

**SUPREME COURT OF THE
STATE OF CONNECTICUT**

S.C. 19768

**CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING
INC., ET AL.,**

PLAINTIFFS-APPELLEES

V.

M. JODI RELL, ET AL.,

DEFENDANTS-APPELLANTS

**BRIEF OF AMICUS CURIAE EDUCATION LAW CENTER
IN SUPPORT OF PLAINTIFFS-APPELLEES-CROSS-APPELLANTS**

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STATEMENT OF ISSUE OF AMICUS CURIAE

Whether the trial court erred in holding that, in determining whether the state was providing adequate resources, the court was limited to four specific categories of resources: facilities, instrumentalities of learning, teaching of a reasonably up-to-date curriculum and sufficient personnel adequately trained to teach those subjects.

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INTEREST OF AMICUS CURIAE

Education Law Center (“ELC”) is a non-profit organization established in 1973 to advocate, on behalf of public school children, for access to fair and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiff school children in the landmark case Abbott v. Burke (Abbott II), 575 A.2d 359 (N.J. 1990), and continues to advocate on their behalf to ensure effective implementation of the Abbott remedies, which have “enabled children in Abbott districts to show measurable educational improvement.” Abbott v. Burke (Abbott XX), 971 A.2d 989, 995 (N.J. 2009) (quoting Abbott v. Burke (Abbott XIX), 960 A.2d 360 (N.J. 2008)). In 2011, ELC took over the mission of the Campaign for Fiscal Equity, the plaintiff in New York’s landmark school funding case, Campaign for Fiscal Equity v. State. ELC is co-counsel in Maisto v. State of New York, a case asserting a violation of the rights of students in eight small city school districts to a sound basic education.

Using its expertise in education law and policy, ELC advances children’s opportunities to learn, and assists advocates seeking better educational opportunities for students in states across the nation. ELC accomplishes this work by providing analyses and other support with regard to relevant litigation, high quality preschool and other proven educational programs, resource gaps, education cost studies, and policies that assist states and school districts to gain the expertise needed to narrow and close achievement gaps. As part of its work, ELC has participated as amicus curiae in state educational opportunity cases in California, Colorado, Indiana, Maryland, Pennsylvania, Oregon, Texas and South Carolina. ELC participated as amicus curiae in CCJEF v. Rell when it was last before the Connecticut Supreme Court. In light of its extensive experience in education adequacy cases, ELC is well-positioned to provide insight into a fundamental issue in this appeal: the proper standard for determining the adequacy of educational resources.

ARGUMENT¹

THE TRIAL COURT ERRED IN RULING THAT ONLY THREE NARROW CATEGORIES OF EDUCATIONAL RESOURCES ARE NECESSARY FOR A CONSTITUTIONALLY ADEQUATE EDUCATION

The CCJEF trial court ruled that Connecticut's overall spending on public schools meets the standard for constitutional adequacy of education funding. A474. The trial court's conclusion that Connecticut adequately funds the state's schools stems largely from its ostensible analysis of the educational resources present in Connecticut schools.² However, the court erroneously limited that analysis to three narrow categories of resources, or "inputs": minimally adequate facilities, minimally adequate instrumentalities of learning and minimally adequate teaching of reasonably up-to-date curricula.³ A467-68.

The court found that there was insufficient evidence to declare a statewide lack of minimally adequate facilities. A475. It further found that while many poor schools lacked computers, up-to-date textbooks and supplies, the state satisfied the minimal standard regarding instrumentalities because there was no evidence of a "statewide problem" with

¹ In accordance with Practice Book § 67-7, the amicus states that no counsel for a party to this case wrote this brief in whole or in part and that no such counsel or a party contributed to the cost of the preparation or submission of the brief. No persons, other than the amicus, its members or its counsel made such a monetary contribution. Attorney Wendy Lecker participated in the preparation of this brief solely in her capacity as an attorney for ELC, together with other attorneys at ELC, and to advance the position and viewpoints of ELC alone. In the interest of full disclosure, in her personal capacity, Attorney Lecker is a Stamford resident, parent of a current public school student and a member of CCJEF.

