. While SDE assists and supports local boards of education in instituting high quality programs for English Learners, it is the responsibility of the district to identify students as EL and to choose and implement a program of instruction for ELs. Id. at 27:25-30:7; PTX 170, pp. 1-5. The districts are adequately complying with all their responsibilities outlined in PTX 170. Id. at 35:11-20; 109:25-110:5. The 2015 Every Student Succeeds Act (ESSA) newly mandates that states identify standardized entrance and exit procedures for ELs by school year 2017-18. Id. at 38:19-39:10. ELs are now tested annually with an English language proficiency assessment called the LAS Links Form C, which tests speaking, listening, reading and writing, and which is paid for by the state. Id. at 47:20-26, 51:1-3. To exit EL status, a student must achieve an overall score on the LAS Links Form C of 4 or 5 (on scale of 1-5) and a score of 4 or 5 on the reading and writing subtests of Form C. Id. at 49: 21-2**7.** By definition, the EL category applies to students who have lower academic achievement, Hakuta Tr., pp. 96:7-10, 98:13-99:8, because their limitations in English language proficiency make them unable to fully access the curriculum in English. Id. at 19:11-15. Once ELs are reclassified out of that status, they do as well or better than English only students. Hakuta Tr. pp. 98:24-99:3. Under ESSA, starting in 2017-18, states are allowed to count former ELs as part of the EL subgroup for accountability purposes for up to 4 years after exit instead of the prior 2 year consideration. Flick Tr., p. 56:7-13. This will allow the state to demonstrate the success of former ELs. Id. 57:2-8, 58:8-12.

Districts must monitor former ELs for two years after exiting EL status. Flick Tr., 51:7-22. During this time, districts may be providing additional content area support and even some English language support. Id. at 13-22. If the district sees that after providing significant educational supports, the exited student continues not to make appropriate progress, Scientific Research-Based Interventions (SRBI) should be implemented. Id. at 51:23-52:13; DTX 4343 (SRBI for ELs Handbook). In addition, pursuant to recent federal guidelines, a student can be re-identified as an EL if an English language proficiency assessment suggests that the student is still in need of English services. Id. at 52:14-24, 55:1-9.

In CT, a bilingual program is required when a district reports that there are 20 or more eligible students who speak the same language other than English in a given school building. Conn. Gen. Stat. § 10-17e and f(b). The districts report the number of students with the same dominant language by October 1, which triggers the bilingual program requirement for the next school year. Flick Tr., pp. 43:1-17, 43:22-23. Transitional bilingual programs utilize the student's native language to help the student acquire English and content. Id. at 43:23-44:2. Districts may also offer other bilingual programs, such as a dual language model, where the goal is to have both non-English speaking students and English speaking students become bilingual. Id. at 44:2-14; Conn. Gen. Stat. § 10-17e(2)(E). As of the June 2015 Special Session, districts may request approval from SDE for a student to remain in a transitional bilingual program for an additional 30 months, for a total of up to 60 months. Id. at 46:5-15. There is no time limitation for participating in a dual language program. Id. at 46:15-19. If a transitional bilingual student does not meet the English mastery standard after completing the 30 or 60 month period, a district must provide him with language transition and academic support services based on results of both his content and English language proficiency assessments. Id. at 46:20-47:10.

In October 2015, SBE adopted new CT English Language Proficiency standards, DTX 5690 (CELP), which are intended to be used by both general ed teachers and TESOL professionals in the areas of math, social studies, science, and ELA for ELs for K-12 and are aligned to both the Common Core and LAS Links Form C. Id. at 65:22-26, 66:1-67:11, 70:7-8. Extensive professional development related to CELP was provided both before and after adoption free to the recipients. Flick Tr., pp. 70:11-72:23. Aside from professional development regarding CELP, there are other professional development opportunities offered to support ELs, including but not limited to training for tutors, training at the RESCs' Title III consortium meetings, trainings on LAS, and trainings on basic ESL. Id. at 72:24-74:4. It is up to the districts to determine how to provide professional development to teachers with regard to ELs. Id. at 74: 9-11.

All of the six focus districts and two-thirds of the Alliance Districts with high EL populations have full time EL coordinators. Id. at 60:15-61:14. The six focus districts received some additional assistance with Title III funds for 2015-16 based on the amount of the federal grant and district per pupil enrollment of ELs. Id. at 75:18-27, 80:23-81:6; DTX 6335 (2015-16 Title III entitlement amounts). The traditional Bilingual grant has provided $1,916,130 over the last few years, allocated to the districts mandated to provide bilingual programs based on the number of bilingual students in the district. Id. at 95:4-10, 99:19-11. DTX 4729 (2015-16 State Mandated Bilingual Grants), reflects the following focus district allocations: Bridgeport - $210,184; Danbury - $186,682; East Hartford - $44,882; New Britain - $123,336; New London - $57,074; Windham - $66,616. Evidence of EL successes in the six focus districts is found in their Title III and Bilingual Grant Annual Evaluation Reports (AERs): DTX 5688 and DTX 4739 Bpt;  DTX 6373 and DTX 6338  Danbury; DTX 6340 and DTX 4741 EH; DTX 4805 and DTX 4743 New Britain; DTX 4808 and DTX 4744 New London; DTX 6339 and DTX 4748 Windham.

1. Connecticut Provides Adequate and Equitable Opportunities to Special Education Students.

On June 3, 2016 the court directed the parties to address six statements, one of which specifically concerns special education:

Connecticut spends a very substantial portion of its education funds on special education without rationally ensuring that the children who need special educational services are getting them while being certain that children who cannot profit from educational services are getting services at the expense of those who need them.

In asking the parties to address this point, the court noted that it was "fully apprised that there is a federal mandate about special education" and that "[t]he question is whether [the federal mandate] should affect the manner in which funding is handled on the state level to the local level for special education." Tr., 6/3/16, p. 144.

Discussion of this issue must begin with the overlay of federal law concerning special education. Under federal law[[42]](#footnote-42) each student who qualifies for special education services is entitled to an individualized determination; each student has rights of due process and access to federal court if dissatisfied with her special education services, including the requirements of a "free appropriate public education" ("FAPE") in "the least restrictive environment." 20 U.S.C. § 1412(a)(1), (5). The IDEA mandates that “[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A). However, due to the "tension between the IDEA's goal of providing an education suited to a student's particular needs and its goal of educating that student with his non-disabled peers as much as circumstances allow… courts have used a case-by-case analysis in reviewing whether both of those goals have been optimally accommodated under particular circumstances." P. ex rel. Mr. & Mrs. P. v. Newington Bd. of Ed., 546 F.3d 111, 119 (2d Cir. 2008)(internal citations omitted).

Although the IDEA requires the states to establish "procedural safeguards," 20 U.S.C.S § 1415(a), the fact that each disabled student is guaranteed an individualized determination necessarily weighs against statewide dictates affecting special education identification rates and services. Indeed, establishing arbitrary referral quotas or implicitly pressuring school officials to reduce special education referrals, regardless of individual student needs, would be illegal. See, e.g., Jose P v. Ambach, 557 F. Supp. 1230, 1237-38 (E.D.N.Y. 1983). The IDEA’s “principal mechanism” for achieving the law's purpose is an individualized education program (“IEP”), which is a “written document that must include the child’s level of performance, goals for [his] improvement, and a plan about how to achieve that improvement.” T.K. v. N.Y.C. Dept. of Educ., 810 F.3d 869, 875 (2d Cir. 2016). “The particular educational needs of a disabled child and the services required to meet those needs must be set forth at least annually in a written" IEP. M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 62 (2d Cir. 2000). The IDEA provides that a parent or guardian of a disabled child may present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. S 1415(b)(6). The State of Connecticut is not a proper party to such a special education appeal. See Quatroche v. E. Lyme Bd. of Educ., 604 F. Supp. 2d 403, 411 (D. Conn. 2009). Thus, if a disabled student is dissatisfied with his or her special education services or identification, he or she has the right to bring a claim under the IDEA against the local educational agency ("LEA") and the state has no right to participate as a party in that process.

Additionally, as Dr. Reschly testified, it would be inappropriate to deny educational services to students simply on the basis of their disabilities.[[43]](#footnote-43) Reschly Tr., 4/19/16, pp. 51. Therefore the State of Connecticut does not and cannot make determinations as to which special education students can or "cannot profit from educational services" or are "incapable of receiving a primary and secondary education." Tr., 6/3/16, pp. 146-57. In fact, in passing the predecessor to the IDEA – appropriately titled the Education for All Handicapped Children's Act -- Congress acknowledged that a purpose of the federal law was to bring into the public schools many special education students otherwise excluded. See "Statement of Findings and Purpose," Public L. No. 94-142, 89 Stat. 774 (1975)(current version at 20 U.S.C. §§ 1400-20 (2012))("one million of the handicapped children in the United States are excluded entirely from the public school system…..") In fact, a federal study found that almost 2 million children with disabilities were excluded entirely from public schools. 1 H.R. Rep. No. 94-332, at 4 (1975). To the extent that the court's question concerns funding for such students, that issue is dealt with in the section of defendants' brief concerning excess cost. See infra.

Plaintiffs' operative complaint contains almost no allegations concerning special education. To the extent plaintiffs' complaint does address special education, it does so in the form of a process claim. Plaintiffs allege that the "level of funding for special education" is "unrelated to the actual costs of providing special education students with suitable and substantially equal educational opportunities." Corrected Third Amended Complaint, Docket No. HHD-CV05-4050526-S, Doc. # 163.00 ¶ 145. Plaintiffs also allege that "state funding for special education students" is done through "an arbitrary formula." Id. at ¶ 146.

Plaintiffs offered no evidence at trial that any plaintiff failed to receive required special education services and therefore failed to receive a minimally adequate educational opportunity.[[44]](#footnote-44) Nor did they offer evidence that any particular non-special education student was deprived of any particular adequate educational opportunity because of the requirements to meet the needs of special education students. In fact, several of plaintiffs' witnesses testified that their students' IEPs were fulfilled and/or there haven't been any due process hearings. See, e.g., Carver Tr., 2/4/16, p. 69; Stewart-Curley Tr., 2/10/16, p. 64; Thompson Tr., 2/18/16, p. 81; Garcia Tr., 3/4/16, pp. 53-54; East Hartford has not alerted the CSDE about any due process issues regarding special education services. Quesnel Tr., 6/1/16, p. 171.

Regarding the identification rates of special education students, the evidence at trial demonstrated that the vast majority of school districts in Connecticut have identification rates consistent with the state's identification rate, which is roughly the national median rate. DTX 2428 at 10. Dr. Reschly testified that based on Connecticut's identification rate the state was not, on its face as a whole, overidentifying or underidentifying students with disabilities. Reschly Tr., 4/19/16, p. 36. Dr. Reschly also testified that his research and the research of others in the field has come up with "virtually nothing" that explains why there are variations across districts around the country in disability identification. Reschly Tr., 4/19/16, p. 103. Dr. Reschly also testified that the variations in identification rates "have to be understood as the culmination of decisions made by individuals," id. at 104, as required by federal law.

With respect to the "focus districts" chosen by plaintiffs, their special education identification rates for the 2014-15 school year are reasonably similar to the average identification rate statewide for that year (13%). DTX 5299. The rates for the six focus districts for 2014-15 were as follows: Bridgeport: 14%; Danbury: 12%; East Hartford: 16%; New Britain: 16%; New London: 17%; Windham: 14%. DTX 5299. Dr. Reschly also testified that there was almost no correlation between spending on students with disabilities and whether the district was a high or low poverty district.[[45]](#footnote-45) Reschly Tr., 4/19/16, p. 106. Dr. Reschly's report and testimony explained that there was little or no correlation between special education identification rates (for high and low incidence categories) and the number of students on free and reduced priced lunches in a district. DTX 2428. Thus, to the extent plaintiffs' argument is that special education students "cost" more to educate than most other students, the evidence does not support a significant correlation between special education identification rates and rates of poverty. In other words, there is no evidence that special education costs pose a greater or different challenge in high poverty districts than in any other districts. Dr. Reschly also testified extensively about how favorably Connecticut compared to other states nationally and in the Northeast. Tr. 4/19/16, pp. 24-25, 38-41, 125; DTX 2428 at 15. And, with respect to funding, he explained: "My conclusion, as I stated in the report, is that a student with a disability, if they are in Connecticut, is in a very favorable situation with regard to resources compared to students with disabilities in other states." Reschly Tr., 4/19/16, p. 154.

1. There is Adequate and Equitable Funding for Appropriate Special Education Services.

To the extent plaintiffs' claim is that there is not enough money for special education, that claim finds no support in the evidence. The evidence at trial demonstrated that there are three primary non-local methods for funding the education of special education students in Connecticut.

First, there is the ECS formula itself. According to plaintiffs' Corrected Third Amended Complaint, in 1995 the ECS foundation amount was increased "to adjust for the consolidation of special education funding into the ECS formula." Corrected Third Amended Complaint, Docket No. HHD-CV05-4050526-S, # 163.00 at 39-40. 19-22% of the current ECS grant is attributed to special education.[[46]](#footnote-46) Demsey Tr., 4/5/16, pp. 150-151. Second, the state also transfers the excess cost grant monies to municipalities to help the districts fund the education of special education students for whom the districts are expending more than 4.5 times the net current expenditures per pupil. Conn. Gen. Stat. § 10-76g(b).[[47]](#footnote-47) Third, the federal government sends monies to the state which are in turn distributed to the school districts.

The plaintiffs made no specific claim, and presented no evidence, as to any district, that the 19%-22% of ECS grants attributable to special education were not a reasonable contribution by the state to those costs under the circumstances of that district. Plaintiffs also failed to present any specific evidence that special education students are not receiving minimally adequate or equitable educational opportunities. Furthermore, even if plaintiffs' generalized claims can be taken to demonstrate that local districts have to use locally raised monies in addition to those above to support the education of special education students, that situation would not be illegal or improper. The Horton III court specifically held that "the property tax is still a viable means of producing income for education." Horton v. Meskill, 172 Conn. 615, 651 (1977).

1. Although There is No Constitutional right to Preschool education, Connecticut Provides Broad and Effective Preschool Opportunities -- More and Better than Almost Any Other State.

The defendants continue to assert that there is no constitutional right to preschool education under the Connecticut Constitution. Even though Connecticut provides neither a constitutional right to pre-K nor any state law requirement for Pre-K,[[48]](#footnote-48) Connecticut is ranked 3rd in the nation in state per pupil spending for Pre-K for 2014 and 5th in the nation for 2015. Pre-K FOF 6, 7, 7/15/16. Given its fiscal constraints and the research on the effectiveness of pre-K for children of low-income families, Connecticut focuses on providing greater universal access to pre-K for families who would not have an opportunity to attend pre-K because of income. Pre-K FOF 4. Connecticut is **the highest ranking state in the country in terms of the percentage of low-income children enrolled in preschool**, and yet also has the highest percentage of any state of non–low-income children enrolled in preschool. Pre-K FOF 5, 7/15/16. Connecticut's Office of Early Childhood is one of only four cabinet level state agencies in the country, including Massachusetts, Washington, and Georgia, focusing on early childhood. Pre-K FOF 1, 7/15/16.[[49]](#footnote-49)

Connecticut encourages pre-K participation among low-income families by helping to meet family needs through its state funded programs, including the Child Day Care Contracts, the School Readiness Program, state Head Start, and Smart Start. Pre-K FOF 13, 16, 31, 48, 7/15/16. A variety of program lengths are offered, including full day/full year, school day/school year, part day/5 days a week/180 days a year and extended day. Pre-K FOF 17, 7/15/16. In addition, parents are given choices in a variety of settings beyond the public schools, including for profit and non-profit community programs, Head Start and day care programs, all in an effort to encourage pre-K participation. Pre-K FOF 13, 16, 31, 48, 7/15/16. Unlike in many states, access is not limited to 4 year olds, but provided to both 3 and 4 year olds. In fact, Connecticut's access ranking among all states for 4 year olds has risen from 29 in 2014 to 23 in 2015, according to the NIEER Yearbooks. Pre-K FOF 8, 7/15/16. Its access ranking for 3 year olds has risen from 12 to 8. Id. Plaintiffs' expert witness, Dr. W Stephen Barnett, is the Director of NIEER.[[50]](#footnote-50) Barnett Tr. 2/25/16, p. 117:22-24.

Aside from offering a variety of settings and lengths of day for its pre-K programs, Connecticut seeks to remove barriers to access with assistance for payment of fees for its state and federal programs. Pre-K FOF 19, 7/15/16. Those fees are based on a sliding scale of income and parents can also establish hardship or obtain a subsidy through the Care4Kids program. Pre-K FOF 19, 7/15/16; DTX 6429, Income Fee Schedule. These programs also receive funds directly from the Care 4 Kids program in addition to the state reimbursement for the slots. Pre-K FOF 19, 7/15/16.

Along with removing barriers to access, Connecticut sought to expand access with an increase in the reimbursement rate for School Readiness full day slots in FY15 to $8,924, as well as providing two recent expansions of the School Readiness Program in FY 13 and FY 15 totaling 2020 additional slots. Pre-K FOF 24-27, 7/15/16. The result has been a steady increase in funding for the School Readiness Program over the past 6 years to $94.3 million, serving 12,263 children. Pre-K FOF 29, 7/15/16. When the State's fiscal situation prevented additional planned expansion of the School Readiness Program through FY 19, OEC pursued other ways to expand pre-K through the Smart Start Program in the public schools and the federal Preschool Development Grant ("PDG") in both public schools and community-based sites. Pre-K FOF 48, 53, 54, 7/15/16. Two cohorts of funding have been awarded to 18 districts to date for FY 16 and FY 17, totaling $2.8 million, serving an additional 582 children through the Smart Start Program, while Connecticut was also awarded $10.8 million for the first year of the four year federal Preschool development Grant, serving an additional 712 children. Pre-K FOF 49, 53, 7/15/16. Continued expansion is likely through the PDG, given that the present funding is for the first year of the 4 year grant and the fact that first year recipients will receive priority for continued funding. Pre-K FOF 53, 7/15/16. Meanwhile expansion will also continue through the Smart Start program. Pre-K FOF 51, 7/15/16. Additional expansion has also occurred through the pre-K slots offered by charter and magnet schools as well as those offered by school districts. Pre-K FOF 63, 7/15/16.

Total state and federal spending for pre-K in Connecticut for FY 16 is $237 million, serving approximately 35,000 children for primary preschool experience and/or a subsidy to help pay for preschool. Pre-K FOF 62, 7/15/16.[[51]](#footnote-51) Most of this funding is focused on low income families. Pre-K FOF 13, 16, 18, 19, 31, 48, 53, 7/15/16; DTX 6449, FY 16 Preschool Funding. In addition, Connecticut also provided $1.1 million of quality enhancement grants for FY 16 for the School Readiness Program to improve the quality and comprehensiveness of the programs. Pre-K FOF 30, 7/15/16. The PDG was also supplemented with quality enhancement funds of $456, 411 to provide 112 slots for 3 year olds to ensure diversity of age because of the PDG's limitation to 4 year olds.  Pre-K FOF 55, 7/15/16.  This continued Connecticut's focus on providing access to both 3 and 4 year olds. Pre-K FOF 55, 7/15/16. Additional state funding also has been provided through the Minor Capital Improvement Grants totaling $1.7 million from 2013-2015 for individual state funded programs to improve existing facilities. Pre-K FOF 64-66, 7/15/16. Finally, the School Facilities Construction Grant program provides varying increases in reimbursement rates to any district or regional school district for building expansions that include space for an early childhood program or full day kindergarten programs and/or full day preschool programs. Pre-K FOF 67, 68, 7/15/16.

Connecticut's funding for pre-K has also been accompanied with a focus on improving the quality of its pre-K programs. Connecticut is phasing in the staff education requirement of a Bachelor's degree by 2020 for its state funded programs. Pre-K FOF 40, 7/15/16. Connecticut has demonstrated its commitment to this upgrade in teacher qualifications by investing $2.6 million in individual scholarships since 2013 and $1 million for FY16 alone, a 50% increase since FY 15. Pre-K FOF 41-44, 7/15/16. In addition, the Early Childhood Teacher Credential ("ECTC") has been developed as an alternative to the Bachelor's degree to meet the staff education requirements and develop a talent pipeline of teachers who meet high standards of teacher preparation. Pre-K FOF 45, 7/15/16. To date, 288 ECTCs have been approved. Pre-K FOF 46, 7/15/16.