² Though the plaintiffs presented evidence from specific school districts in Connecticut, and the court made specific findings of fact regarding those districts, the court's discussion and opinion refer to Connecticut schools on an aggregate level, without aggregate evidence.

³ This brief refers to three categories: facilities, instrumentalities of learning and teaching of a reasonably up-to-date curriculum by sufficient personnel who are adequately trained, because the CFE decisions refer to three categories. See, e.g., Campaign for Fiscal Equity v. State, 295 A.D.2d 1,10 (1st Dep't 2002)(Court of Appeals established three areas). In CCJEF, the Connecticut Supreme Court and the trial court separate these same categories into four: facilities, instrumentalities, curriculum and adequately trained personnel. CCJEF v. Rell, 295 Conn. 240, 290 (2010); A467.

instrumentalities of learning. A475. Finally, the court found that, “[j]udged against a low minimum and judged as a system, the plaintiffs have plainly not met their burden to show ...that Connecticut lacks minimally adequate teaching and curricula....” A476.

In its discussion of inputs, the CCJEF trial court did not consider essential resources such as guidance counselors, social workers, extended learning opportunities or other programs designed to enable disadvantaged students to access educational opportunities. In fact, the trial court deemed those services “extras” that were not part of an adequate education. A476. Rejecting the plaintiffs’ claims that the court should examine whether interventions such as after-school programs are adequate in high-poverty districts, the court declared that “the very existence of these programs means the state far exceeds the bare minimum spending levels the judiciary is willing to order under the education provision.” A477.

The trial court’s constricted view of what resources are necessary for a constitutionally adequate education is erroneous for several reasons. The court’s conclusion contradicts the New York precedent upon which it claims to rely, Campaign for Fiscal Equity v. State. The court’s standard for resources is also at odds with precedent across the nation. Finally, the trial court’s ruling conflicts with the Connecticut Supreme Court’s charge in remanding this case for trial.

I. The CCJEF Trial Court Misinterpreted *Campaign for Fiscal Equity v. State*

The CCJEF trial court purported to base its analysis of the inputs, or educational resources, necessary for a constitutionally adequate education on the New York Court of Appeals decision in the landmark school funding case, Campaign for Fiscal Equity v. State (“CFE”). The CCJEF trial court’s opinion noted that in the 2010 Connecticut Supreme Court decision remanding the case for trial, both the plurality and Justice Palmer, the concurring justice, looked to the CFE case as the standard for which resources to consider in determining whether children were receiving the opportunity for a constitutionally adequate education. A467. The trial court then incorrectly declared that

CFE only requires three categories of educational resources: facilities, instrumentalities of learning and teaching of a reasonably up-to-date curriculum. Based on that erroneous reading of CFE, it concluded that “because Connecticut schools more than meet the New York minimum standard the upper court pointed to—the state has not violated the constitution.” A474.

CFE, filed in 1993, was a challenge to New York State’s funding system, brought on behalf of students in New York City public schools. In 1995, New York’s highest court, the Court of Appeals, permitted CFE to proceed to trial. Campaign for Fiscal Equity v. State (“CFE I”), 86 N.Y.2d 307, 319 (1995). The trial court rendered its decision in 2001, after 72 witnesses and 4,300 exhibits, finding that New York State’s school funding system violated the rights of New York City public school students under the Education Article of the New York State Constitution. Campaign for Fiscal Equity v. State (“CFE Trial Court”), 187 Misc.2d 1, 115 (New York County, 2001). New York’s intermediate appellate court, the Appellate Division First Department, reversed the trial court’s decision in 2002. Campaign for Fiscal Equity, Inc. v. State, 295 A.D.2d 1, 22 (1st Dep’t 2002). In 2003, the Court of Appeals reversed the First Department’s ruling on the claim of violation of the Education Article and reinstated the trial court’s findings that the education provided to New York City’s public school students was inadequate. Campaign for Fiscal Equity v. State (“CFEII”), 100 N.Y.2d 893, 913 (2003). Notably, the Court of Appeals upheld the trial court’s finding that the educational resources, or inputs, necessary for a constitutionally adequate education were deficient in New York City schools. CFE II, 100 N.Y.2d at 915.