Accreditation by the National Association for the Education of Young Children ("NAEYC") is another requirement for Connecticut's state-funded programs. FOF 33, 39, 7/15/16. Considered the gold standard among accrediting bodies in terms of being the most rigorous and having the highest standards for child outcome, it is viewed by plaintiff's expert witness, Dr. Barnett, as one route to higher quality and a valuable process for pre-K programs. Pre-K FOF 33-37, 7/15/16. Despite its relatively small population, Connecticut ranks third in the country in the number of pre-K programs accredited by the NAEYC, after the more populous states of Massachusetts and California. Pre-K FOF 38, 7/15/16; FOF 17, Doc. # 265.00 (attached hereto as Appendix 3).

Despite the focus on increased funding and the efforts to improve quality and access for Connecticut pre-K programs, Connecticut's state and federal programs are underutilized, with available funds often unspent in local districts, including $2.1 million in School Readiness funds, $1.8 million in the Child Day Care Contract funds and $400,000 in federal Preschool Development Grant (hereinafter "PDG") funds. Pre-K FOF 69, 7/15/16. The local School Readiness Councils are responsible for administering the School Readiness Program and the PDG, but the Councils vary in their effectiveness. Pre-K FOF 70, 71, 7/15/16. New Britain's School Readiness Council is an example of a Council whose leadership has developed the necessary community connections for high utilization. Pre-K FOF 76, 77, 7/15/16. Indeed, Plaintiff's expert, Dr. Pamela Granucci, attributes New Britain's high percentage of pre-K experience of 79% for the 2011/12 school year to the great collaboration among agencies in cooperating to connect families to programs. Pre-K FOF 78, 7/15/16.[[52]](#footnote-52) In contrast, Bridgeport is one of 3 districts which historically have been unable to utilize all of their available School Readiness funds. Pre-K FOF 73, 7/15/16. In fact, Bridgeport's unspent School Readiness funds for the past 6 years total over $2 million. Pre-K FOF 79, 7/15/16. In comparison, the amount of unspent funds for the Plaintiffs' other 5 focus districts is significantly lower, whether for FY 15 or based on a 6 year comparison, even giving consideration to the larger number of children served by Bridgeport. Pre-K FOF 75, 79, 7/15/16.

Bridgeport also accounts for the lion's share of unspent PDG funds, specifically $240,000 of $400,000 for the 2015/16 school year. Pre-K FOF 59, 7/15/16. In contrast, the other districts which received PDG funds had high utilization rates. Id. Bridgeport was unable to fill 54 slots from July 2015 until February 2016, and did not reach full enrollment until April 2016. Id.

Despite the amount of unspent funds, OEC is continuing to determine and address the issue of unmet need through its new unmet need report. Pre-K FOF 80-85, 7/15/16. Among other items, this new report will address the issue of unspent funds by showing the status of each community in terms of its leadership in encouraging program providers to do their work to meet needs. Pre-K FOF 81, 7/15/16.

OEC has also undertaken several initiatives to improve the quality of the early childhood system, impacting children from birth to age 5.  These include the development of a Quality Rating Improvement System ("QRIS"), an Early Childhood Information System ("ECIS"), the Early Learning and Development Standards, ("ELDs"), the revised Kindergarten Entrance Inventory, ("KEI"),[[53]](#footnote-53) the Core Knowledge and Competencies Framework, and the Pre-K Grade 3 Leadership Program. Pre-K FOF 86-97, 7/15/16.

1. Connecticut Provides Excellent Kindergarten Opportunities.

Full day kindergarten is offered in 143 of the 169 school districts in Connecticut. In addition, 13 charter schools and 14 magnet schools offer full day kindergarten. Kindergarten FOF 99, 7/15/16. The percentage of children who have enrolled in full day kindergarten in Connecticut has increased dramatically in the past 4 years, to 94.2% for the 2014/15 school year. Kindergarten FOF 100, 7/15/16.

N.Lead Connecticut Develops and Teaches Critical School Leadership Skills.

LEAD CT programs were developed specifically to support the 2012 education reforms in recognition of the fact that school and district leadership is a critical component of the work of school reform in Connecticut. Villanova Tr. 5/11/16, p. 69:24-27, DTX 5746. The programs focus on recruiting, selecting, preparing, developing, and retaining school and district leaders improve and strengthen student learning across all Connecticut districts and classrooms, with a priority focus on the schools and districts in most need of improvement in student performance, the Alliance Districts. Villanova Tr., 5/11/16 pp. 3:24-4:8, 66:15-68:21. Villanova Tr., 5/13/16, p. 81:14-19. DTX 5744, LEAD CT Programs; FOF 19, Doc. # 265.00. LEAD CT offers intensive training and coaching based on principal and superintendent competencies that have been identified in research as essential skills for high performing and effective school leaders who can promote sustainable and ongoing improvements in student learning. Villanova Tr., 5/13/16, pp. 80:5-83:19, 84:2-13, DTX 5164, Principal Competencies; DTX 6413, Superintendent Competencies.[[54]](#footnote-54) LEAD CT's budget has been $1.8 million to $1.9 million during each of the past 3 years. Villanova Tr., 5/11/16, pp. 79:13-80:1.

LEAD CT's programs for principals include the Turnaround Principal Program, which has trained 59 principals during the past 3 years, approximately 20 each year, through 8 days of intensive summer training accompanied by executive coaching each week to take over the most challenging schools in the Alliance Districts and Commissioner's Network Schools. Id. pp. 70:13-71:22, DTX 5744. The Spring Fellowship Program for Early Hires provides 2 months of training during the summer followed by participation in the Turnaround Principal Program during the school year for principals hired in the spring of the school year. DTX 5744. Eight principals participated during the first year, Villanova Tr., 5/11/16, pp. 71:23-73:2; DTX 6325. In addition, the University of Connecticut's Administrator Preparation Program ("UCAPP"), known as the strongest principal preparation program in Connecticut, has produced 17 turnaround principals in the past 2 years. In this program, with the recommendation of their superintendents, strong teachers become administrative interns with a talented principal in their current district and attend weekly a full day of instruction on principal effectiveness, preparing to become turnaround principals in one year. Id. pp. 73:3-74:17; DTX 5744.

The principal programs are offered only to Alliance Districts, and the Alliance Districts are given first priority for the superintendent programs. Id. p. 74:18-75-5. The Alliance superintendents receive 3 years of coaching while every other superintendent is provided one year of coaching; all funded by LEAD CT. Thirty-two superintendents have received executive coaching in the past 2 years. Id. pp. 75:14-77:5. Along with executive coaching, LEAD CT offers early career superintendents a community of practice, in which superintendents meet monthly to talk about their work as new superintendents and the superintendent competencies are reinforced. This program has served over 50 superintendents in the past 3 years. Id. 77:6-21. The program also offers a website providing resources for developing a strategic approach to talent development. Id. pp. 77:22:-78:16.

LEAD CT has also developed the District Leadership and Coherence Framework. DTX 6452. It requires coherence in the form of a strong working relationship among superintendents, central office leaders, and boards of education to develop and communicate a shared vision for how their work will improve student outcomes. Id. pp. 84:26-86:1, 87:17-89:24. In line with the framework, LEAD CT has presented the Building District Coherence and Capacity Program for the past 2 years, serving over 180 participants in 28 leadership teams from 28 districts, including the Alliance Districts, which again were given priority. Over four days, the teams were led though a process by national and local experts to create a 100 day plan to develop coherence in the following school year. Id. pp. 86:25-87:16, Villanova Tr., 5/13/16, pp. 7:2-9:4, DTX 6412, Coherence and Capacity Program. Also, consistent with the framework, LEAD CT has assisted with the development of a model evaluation for superintendents based on the superintendent competencies and a coherent relationship between the work of the superintendent and the board of education. This is currently being used voluntarily by some districts in CT.  Villanova Tr., 5/11/16, p. 84:14-24, DTX 6410, 6411, Villanova Tr., 5/13/16, pp. 19:25-20:7, 25:19-27:7.

O. Connecticut Provides Broad Wraparound Services (Student Supports).

The CSDE also provides significant "wraparound" funding and support to districts, particularly to high poverty, low-performing districts such as the Alliance Districts and the plaintiffs' six focus districts. See DTX 4716; Frassinelli Tr., 5/6/16, pp. 30-1, 33; Defs' Demonstrative 6 (FY 15 Distribution of State and Federal Funds in Bureau of Health/Nutrition, Adult Education and Family Services – focus districts and comparator districts). The CSDE's Bureau of Health/Nutrition, Family Services & Adult Education, which consists of about 40 staff members and manages roughly 60 programs and initiatives, is dedicated to supporting districts in reducing and eliminating non-academic barriers to students' academic success. Frassinelli Tr., 5/6/16, pp. 26-9. For example, the Bureau provides assistance to address the following issues: the social and emotional health of students; see Wraparound Services FOFs, 7/15/16, ##1-3; the physical health of students; id., ##4-5; the mental health of students; id., ##6-7; assistance for preparation and transition to college; id., #8; after school and extended learning programs; id., #9; assistance for families in high poverty communities; id., #10; assistance for homeless and transient students; id., #11; support for pregnant and parenting teens; id., #12; wraparound programs specifically for Commissioner's Network schools; id., ##13-15; assistance for adult learners; id., ##16-18; specific critical issues that impact student achievement, such as student discipline; id., #19; and chronic absenteeism; id., #20; and assistance to districts in building community partnerships and increasing family engagement. Id., #21.

These programs and initiatives are primarily targeted at the neediest districts, schools and students in the state. Defs' Demonstrative 6 shows that the vast majority of the state and federal funding from the Bureau is distributed to high poverty, low-performing districts, such as the plaintiffs' six focus districts. Defs' Demonstrative 6 (showing the difference between the large amount of funding to the focus districts compared with little to no funding to the wealthy comparator districts); DTX 4716; Frassinelli Tr., 5/6/16, pp. 35-6, 37 ("[O]ur effort [is] to work on targeting the districts with the most vulnerable students so that we're able to provide resources, both technical assistance and financial resources, to those districts; and again, trying to eliminate those barriers to their academic achievement. So that's where the need is. And so that's where we gear the opportunities for funding primarily.").

P. Connecticut Provides Additional Funds for Technology and Other Additional Financial

Assistance to Low-Performing Districts.

Over the last several years, the state has made a significant financial investment to upgrade the facilities and technological infrastructure in schools across Connecticut, particularly in low-performing schools. See, e.g., DTX 4716 (summary of state and federal funding for focus districts); DTX 6307 (summary of bond allocations in plaintiff districts); DTX 6226 (Turnaround Grants Overview), pp. 8-9; Demsey Tr., 4/1/16, pp. 105-6, 110-18, 160; Cohn Tr., 5/24/16, p. 138. For example, the State Bond Commission authorized about $24.4M in January 2014 and about $11M in January 2016 for grants-in-aid for alterations, repairs, improvements, technology, equipment and capital start-up costs, including acquisition costs, to expand the availability of high-quality school models and assist in the implementation of the Common Core State Standards and related Smarter Balanced assessments. DTX 4716; DTX 6307 (lines 125-8); DTX 6236; Demsey Tr., 4/1/16, pp. 157-8. In January 2014, grant recipients included Bridgeport ($899,797), Danbury ($238,171), East Hartford ($337,414), New Britain ($237,875), New London ($128,469), and Windham ($349,525). DTX 4716 (Bridgeport- line 49; Danbury- line 38; East Hartford- line 39; New Britain- line 46; New London- line 42; Windham- line 43). In January 2016, grant recipients included Bridgeport ($463,892) for Chromebooks/ Computers, Danbury ($240,064) for Chromebooks/Carts, East Hartford ($154,505) for Otter Boxes/cables and Cisco Wireless Access Points/iPads/Charging Stations/Projectors, New Britain ($220,132) for Chromebooks/ Chromebook Carts, New London ($70,400) for Chromebooks/carts, and Windham ($69,498) for Laptops/Laptop Cart/Samsung Zero Client. DTX 6236.

Over the last three years, the State Bond Commission has also approved various projects for low-performing schools, including numerous projects in 5 of the six focus districts. DTX 6289, all tabs; DTX 6226 (Turnaround Grants Overview), pp. 8-9; Demsey Tr., 4/5/16, p. 3. As of March 10, 2016, the funding for projects with existing approvals by the Bond Commission since 2013 totaled roughly $22.5M. DTX 6289, summary tab. Just within the last year, the projects in the focus districts included, but were not limited to: computer labs, classroom instructional technology, general facility upgrades and furniture at East Hartford Middle School ($500,000); all bathrooms upgrade, sound reduction panels installed in the gymnasium, technology upgrades, new lockers, and security system upgrades at Bennie Dover Jackson Middle School in New London ($850,000); general facility upgrades, classroom improvement, student technology, and other building technology and equipment at Marin School in Bridgeport ($189,350); playground equipment, HVAC improvements, safety/security enhancements, and general facility upgrades at DiLoreto School in New Britain ($200,000); gymnasium upgrade, auditorium upgrades, bathrooms and classroom technology at Windham Middle School ($200,000).[[55]](#footnote-55) DTX 6289, 1/29/16(1) and (2) tabs, 7/28/15 tab. There is also a request for proposals for eligible districts to apply for additional low-performing school bond funding for the 2016-17 school year. DTX 6298; Demsey Tr., 4/5/16, pp. 5-7. There is approximately $9.6M available for these applications, which were sent specifically to the Alliance Districts and also posted on the CSDE's website. Demsey Tr., 4/5/16, pp. 5-7. The applications closed on February 29, 2016, and as of April 5, 2016 they were under review at the CSDE. Id.

Many other grants have been awarded to districts and schools in the past several years, typically with preference to Alliance Districts, including teacher mini-grants; Cohn Tr., 5/24/16, pp. 138-9; grants for in-district coaching by RESCs ($4M over two years); id., 140-1; and local assessment reduction grants ($500,000). Id., 141-4. See also DTX 4716; DTX 6226.

Q. The State Provided Effective Special Master Assistance to Windham and New London.

To the extent local control is rendered ineffective due to severe and irreparable school governance issues, the state has acted appropriately to assist districts. See, e.g., Villanova Tr., 5/13/16, p. 107 (noting that the state has recently intervened in Winchester, which has a board "that was not functioning in a way that would ever make a difference in achievement for students"). The State hired consultants, including Dr. Villanova, to conduct Governance, Leadership and Organization audits of the Windham and New London Districts (both focus districts) in 2010 and 2012, respectively. DTX 2397 (Windham Governance Report), PTX 295 (New London Governance Report). Both districts suffered from leadership incoherence and ineffectiveness, dysfunctional connections between the board of education and the superintendent, and a loss of confidence in the school system by fiscal authorities and elected officials in the town. Villanova Tr. 5/11/16, pp. 46:24-27, 46:1-5; Villanova Tr. 5/13/16, p. 30 (Windham had a "chaotic and conflict-ridden board of education-superintendent arrangement"), p. 41 (In New London, "the interaction between the board of education and the city council and superintendent were in disarray and disruptive to the education process at that time"). In Windham, the Board of Education had a diminishing regard for the leadership potential of the superintendent and treated her like a staff member as opposed to the chief operating officer of the district and the Board's Chief Executive Officer. Villanova Tr., 5/11/16, p. 47:11-15. The communications between the board and superintendent were "practically nil: very little communication, most of it negative." Villanova Tr., 5/11/16, p. 47:18-21. The town's elected officials were wary of the Board of Education's budgeting promises and their budget figures in general. The consistent chaotic governance climate resulted in the Central Office operating separately from the schools to simply feed the schools money rather than providing leadership to create the conditions for outstanding schools by putting systems and structures in place. Not only was there no attempt to develop and hire talented people to address the needs of students, but the academic programs were "unfocused and sloppy" and without a written curriculum. Villanova Tr., 5/11/16, pp. 52:22-27, 53:1-27. A similar situation existed in New London. The Board of Education and the Superintendent were in regular disagreement, with board meetings being very chaotic events at which the superintendent was subject to heavy board criticism. Villanova Tr., 5/11/16, p. 61:13-18. Any improvement plans were thwarted by the politics and governance issues of the district. The districts operated without the support of town administration or the community because they had lost the trust of the community. In fact, the "war" among elected officials "pervaded everything else in the district." Villanova Tr., 5/11/16 pp. 61:13-27, 62:1-2.

The Windham and New London Governance Reports set forth recommendations to address the issues surrounding organization, governance, and leadership, which could be made within a short timeframe and without significant additional resources by changes in policy, practice and procedure. Villanova Tr., 5/11/16, pp. 52:1-19, 62:5-12. Following the Governance Reports, a Special Master, Dr. Steven Adamowski, was appointed for each of these districts. His recommendations tracked the 2012 reforms and many of the recommendations in the reports. Villanova Tr., 5/11/16, pp. 62:25-27, 63:1-16. After the Windham Governance Report in 2010, which found that the district's challenges were systematic and that it lacked the capacity to improve on its own, special legislation (PA 11-61, § 138) was enacted placing Windham under the CSBE supervision through a special master. PTX 317 (Windham Special Master Report 2011-12), p. 3. New London was similarly mired in governance and financial issues and on the brink of being unable to operate, when a request was made in June 2012 by the Superintendent and the then Chairman of the New London Board of Education for state intervention. PTX 630 (State Supervision and Support of the New London School District 2012-13 Report and Recommendations), p. 6. After meetings with key New London stakeholders and elected officials, as well as various reviews of district operations (including the New London Governance Report) in 2012, Id., acting under its new authority in PA 12-116 (consistent with PA 11-61, § 138), the CSBE appointed a special master for New London in August 2012, and provided specific requirements for local Board training and the development of a multi-year improvement plan. Id. Support for Board training and limited other assistance was funded by the CSDE in 2012-13. Id. Both districts welcomed the state assistance. PTX 317, p. 20; PTX 630, p. 67.[[56]](#footnote-56)

Dr. Adamowski served as special master in Windham from 2011-12 to 2013-14, and in New London from 2012-13 to 2014-15. Significant progress was made in both districts during state supervision. See PTX 317, pp. 6-13; PTX 626 (State Supervision and Support of the Windham School District 2012-13 Report and Recommendations), pp. 8-15; PTX 630, pp. 8-15; PTX 885 (State Supervision and Support of the New London School District 2013-14 Report and Recommendations), pp. 6-14. This progress has continued to the present in both districts, which have seen improved relations between their respective boards and school leaders and are being led by capable superintendents -- Dr. Patricia Garcia in Windham and Dr. Manuel Rivera in New London. Defs' Findings of Fact Per 5/9/16 Order ## 47-51, 53-7, 166-9 (showing positive academic outcomes in Windham and New London); Villanova Tr., 5/11/16, p. 55:11-14; Villanova Tr., 5/11/16, pp. 56:16-27, 57:1-14, Villanova Tr., 5/13/16, pp. 40:15-27, 41:1-12 ("There is now appropriate professional relations among the governance structure in Windham which allows the superintendent to focus on district goals, academic, talent development, changing operational procedures, and having a better culture and climate for student performance as opposed to only the politics of getting the budget passed," and "Compared to 2010 when I was [in Windham], the board of education and superintendent are collaborating around governance in a much more effective way"); Villanova Tr., 5/11/16, pp. 63:17-27, 64:1-12 ; Villanova Tr., 5/13/16, pp. 41:17-27, 42:1-9 (" [in New London] my impression is from 2012 through now, they've improved the collaborative connection between the board and superintendent), pp. 105-6.