Contrary to the CCJEF court’s contention, CFE did not hold that the analysis of the inputs necessary for a constitutionally adequate education is limited to three narrow categories. In its 1995 ruling allowing the CFE case to proceed to trial, New York’s Court of Appeals set forth what it termed a “template” of inputs, to be further developed at trial. That template consisted of, as the CCJEF court noted, adequate facilities, instrumentalities of learning and adequate teaching of reasonably up-to-date curricula. Campaign for Fiscal

Equity, Inc. v. State (“CFE I”), 86 N.Y.2d 307, 317 (1995). The CFE I Court stressed that this template was not a definitive list of the inputs necessary for a constitutionally adequate education. The Court of Appeals emphasized that, given the procedural posture of the case, “[w]e do not attempt to definitively specify what the constitutional mandate of a sound basic education entails.” CFE I, 86 N.Y.2d at 317. The Court explained that defining what a sound basic education entails required development of the factual record. CFE I, 86 N.Y.2d at 317.

Following the Court of Appeals’ directive, the trial court developed the “template” of inputs, defining it to include the following categories of resources:

1. Sufficient numbers of qualified teachers, principals and other personnel.
2. Appropriate class sizes.
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up to date books, supplies, libraries, educational technology and laboratories.
5. Suitable curricula, including an expanded platform of programs to help at-risk students by giving them "more time on task."
6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment.

CFE Trial Court, 187 Misc.2d at 115. On appeal, both the Appellate Division, First Department and the Court of Appeals recognized this expanded list of input categories as consistent with the Court of Appeals’ charge in remanding the case for trial.⁴ The First Department noted that the trial court “adopted [the Court of Appeals’] outline, and advanced seven categories of resources, which essentially fall within the three areas set forth by the Court of Appeals.” Campaign for Fiscal Equity v. State, 295 A.D.2d 1,10 (1st Dep’t 2002). When the case reached the Court of Appeals again in 2003, New York’s highest court affirmed that the trial court properly expanded upon its outline: “In keeping with our directive, the trial court first fleshed out the template for a sound basic education that we

⁴ The CCJEF trial court mischaracterized these decisions as “later New York case law,” when in reality they were further proceedings on the same case. A467.

had outlined in our earlier consideration of the issue.” CFE II, 100 N.Y.2d at 902. The Court noted that in its ruling prior to the trial, “we refrained from addressing this problem in detail.” Id. at 907. It is evident from the Court of Appeals’ decision affirming the trial court’s delineation of seven resource categories that the three input categories the Court set forth before trial were to serve merely as a general blueprint for the trial court, rather than a narrow and finite list of resources.

The CFE trial court held that resources such as services tailored to meet the needs of at-risk children were fundamental components of a constitutionally adequate education.⁵ CFE Trial Court, 187 Misc.2d at 115. Some examples of those resources include additional academic and social support and extended time for learning, as well as small class size in the early years. Id. at 23, 54, 115. This conclusion was affirmed by the Court of Appeals, which explained that these services are necessary elements of a “sound basic education” because, “[a]s the trial court correctly observed, this opportunity [for a sound basic education] must still ‘be placed within reach of all students,’ including those who ‘present with socioeconomic deficits.’” CFE II, 100 N.Y.2d at 915 (citation omitted). The Court of Appeals further noted that the trial court’s conclusion that academic and social support services are essential to an adequate education is consistent with the New York State Board of Regents’ and State Education Department’s position that “[a]ll children can learn given appropriate instructional, social, and health services.” Id. at 915.