R. The State Provides Adequate and Equitable Funding for School Facilities.

The State funds a generous School Construction Grant -- $1 billion for FY 16 and $700 million to $800 million in previous years. Dixon Tr., 6/3/16, pp. 23:20-24:1, 59:23-60:10. The State provides generous reimbursement percentages to towns based on statutory formulas related to town wealth and relative population and the type of project. The percentages range from 20% to 80% for alterations and renovations and from 10% to 70% for new construction. See Conn. Gen Stat. § 10-285a(a); DTX 6406, 2015/16 Reimbursement Percentage. The reimbursement percentage strongly favor poorer districts, including the Plaintiffs' six focus districts. DTX 6477, Reimbursement Rates, 2013-16. Reimbursement percentages are the same for roofs over 20 years old as for renovations and alterations, with decreasing reimbursement percentages for roofs between 19 and 15 years old. See Conn. Gen Stat. § 10-286(a)(6); Dixon Tr. 6/3/16, pp. 10:16-12:6. As part of the State's effort to provide early childhood education and full-day kindergarten, building expansions that include space for a School Readiness program or full day kindergarten and/or full day preschool programs receive additional reimbursement percentages of 5% and 10%. See Conn. Gen. Stat. § 10-285a(e) and 10-285a(h); Pre-K FOF 67, 68. Renovation of a building for use as a Lighthouse School also receives a 10% increase in the reimbursement percentage. See Conn. Gen. Stat. § 10-285a(f). Finally, projects for technical high schools are funded 100% under the grant, and interdistrict magnet schools are funded 80% under the grant. See Conn. Gen. Stat. §§ 10-283b and 10-264h.[[57]](#footnote-57)

The Plaintiffs' six focus districts have received funding for numerous construction projects as detailed in DTX 3844, which includes the projects for each district from 2005 to 2015.  The following are the total amounts of the project costs approved by the legislature for this period as set forth in Column J of DTX 3844 for each district:[[58]](#footnote-58) Bridgeport $455,468,303, Danbury $9,147,750, East Hartford $9,147,750, New Britain $66,485,000, New London $68,056,463, and Windham $47,956,250, for a total of $722,315,126.  In addition, Danbury received approval for another project this year involving extension/alteration and a new roof for its high school.  It will receive a grant for this project of $31.7 million based on its 2015/16 reimbursement percentage of 63.2% being applied to the total project costs of $50.2 million. DTX 6027, 2016 Priority List; DTX 6406, 2015/16 Reimbursement Percentages; Dixon Tr. 5/3/16, pp. 66:12-67:26.In addition, the Alliance District Grant for repairs has provided a total of $50 million in two rounds of applications for the 2 year period of the grant from 2015-2017. DTX 6165, Alliance Dis Repair Grant; Dixon Tr. 6/3/16, p. 69:2-72:22. Eligible repairs include boiler replacements, bathroom renovations, painting, etc. Dixon Tr. 6/3/16, pp.73:23-74:19. The Plaintiffs' six focus districts received the following total amounts in the 2 rounds of applications: Bridgeport $2.6 million, Danbury $1.7 million, East Hartford $1.7 million, New Britain $1.7 million, New London $1.2 million, and Windham $1.2 million. DTX 6115, Bond Comm. Agenda Items 1/29/16 p. 21, DTX 6491, Bond Comm. Agenda Items 5/27/16, p. 12.

V. THE TESTIMONY AND REPORTS OF DR. ROBERT PALAICH SHOULD BE STRICKEN FROM THE RECORD BECAUSE THEY ARE NOT SCIENTIFIC AND LACK VIRTUALLY ALL BASIC INDICIA OF RELIABILITY

Whether it is described as the duty to exclude unreliable evidence generally, or as the more specific duty to exclude claims masquerading as scientific evidence when they are not, the trial court is required to serve a gatekeeper function, separating the wheat from the chaff, and not relying upon claims of experts when the reliability of those claims has not been established. State v. Porter, 241 Conn. 57, 87 (1997); Conn. Code of Evid. § 7-2. In this trial, defendants moved to exclude the testimony and reports of Dr. Robert Palaich; Tr. 2/10/16, pp. 69, 129 (PTX 31), 169 (PTX 715), Tr. 2/11/16, pp. 71-109; and other testimony and reports, in particular sections of the reports and testimony of Dr. Bruce Baker; Tr. 1/27/16, pp. 49-53, 56-7 (PTX 236); which refer to or rely upon those exhibits. Defendants previously moved to exclude this testimony in their Motion in Limine, 9/2/15, Doc. # 207.00, denied without prejudice on 10/15/15, Doc. # 207.86, and again in more detail orally on 2/11/16, Tr. pp. 71-109, when the court reserved ruling, Id.*,* p. 109.[[59]](#footnote-59)

As the testimony of Dr. Palaich revealed, his reports were designed not in compliance with principles of science nor even of common sense, but in order to maximize the claimed amount of additional money that Connecticut supposedly must spend on public education (roughly $2 **billion** over ten years ago!), Tr., 2/11/16, p. 50, PTX 31, p. v (also marked p. 6). In addition, to the limited extent that his study had rules, he and his colleagues ignored their own rules. Some of the key deficiencies in Dr. Palaich's "study" are highlighted in his cross-examination, Tr. 2/11/16, pp. 1-56, and they are too numerous to list fully here. Among the key deficiencies in his reports, however, that render them completely unreliable, are the following:

* All of the data relied upon to determine goals and previously successful schools came from the years 2001 to 2004 – eons ago in terms of federal and state educational policies, and so outdated as to be meaningless. Tr. 2/11/16, pp. 3-4.
* The professional judgment panels were instructed to determine how much it would cost to meet a goal – of achieving 95% proficient test scores -- that no urban school districts had ever met, something for which there was obviously no precedent from which to make sound judgments. Tr. 2/11/16, p. 29.
* The "professional judgment" panels were told not to think about where the money would come from, to be creative, and not to be limited by knowledge based on their personal experiences. They were **not** instructed to include cost effectiveness in their considerations. Tr. 2/11/16, pp. 21-25.
* Every member of every "professional judgment" panel was selected by the executive director of the plaintiff. Tr. 2/11/16, p. 14.
* Although the study stated criteria for membership on the "professional judgment" panels, including a majority of each panel from "successful" school districts, there was no attempt to see that the panel membership met the criteria, and **not a single one** of the panels was constituted in accordance with the stated membership criteria. Tr. 2/11/16, pp. 32-37.
* Although the "highest" level panel had the authority, which it exercised, in unrecorded ways, to adjust or change all of the recommendations from the other panels, there were no stated criteria by which it could or should act. Tr. 2/11/16, pp. 26-28.
* The professional judgment panels were advised to start with an assumption that no elementary school classroom should exceed 17.5 students, although this figure had no connection to or basis in any Connecticut data. Tr. 2/11/16, pp. 37-41.
* The study added an "urban factor" cost multiplier and determined to which districts that multiplier should apply without any objective or recorded criteria. Tr. 2/11/16, pp. 42-44.
* The study threw out the results of certain panels when they didn't agree with the results, without any stated criteria. Tr. 2/11/16, pp. 26-28.
* The study either did not record or is unable to produce virtually all crucial documentation of its work, including records of the deliberations of the panels and the reasons for their determinations, and even which persons were actually members of which panels, further making it impossible to validate the accuracy or reliability of the work. Tr. 2/11/16, pp. 13, 15-17, 26-28.
* When evaluating "successful schools," the study made no effort to focus on those that had been successful at the lowest cost, even though the investigators did so in other states. Tr. 2/11/16, pp. 6-7.
* The "update" to the report, PTX 715, was done by an approach which was admittedly not best practice. Tr. 2/11/16, pp. 48-49.
* The "update," arbitrarily and without any explanation, dropped the results of the "successful schools" review, which were about 30% lower, in favor of considering only the higher "professional judgment" cost figures. Tr. 2/11/16, pp. 49-50.

Neither the study nor Dr. Palaich could provide any explanation whatsoever as to how much of the final figures in the study were attributable to preschool costs, or how those costs were derived. Dr. Palaich did not know, and the report does not explain, for example, whether it includes costs of providing all of the cost of full day public school preschool to every child in Connecticut, or something less, and how that was determined. Tr. 2/11/16, pp. 45-48.

See also DTX 2432, pp. 23-29 (Seder Report - critique of Palaich), Tr. 4/26/16, pp. 88-90 (testimony of Seder).

In sum, the deficiencies in this report and testimony go far beyond some minor defects that should be considered in determining the weight to be given to it. In this case, the entire study was rigged, in every possible way, to ignore science and reliability in order to come up with the largest possible number, a number which is, for a state that is already near the top in education spending, ridiculous on its face. Because the reports have no basis in science and are utterly unreliable in every aspect of their construction and application, they, and all testimony and evidence based upon them, must be stricken.

VI. If the Court Rules in Favor of Plaintiffs, Relief Is Limited To Deferral to Legislative Action.[[60]](#footnote-60)

1. The Connecticut Supreme Court Dictates Deferral to the Legislature to Determine

Competing Constitutional Priorities. (addresses Judge Q # 2)

Connecticut caselaw is clear that even when constitutional violations have been found in the education area, the courts in the first instance should defer to the elected branches of state government to address the matter. E.g., CCJEF v. Rell, 295 Conn. at 261-63, 265, 314, 318, n. 22 and n. 59 (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).[[61]](#footnote-61) [[62]](#footnote-62) Accord, Seymour v. Region One Bd. Of Education, 261 Conn. 475, 484 (2002).

As the Court demonstrated in Horton v. Meskill, 172 Conn. 615 (1977) (“Horton I”), and Sheff v. O’Neill, 238 Conn. 1 (1996), separation of powers vests the legislature, not the courts, with the function and duty to fashion a constitutional system of education and education financing. In both Horton I and Sheff, the Court declined to dictate a remedy, stating that "judicial intervention should be stayed 'to afford the General Assembly an opportunity to take appropriate legislative action.'" Sheff, 238 Conn. at 45-46, quoting Horton I, 172 Conn. at 653. This case is no different. Because "separation of powers concerns necessarily will inform the creation of any remedy in this case, should one ultimately be required," CCJEF, 295 Conn. at 265 n. 22 (plurality opinion), this court should not entangle itself in the complexities of what is fundamentally a legislative matter. “[T]he ultimate solutions [to education financing] must come from the lawmakers and from the democratic pressures of those who elect them.” Horton I, 172 Conn. at 644, quoting San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 58 (1973). Any remedy that orders the legislature to spend additional money or spend it differently will, of necessity, intrude on the exclusively legislative power to appropriate. City of Bridgeport v. Agnostinelli, 163 Conn. 537, 544 (1972).

Any judicially imposed remedy would also interfere with the core legislative power to determine education policy. See Conn. Const. Art. Eighth, § 1 (explaining that the general assembly "shall implement" the principle of free public elementary and secondary schools "by appropriate legislation"); Sic v. Nunan, 307 Conn. 399, 410 (2012) ("it is undisputed that the legislature . . . has the 'primary responsibility for formulating public policy'"); Stolberg v. Caldwell, 175 Conn. 586, 603 (1978) ("[i]t is the province of the legislative department of our government . . . to determine the general public policy in the area of higher education"); Regional High School District No. 3 v. Town of Newtown, 134 Conn. 613, 617 (1948) ("[t]he determination of the state policy . . . [concerning the creation of regional school districts] is for the General Assembly"). This court cannot mandate increased or altered educational spending for particular purposes and priorities without treading on the core legislative power to determine educational policy. See CCJEF, 295 Conn. at 317 n.59 (plurality opinion) (recognizing the “separation of powers concerns attendant to intensive judicial involvement in educational policy making”).

Other state courts have also looked to their legislatures for solutions to their educational challenges. E.g., Lobato v. State, 304 P.3d 1132, 1143-4 (2013) (“courts must avoid making decisions that are intrinsically legislative. It is not up to the court to make policy or to weigh policy."); Hancock v. Commissioner of Education, 443 Mass. 428, 431 (2005) (Marshall, J. concurring, with whom Spina and Cordy, Justices join) (prior determination of constitutional violation (now reversed) was to be corrected by the legislature); Abbeville County School District v. State, 335 S.C. 58 (1999) ("[w]e do not intend the courts of this State to become super-legislatures or super-school boards."), order superseded and amended, 415 S.C. 2d 19, 21 (2015) (court "will give due consideration to the General Assembly's prerogative to choose the methodology by which the constitutional violation shall be remedied.").

1. Any Injunctive Relief Must Be Limited to the Complaint, The Prayer for Relief, and Proper Parties Before the Court.

In ... (their) prayer for equitable relief, the plaintiff(s) ... (were) claiming the extraordinary remedy of an injunction. This is a power that courts exercise cautiously. A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law. The allegations and proof are conditions precedent to the granting of an injunction. [citations omitted.]

Waterbury Teachers Ass'n v. Civil Serv. Comm'n of City of Waterbury, 178 Conn. 573, 577-78, 424 A.2d 271, 273 (1979). “[P]arties are bound by their pleadings.” New Breed Logistics, 129 Conn. App. 563, 573 (2011), quoting Edelman v. Page, 123 Conn. App. 233, 243, cert. denied, 299 Conn. 908, (2010). The case before the court is not a class action lawsuit. See Doc. # 163 X07-HHD-cv05-4050526-S, Corrected Third Amended Complaint (CTAC). Therefore any injunctive relief can only bind the parties properly before the court. Connecticut Emp. Union Indep., Inc. v. Connecticut State Emp. Ass'n, Inc., 183 Conn. 235, 248-49 (1981) ("Equity cannot act where parties to be affected are not before the court or have not been given the opportunity to be heard."); Stefan v. P.J. Kids, 2005 WL 834208 (Waterbury 2005) (impermissibly broad injunctive request sought to extend to and bind unknown third parties, neither before the court nor represented by plaintiffs' counsel). Cf. Horton I, 172 Conn. at 627 (declaratory judgment procedure may only be employed "where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof.")

The plaintiffs only put on evidence as to their six focus districts. Accordingly, even if the court should determine that some sort of injunctive relief is merited, it could not possibly exceed whatever facts the court finds plaintiffs have proved, and plaintiffs have not put on specific evidence about facts outside of the six focus districts. Plainly, statewide relief is insupportable even if the court finds the evidence offered establishes some violation somewhere. Horne v. Flores, 557 U.S. 433, 470-2 (2009) (statewide injunction not shown to be justified in light of no evidence that any school district other than the one plaintiff district failed to provide equal educational opportunities to ELL students; and statewide injunction intruded deeply into state's budgetary processes).[[63]](#footnote-63) To the extent plaintiffs' Prayer for Relief in CTAC ¶ 180 exceeds the evidence presented, any injunction must be narrowly limited to remedying specific proven violations. H.O. Canfield Co. v. United Construction Workers, 134 Conn. 623, 626 (1948) ("The issuance of a permanent injunction is, however, to be decided upon the facts proven at the trial.").

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**CERTIFICATION**

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1. The total Alliance District allotments from 2012-13 to 2016-17 for the plaintiffs' six "focus" districts are as follows: Bridgeport, $63,839,349; East Hartford, $28,625,403; Danbury, $29,359,660; New Britain, $46,097,611; New London, $11,532,221; Windham, $10,234,401. <http://www.sde.ct.gov/sde/lib/sde/PDF/dgm/report1/ecs-alliance-nonalliance.pdf>, DTX 6488, DTX 5682. [↑](#footnote-ref-1)
2. For the 2016-17 school year, the Education Cost Sharing (ECS) allotment is over $2 billion, and is expected to decrease by approximately $30 million, or about 1.5%, from the previous year. See DTX 6488. The plaintiffs' six "focus districts," however, will receive the following ECS allotments: Bridgeport, $181,355,390; Danbury, $31,540,480; East Hartford, $49,315,667; New Britain, $86,445,269; New London, $25,928,509; Windham, $26,681,944. DTX 6488. Five of the six focus districts received a decrease from the previous year of 0.5% or less, while Danbury received an increase of 2.74%. DTX 6488. In comparison, the so-called "wealthy" districts referenced by plaintiffs throughout the trial received the brunt of these cuts. See DTX 6488 (Westport: -54%; Weston: -55%; Greenwich: -52%; Ridgefield: -60%; Wilton: -54%; New Canaan: -44%; Redding: -62%; Easton: -59%; Darien: -43%; Waterford: -67%; Fairfield: -54%). This newest budget is further evidence of the fact that Connecticut's funding system for public education is rational and constitutional because the poorest districts receive by far the most and the largest proportion of state aid. See infra. Moreover, total state aid to municipalities (including education) actually increased for each of the focus districts from FY 16 to FY 17: Bridgeport (increase of $17.7M); Danbury (increase of $3.4M); East Hartford (increase of $5.6M); New Britain (increase of $9.4M); New London (increase of $2.5M); and Windham (increase of $2.2M).  <http://www.ct.gov/opm/lib/opm/igp/estimat/71_section_e.pdf>.

   . [↑](#footnote-ref-2)
3. While parents, spouses and siblings might qualify as next friend, first cousins have not. Davis v. Austin, N.D. GA., 492 F. Supp. 273, 275 (1980). [↑](#footnote-ref-3)
4. Judge Dubay previously denied defendants' motion to dismiss CCJEF on associational standing grounds. However, that decision was made on the basis of the complaint and did not affect plaintiffs' burden of proving standing at trial. [↑](#footnote-ref-4)
5. For more specifics as to the AD/ PSD, and CN grants, see Cohn Tr., 5/25/16 pp. 86-139, 140-147 respectively for Bridgeport; pp. 147-153, 154-169 for EH; pp. 169-173, 173-175, respectively for Windham; pp. 181-185 for New Britain AD's; Cohn Tr., 5-26-16, pp. 4-9, 9-12, and 12-13 (SIG), respectively for New Britain; pp. 13-26, 34, respectively for New London; pp. 35-38, 38, respectively for Danbury. [↑](#footnote-ref-5)
6. These counts were stricken by the trial court and later reinstated by our supreme court.  CCJEF v. Rell, 295 Conn. 240, 251 (2010)(plurality).  Count three was never stricken and was therefore not before the supreme court.  Id. [↑](#footnote-ref-6)
7. Even the plurality took this view.  See CCJEF v. Rell, 295 Conn. 240, 318-20 (plurality) ("We note that the failure of students to achieve the goals of a constitutionally mandated education may be the result of specific deficient educational *inputs*, or potentially, be caused by factors not attributable to, or capable of remediation by, state action or omission, a complicated question that is at this point beyond the procedural posture of this case. . . .  [A]ny appropriate standard by which to measure the state's assumed obligation to provide a minimally adequate education must be based generally, *not on 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") (internal citations omitted; emphasis added). [↑](#footnote-ref-7)
8. "Even assuming, arguendo, that the plaintiff could prove that a disparate impact exists, an equal protection challenge cannot be supported on that basis alone.  Intentional or purposeful discrimination must be shown to make a successful equal protection challenge."  Wendt, 59 Conn. App. at 685-86 (citation omitted).  The Wendt court also made clear that "[d]ecisions subsequent to Sheff reveal that the Supreme Court did not open the door to disparate impact challenges."  Id. at 686 (citing cases). [↑](#footnote-ref-8)
9. To the extent plaintiffs' claims are construed as an "as applied" constitutional challenge, they must also fail. See Doc. # 265.00 at pp. 12-15; ­see also Moore v. Ganim, 233 Conn. 557, 570 (1995). [↑](#footnote-ref-9)
10. Paragraph 37 of the original complaint (and ¶ 39 of the January 2006 amended complaint) defined the class:

    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. [↑](#footnote-ref-10)
11. The legislature is explicitly tasked with implementing the right to a public education in Connecticut. Conn. Const. art. Eighth § 1. [↑](#footnote-ref-11)
12. For example, the following sections of the Connecticut General Statutes: §§ 10-240 (town to control schools through board of education), 10-220 (board duties), 10-221, 10-222 (local board budget process; funds appropriated by municipality “shall be expended by and in the discretion of the board of education”), 10-51 (regional school district budget process), 10-221a (graduation requirements; subsection (f) provides that eligible credits in the discretion of the local board; subsection (j) requires local boards to create student success plans), 10-233c (local discretion regarding suspensions), 10-233d (local discretion regarding expulsions), 10-221t (Common Core alignment), 10-223a (local board policies on promotion from grade to grade; basic skills necessary for graduation), 10-241 (powers of school districts), 10-16b (public schools to offer instruction in specified areas and to attest to the SBE that they are doing so), 10-17f (local board to provide bilingual education program for eligible students), 10-18 (graduation eligibility contingent on familiarity with specified subjects), 10-18a (local board to select textbooks with certain content required), 10-186 (local boards to furnish school accommodations). [↑](#footnote-ref-12)
13. The NAEP Grade 4 Reading scores from 2003 to 2015 refute Plaintiffs' expert, Dr. Barnett's, claim that Connecticut has seen virtually no change in scores from 2002 to 2011 compared to New Jersey for the NSLP subgroup. PTX 333, Barnett 2012 Report, p. 14.  The evidence shows only 2 administrations in which the New Jersey scores were statistically significantly higher than those of Connecticut, namely 2007 and 2011.  DTX 6176, NAEP CT NJ 2003-2011 Grade 4 Reading Math NSLP, Savoie Tr. 4/27/16, pp. 136:27-139:27.  Otherwise, the evidence shows that Connecticut and New Jersey's scores were not statistically different, including for the two most recent administrations in 2013 and 2015 for Grade 4 Reading for the NSLP subgroup, which Dr. Barnett did not consider.  Id.  Barnett Tr. 4/25/16, pp. 101:17-102:5, 103:9-105:4. [↑](#footnote-ref-13)
14. Connecticut's overall poorer performance on 4th and 8th grade math, as compared to reading, actually further undercuts Plaintiffs' claims. There is no evidence that Connecticut devotes fewer resources to teaching math than to teaching reading, but its reading results are much better than its math results. In the absence of any other explanation, this fact surely reinforces the idea that quality of teaching and leadership, rather than resources, are the most important factors in producing better results. If there is a better explanation, plaintiffs have not presented it. [↑](#footnote-ref-14)
15. The achievement gap data is considered in light of the number of states with no reportable data for the Grades 4 and 8 NAEP assessments and the 13 states that participated in the Grade 12 2013 NAEP assessments as well as the number of those states that did not meet the NAEP reporting standards for Grade 12. [↑](#footnote-ref-15)
16. "Plaintiff districts" were derived from the Corrected Third Amended Complaint, dated January 7, 2013, and were Bridgeport, Danbury, Windham, East Granby, Plainfield, Norwich, New Britain, New London, East Hartford, Hartford, and Stamford. [↑](#footnote-ref-16)
17. This data was accurate and reliable based on performance office calculations. See Gopalakrishnan Testimony, 5/18/16, pp. 124-32. [↑](#footnote-ref-17)
18. New London's overall average class size for grades K-8 was 23.7; however, the data was skewed due to inaccurate reporting by one of the elementary schools. See Defs' Demonstrative 10. [↑](#footnote-ref-18)
19. In fact, Prof. Wolkoff's reports obviously **understate** the extent of these findings for three reasons – 1) they stop just before the most substantial additional funding for the poorest (Alliance) districts begins 2) they do not take into account the understatement of per pupil expenditures in the poorest districts, See, infra, Section III.I, pp. 39-41, and 3) they do not take into account major reductions in ECS grants to the wealthiest districts in the new 2016-17 budget. [↑](#footnote-ref-19)
20. The figure commonly referred to as "net current expenditure per pupil," or NCEP, is defined by statute in Conn. Gen. Stat. § 10-76f(a) as "per pupil cost," meaning "the quotient of net current expenses, as defined in section 10-261, divided by such school district's average daily membership, as defined in section 10-261." Section 10-261(2) defines "average daily membership" and section 10-261(3) defines "Net current expenditures" as total current educational expenses, with certain specified exceptions, including an exception for "(E) all tuition received on account of nonresident pupils." This exclusion has the effect of not counting tuition that districts receive for students in their own interdistrict magnet schools as part of their net current expenditures per pupil. [↑](#footnote-ref-20)
21. Several superintendents extolled the benefits of the Alliance district program. E.g., Quesnel Tr., 1/15/16, p. 182 ("the Alliance District grant is a fantastic example of when funding and management and oversight and accountability all come together with a dynamic strategic plan towards student achievement based on student needs and based on the concept that what we're doing does not work and we need to do more and we need to do smarter to bring students to an adequate level of both performance and opportunity, [and] results begin to happen.");  1/19/16, p. 26 ("as a result of the Alliance District program where funding and accountability and a tight plan have come together we have begun to see results.");   6/1/16, pp. 79-80  (Quesnel has learned from Alliance District convening meetings, including the sustainability workshop, and has built community partnerships); pp. 106-7 (noting that one of the strengths of the Alliance District grant is the ability of districts to collaborate with the CSDE on their plans, and that the plans are not "one size fits all."); Rabinowitz Tr., 1/22/16, p. 113 (Alliance District funding is used for what the individual district determines is its highest priority needs); 1/22/16, p. 105 ("I have found great value in being able to work with other superintendents and staff members to collaborate on how they have solved some of their issues, whether it be interventions or suspensions."); Pascarella Tr., 2/2/16, pp. 174-6. (The 2012 reforms, including the Alliance District grant, have provided benefits to students, helped to narrow achievement gaps, and allowed districts to expand their initiatives.).  In addition, Dr. Villanova testified that Connecticut is working to address the needs of children in urban districts through the Alliance District plan, which is "a significant and focused attempt to close the achievement gaps by using more high leverage, coherent strategies to move learning forward. And…that is the work that the districts that I know in Connecticut that are poised to make progress are focused on those strategies." Villanova Tr., 5/11/16, p. 44. [↑](#footnote-ref-21)
22. For the SY 2015-16, Bridgeport was approved to receive $18,071,380.32 in AD funds and $6,637,852.25 in PSD funds as summarized in DTX 6122 (Bpt AD/PSD Summary) and set forth in more detail in DTX 5363 (fully approved application). It was also approved to receive additional PSD grant amounts of $393,459 in an extended school hours grant and $457,729 for summer school grant. DTX 6120. [↑](#footnote-ref-22)
23. For SY 2015-16, Danbury was approved to receive $7,847,721 in AD funds and $2,056,661 in PSD funds as summarized in DTX 6140 (Danbury AD/PSD Summary) and set forth in more detail in DTX 5377 (fully approved). It was also approved to receive additional PSD grant amounts of $203,893 in an extended school hours grant and $230,212 for summer school. DTX 6141. [↑](#footnote-ref-23)
24. For SY 2015-16, East Hartford was approved to receive $7,852,667 in AD funds and $1,111,577 in PSD funds as summarized in DTX 6114 (EH AD/PSD Summary) and set forth in more detail in DTX 5381 (fully approved application). It was also approved to receive additional PSD grant amounts of $152,925 in extended school hours grant and $175,781 for summer school. DTX 6142. [↑](#footnote-ref-24)
25. For SY 2015-16, New Britain was approved to receive $12,749,366 in AD funds and $2,056,662 in PSD funds as summarized in DTX 6234 (NB AD/PSD Summary) and set forth in more detail in DTX 5400 (fully approved application). It was also approved to receive additional PSD grant amounts of $206,066 in extended school hours grant and $240,355 for summer school. DTX 6113. [↑](#footnote-ref-25)
26. For SY 2015-16, New London was approved to receive $3,118,238 in AD funds and $1,135,869 in PSD funds as summarized in DTX 6235 (NL AD/PSD Summary) and set forth in more detail in DTX 6458 (fully approved application). It was also approved to receive additional PSD grant amounts of $66,165 in extended school hours grant and $77,454 for summer school. DTX 6197. [↑](#footnote-ref-26)
27. For SY 2015-16, Windham received $2,646,307 in AD funds and $1,144,757 in PSD funds as summarized in DTX 6232 (Windham AD/PSD Summary) and set forth in more detail in DTX 5424 (fully approved application). It also received additional PSD grant amounts of $61,072 in extended school hours grant and $67,473 for summer school. DTX 6233. [↑](#footnote-ref-27)
28. Quesnel Tr., 1/19/16, pp. 33:17-34:4 (CN plan at O'Brien STEM Academy is a classic example of a really incredible plan because "it is based on the organic needs of the district hammered on a battle through by experts, tight metrics around what success means, and funding to back it up"). [↑](#footnote-ref-28)
29. ("COURT: In other words, that you're weighting heavily toward academic achievement and academic growth. And so that is one way to say that if you're putting pressure on something, you're trying to put pressure on academic achievement and academic growth, because those are your biggest sets of the points."). [↑](#footnote-ref-29)
30. See Defs' Findings of Fact: Teacher and School Leader Evaluation, 5/31/16, ## 103-124. [↑](#footnote-ref-30)
31. In 2012-13 a Pilot Study implemented SEED in 10 districts/district consortia. UCONN’s NEAG School of Education studied the pilot and provided feedback, which further guided the model design. DTX 3715, p. 2; Barzee Tr., 4/14/16, p. 118:13-21. [↑](#footnote-ref-31)
32. Districts may decide to use a whole school set of Student Learning Objectives (SLO), student feedback through surveys, or a combination of the two to determine the 5% component of SEED. DTX 3715, p. 33. Districts may develop their own valid and reliable student surveys or use the sample one developed by Panorama Education for the SEED model. Id. at 34. [↑](#footnote-ref-32)
33. See DTX 6328, p. 24, DTX 3715, pp. 16, 41-42, and DTX 5950 (SESS Rubric) for evaluation programs for educator support specialists. [↑](#footnote-ref-33)
34. Evidence guides, developed with national experts enhance the rubrics and inform deeper levels of look-fors and listen-fors to help educators evaluating outside of their own content area. Barzee Tr., 4/22/16, p. 71:10-24. [↑](#footnote-ref-34)
35. See also Flick Tr., pp. 61:15-62:27 discussing ARCTELL success. [↑](#footnote-ref-35)
36. See also Flick Tr., p. 63:1-20 discussing state and local payments for ARCTELL tuition. [↑](#footnote-ref-36)
37. DTX 5570 (Digital Library, Math, learning modules, SBAC, ELs and Students with disabilities, SRBI); DTX 3826 (Summer Curriculum for ELA and Math, Model Algebra 2 and Geometry Training, Computer Science K-5); DTX 6166 (free principals' workshops); DTX 6167 (Smarter Balanced – formative assessments); see also DTX 4037 (AD Convening Tour of CC website). [↑](#footnote-ref-37)
38. Deputy Commissioner Ellen Cohn published a book on SRBI, which has been used in the field since 2008; p. 13:2-7, and also developed and authored SRBI training modules. Id. at 5/24/16, p. 12:14-25. [↑](#footnote-ref-38)
39. See also Defendants' undisputed and unobjected to RFAs ## 215-230 relating to SRBI and SPDG. [↑](#footnote-ref-39)
40. LEAD CT addresses superintendent and principal coaching and is discussed in a separate section, supra, Section IV.N, pp. 82-84; Cohn Tr., pp. 64:4-6, 64:26-65:6. [↑](#footnote-ref-40)
41. These reports reflect what is occurring with regard to ELs in each of the districts receiving these grants. See ELs FOFs, 7/15/16, pp. 60-62 to see number of ELs, support staff, types of programs, and EL student achievements as reported by the plaintiffs' six focus districts in 2014-15, which include, but are not limited to participation in National Honor Society, Honor Roll, school-wide awards, arts and sports, and growth in English language proficiency and academic content. [↑](#footnote-ref-41)
42. The Individuals with Disabilities in Education Act is not, strictly speaking, a federal mandate. Rather, states such as Connecticut agree to abide by the due process requirements of the IDEA and, in exchange, receive federal funding. 20 U.S.C. § 1415(a); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 62 (2d Cir.2000)( “Under the Act, states that receive funding from Congress are required to provide ‘all children with disabilities' with a ‘free appropriate public education.’ ”). Put another way, states are free to forgo federal IDEA funds in which case they do not have to comply with the IDEA's due process requirements. All states now participate, although New Mexico did not participate until 1984. See Clare McCann, Federal Funding for Students with Disabilities: The Evolution of Federal Special Education Finance in the United States 15 (New America 2014). [↑](#footnote-ref-42)
43. The court asked "[w]hy it wouldn't make education sense" to determine whether certain low incidence students were "not worthy of receiving services." Reschly Tr., 4/19/16, pp. 51-52. In response Dr. Reschly stated: "I think we're -- your Honor, I think we're very reluctant to make that judgment because of the potential pernicious effects of starting to reject children based on our judgments of their ability to profit from an education. I think the -- I think the concern from a special educators point of view, if you reject this child, then what about the next one and the next one? And pretty soon it's not a law that protects all children but a law that only protects some children with disabilities." Id. [↑](#footnote-ref-43)
44. And, of course, to the extent that such claims of deprivation of special education services were to be made, each special education student enjoys the full panoply of due process rights under the Individuals with Disabilities in Education Act, 20 U.S.C. § 1412 et seq., including the right to a due process hearing and appeals thereafter. [↑](#footnote-ref-44)
45. There was also no relationship between poverty level of a district and whether it was able to meet the requirements of the IDEA. Reschly Tr., 4/19/16, pp. 42-43. [↑](#footnote-ref-45)
46. The Total ECS Entitlement for 2015-16 was $2,062,299,984. DTX 5682. [↑](#footnote-ref-46)
47. At least one witness from a "focus district" testified that in his district the excess cost monies are not passed through from the municipal government to the Board of Education. Pascarella Tr., 2/2/16, p. 188. [↑](#footnote-ref-47)
48. See Defs. Motion for Protective Order, Doc. # 228.00, HHD-CV-14-5037565-S; Defs. Reply to Pls. Opposition to Defs. Motion for Protective Order, Doc. # 244.00, HHD-CV-14-5037565-S; Decision Reserved, Doc. # 228.86. [↑](#footnote-ref-48)
49. OEC is responsible for the delivery of services and programs not just for pre-K but for children from birth to age 5. Its budget is $350 million. Pre-K FOF 2, 3. [↑](#footnote-ref-49)
50. Comparison to Florida's universal pre-K offerings as reported by NIEER is particularly illuminating. While Florida is ranked 3rd in the nation with regard to access to 4 year olds, it serves no 3 year olds. Pre-K FOF 9, 7/15/16. Florida also offers only pre-k programs for 3 hours per day, compared to the different dosages offered by Connecticut to meet family need. Pre-K FOF 9-12, 7/15/16. In addition, Florida spends $2,238 per child while Connecticut spends $8,925 per child. Pre-K  FOF 11, 12, 7/15/16. [↑](#footnote-ref-50)
51. This figure does not include state spending on pre-K by magnet and charter schools nor the amounts spent by districts using through education cost sharing funds. Pre-K FOF 63, 7/15/16. [↑](#footnote-ref-51)
52. New Britain's percentage of pre-K experience has continued to increase to 80.8%, above the state average of 79.2% for the 2015/16 school year. In contrast, Bridgeport's percentage is 64.5%. DTX 6277, Pre-K Exp. Update; Gopalakrishnan Tr. 5/18/16, pp. 137:14-138:6. [↑](#footnote-ref-52)
53. Dr. Barnett claimed in his 2014 supplemental report that the difference in KEI results between DRGs A and B (higher income districts) compared to DRGs H and I (lower income districts) related to the DRGs' differing socioeconomic status. PTX 772, Barnett's Updated Analysis of DRG and Kindergarten Readiness Data.  Dr. Barnett admitted that the evidence of the prevalence of red-shirting (parent choice to hold children back for a year from starting kindergarten) in high income districts compared to low-income districts may explain the difference in the KEI results. DTX 6303, Red-Shirting Data. Gopalakrishnan Tr. 5/18/16, pp. 138:25-142:27; Barnett Tr. 2/25/16, pp. 108:19-112:10.