Accordingly, the Court of Appeals rejected the State’s attempt to blame the school district for the over-referral and over-placement of students in special education, finding that these failures resulted in large part from “a lack of support services in general education,” and thus were attributable to the State. Id. at 923. The concurring justice observed that “[t]he record establishes that these [at-risk] students need more help than others in order to meet educational goals, such as extended school programs, remedial

⁵ New York State defines “at-risk” students as those at-risk of doing poorly because of “poverty and limited proficiency in English.” CFE II, 100 N.Y.2d at 944.

instruction, and support services.” Id. at 942 (Smith, J., concurring). As part of its finding that the State’s existing funding system was unconstitutional, the Court of Appeals found that the formula failed to account for the “actual costs necessary to provide New York City students with a sound education,” including the costs of providing additional resources to at-risk students.⁶ Id. at 942-43. The CFE Court clearly found that the resources essential for a constitutionally adequate education must extend beyond facilities, instrumentalities of learning and teaching.

II. The Trial Court’s Ruling Contradicts Precedent from Across the Nation

Courts across the country have recognized that in order to fulfill its constitutional obligation to guarantee the opportunity for an adequate education to all children, a state must provide resources to ensure that all children can access that educational opportunity. Therefore, courts have ruled that for children with additional needs, such as at-risk children, additional services, staff and programs are essential components of an adequate education.

The New Jersey Supreme Court noted that:

there is solid agreement on the basic proposition that conventional education is totally inadequate to address the special problems of the urban poor. Something quite different is needed, something that deals not only with reading, writing, and arithmetic, but with the environment that shapes these students’ lives and determines their educational needs.

Abbott v. Burke, 119 N.J. 287, 372 (1990). Thus, that court ordered that high-needs districts be provided with resources such as pre-k; alternative schools or comparable education programs aimed at reducing the dropout rate; summer school; after-school and nutrition programs; health and social services; among other educational inputs. Abbott v. Burke, 153 N.J. 480 (1998). The New Jersey Supreme Court ruled that these inputs were

⁶ The Court of Appeals found that the New York State’s school funding system was unconstitutional where evidence from one district, New York City, demonstrated a systemic, district-wide deprivation of constitutional rights. CFE II, 100 N.Y.2d at 928. By contrast, the CCJEF trial court concluded that Connecticut as a whole adequately funds its schools, and appeared to treat the evidence from the plaintiffs’ districts as “anecdotal.” A475.

essential “to ensure that public school children from the poorest urban communities receive the educational entitlements that the Constitution guarantees them.” Id. at 489. The North Carolina Supreme Court declared that it is the State’s obligation to provide at-risk students with “tutoring, extra class sessions, counseling, and other programs that target ‘at-risk’ students in an effort to enable them to... avail themselves of their right to the opportunity to obtain a sound basic education.” Hoke County Bd. of Educ. v. State, 358 N.C. 605, 637 (2004). In 2014, the South Carolina Supreme Court ruled that the State did not fulfill its constitutional obligation because its “failure to address the effects of pervasive poverty on students within the plaintiffs’ school districts prevented those students from receiving the required opportunity.” Abbeville County Sch. Dist. v. State, 410 S.C. 619, 624 (2014). Specifically, the South Carolina Supreme Court recognized that pre-k was an essential resource which enabled at-risk students to receive an opportunity for a constitutionally adequate education. Id. at 628. The Wyoming Supreme Court recognized that “[a]t-risk students require specially tailored programs and more time spent on all aspects of academic endeavor.” State v. Campbell County Sch. Dist., 19 P.3d 518, 545 (2001). Included in Wyoming’s basket of resources essential for an adequate education are small class size; after-school programs, alternative programs, and other programs for at-risk students; services for English language learners; and security. Id. at 546-47.

Other courts similarly find a broader range of resources – beyond facilities, teachers and instrumentalities of learning – essential ingredients for a constitutionally adequate education. Massachusetts found a constitutional violation where districts serving high-needs students lacked resources such as small class size, adequate guidance counselors, advanced course offerings, adequate professional development and curriculum development. McDuffy v. Sec’y of Executive Office of Educ., 415 Mass. 545, 553-54 (1993). In Kansas the trial court found that small class size, one-on-one teaching opportunities – especially for language deficient and disabled students, expanded learning time, and tutoring were among the inputs necessary to provide all children with the

opportunity for a constitutionally adequate education. Montoy v. State, Case No. 99-C-1738 (Shawnee County, Dec. 2, 2003) (Bullock, J); aff'd in part, 278 Kan. 769 (2005). The Washington Supreme Court recognized as essential resources components such as bilingual education, remediation services and special education services. McCleary v. State, 173 Wash.2d 477, 526 (2012). The Tennessee Supreme Court cited inadequate laboratories, inadequately stocked libraries, and a lack of curricular offerings such as foreign language, drama, advanced placement courses, art and music as evidence of an unconstitutional lack of essential educational resources. Tenn. Small Sch. Systems v. McWherter, 851 S.W.2d 139, 145-46 (1993).

The CCJEF trial court's ruling that schools need only the "bare minimum" of facilities, teaching and instrumentalities of learning is out of step with what courts around the nation understand is educationally necessary and have enshrined in law as constitutionally required. These courts recognize that the promise of an adequate educational opportunity for all is illusory unless schools are provided the tools to meet the needs of all children, so that they can avail themselves of that opportunity.

III. The CCJEF Trial Court's Ruling Contradicts the Connecticut Supreme Court's Charge Upon Remand

The trial court's ruling limiting the categories of resources to facilities, instrumentalities and teaching also contradicts the Connecticut Supreme Court's charge in remanding the case for trial, and the trial court's actual findings of fact. The CCJEF trial court acknowledged that the Connecticut Supreme Court "sent the case here for the standard to be 'refined and developed further as it is applied to the facts eventually to be found at trial in this case.'" A466 (citing CCJEF v. Rell, 295 Conn. at 318). This development should have entailed an examination of the facts and circumstances in each district, including

determining which resources each district requires to enable children in that district to obtain the opportunity for a constitutionally adequate education.

The districts about which the CCJEF plaintiffs presented evidence at trial are all majority economically disadvantaged, most with over 75% of students qualifying for free or reduced-priced lunch. English Language Learners make up 10% to 24% of the student populations in the districts, and from 12% to 18% of the students in the districts have disabilities. Therefore, many of the children in these districts require additional support and services to enable them to access the opportunity for a constitutionally adequate education.

In its findings of fact, the trial court found that these districts suffer from deficiencies in the supports that assist students in accessing educational opportunity. For example, the court found that “East Hartford High School has one social worker for the 400 ninth grade students, which is insufficient to meet the varied socio-emotional needs of the students.” A663. The court further found that East Hartford has insufficient staff to provide math and reading intervention, and thus students in that district go unserved. A663. The court found similar deficiencies in the other districts. E.g., A653-54, A671, A679, A686-87, A693.

Had the trial court followed the Supreme Court’s charge and applied the facts it found at trial, the court would have properly developed the adequacy standard, consistent with CFE, other cases across the country, and this Court’s remand to include those resources necessary to guarantee the constitutional rights of all children in the CCJEF districts—including students with additional needs. Instead, ignoring facts proving inadequate educational resources that the court itself credited in its findings of fact, the court improperly limited the input categories to those categories enunciated by the Connecticut Supreme Court prior to the development of the record at trial.

CONCLUSION

For the foregoing reasons, amicus curiae urges the Court to reverse the trial court's findings and conclusions regarding the standard for adequacy of educational resources and the application of that standard.

Respectfully Submitted,

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that on March 2, 2017:

- (1) the electronically submitted brief has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and
- (2) the electronically submitted brief and the filed paper brief have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and
- (3) the brief being filed with the appellate clerk is a true copy of the brief that was submitted electronically; and
- (4) the brief complies with all provisions of this rule; and
- (5) a copy of the brief has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7 at the following addresses:

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