    [↑](#footnote-ref-53)
54. The principal competencies include academics, learning and teaching, human capital operations, strategic planning, culture and personal leadership characteristics. The superintendent competencies reflect a coherent approach to the work of the superintendent with his/her principals, teachers and the board of education and community. Villanova Tr., 5/13/16, p. 12:1-8. [↑](#footnote-ref-54)
55. There is also $1.6M assigned to New London High School, pending approved reauthorization of use. See DTX 6289, summary tab, footnote. \*\* [↑](#footnote-ref-55)
56. Thus, both of these situations contrast with the current situation in Bridgeport. Bridgeport Superintendent Fran Rabinowitz explicitly testified that she does not want state supervision of her district; see Rabinowitz Tr., 6/2/16, p. 76 ("I'm not asking for a state takeover"); and plaintiffs have not sought state supervision of any of their focus districts. See also infra Section V. (local control); Conn. Gen. Stat. § 10-220; Pereira v. State Bd. of Educ., 304 Conn. 1 (2012). Furthermore, CCJEF member CABE offers training to local school boards.  Villanova Tr., 5/13/16, p. 50; DTX 6460.

    [↑](#footnote-ref-56)
57. There is presently a moratorium for magnet school programs. See Conn. Gen. Stat. § 10-264l(b)(1). [↑](#footnote-ref-57)
58. In order to determine the actual amount paid or allocated by the State for each project, the applicable reimbursement percentage for each district for a given year would have to be applied to the state grant commitments. Doc. # 331.00, School Construction Spending Stipulation Regarding Defendants' Exhibit 3844. [↑](#footnote-ref-58)
59. Defendants continue to press their motion in limine Doc. # 207.00 with regard to Levin as the court also reserved ruling at trial as to his testimony and report, PTX 189.  See Levin Tr., 2/18/16, pp. 104, 115-116, 152-153; Levin Tr., 2/19/16, pp. 105-112.  His supplemental report PTX 733, which was also objected to in the Motion in Limine, was never offered.  Defendants also continue to press their motion in limine Doc. # 207.00 with regard to Carver.  See Carver Tr., 1/20/16.  With regard to Hakuta, plaintiffs never tried to admit his reports or the underlying reports, which were the subject of the motion in limine, so that part of the motion in limine is moot.  Plaintiffs did not offer testimony or reports from Ronald Jakubowski or Walter Gilliam, and so those portions of the motion in limine are also moot. [↑](#footnote-ref-59)
60. See also Doc. # 296.00, Defs' 3/3/16 Response to Pls' Brief re January 2016 Question 1. [↑](#footnote-ref-60)
61. In the present case, the Connecticut Supreme Court justices were unanimous in their concern and respect for the separation of powers. The plurality expressly warned that "separation of powers concerns necessarily will inform the creation of any remedy in this case, should one ultimately be required." CCJEF, 295 Conn. at 265 n. 22 (plurality opinion). The plurality went on to explain that "[w]e are cognizant of the risks and separation of powers concerns attendant to intensive judicial involvement in educational policy making…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." Id. at 318, fn. 59. Justice Schaller stated that the court would likely need to turn to the legislature first for any remedy "to avoid a conflict concerning the separation of powers." Id. at 381-382 (Schaller, J., concurring). Justice Palmer concluded that "it is unrealistic to believe that a remedy can be devised that will not give rise to separation of powers concerns" Id. at 338 n. 12 (Palmer, J., concurring). And Justice Zarella observed that "[j]udical intervention to resolve an issue with potentially vast financial consequences demonstrates a lack of respect for a coordinate branch of government because the court is treading on a constitutional prerogative of the legislature regarding education and the legislature's exclusive authority to appropriate funds." Id. at 440 (Zarella, J., dissenting) (italics omitted). [↑](#footnote-ref-61)
62. The plurality in CCJEF deemed the judicial remedies in NJ's Abbott cases "particularly aggressive" and warned that they "could well raise some separation of powers issues." Id. at 264 n. 21 (plurality opinion) (referencing extensive litigation stemming from Abbott ex rel Abbott v. Burke, 100 N.J. 269 (1985)). [↑](#footnote-ref-62)
63. Even when a trial court found a violation, it limited relief to only the four focus districts for which it heard evidence and found to have lacked adequate opportunities. See, e.g., Hancock v. Driscoll, 2004 WL 877984 \*4, \*160 (2004), reversed by Hancock v. Comm'r of Educ., 443 Mass. 428 (2005) (rejecting trial court report and recommendation and finding no constitutional violation). [↑](#footnote-ref-63)