X07 HHD CV 145037565 S	:	SUPERIOR COURT
CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	COMPLEX LITIGATION
DOCKET	:	
M. JODI RELL, ET AL.	:	SEPTEMBER 7, 2016

Memorandum of Decision

Honorable Thomas G. Moukawsher

Copies provided to counsel of record and mailed to the OCR on 9/7/16. AH/CO.

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"Learning is not attained by chance...."

Abigail Adams

1. Summary: To be constitutional, the state's chief education policies do not have to be richly funded but they must at least be rational, substantial, and verifiable.

In Connecticut's constitution, the state promises to give children a fair opportunity for an elementary and secondary school education. This doesn't mean the courts can tell the General Assembly how much to spend on schools. But the language can't mean that the state can leave learning to chance. It has to mean that the state must do thoughtful, visible things to give them that opportunity. To put it as a legal proposition, beyond a bare minimum, it is for the General Assembly to decide how much to spend on schools, but the state must at least deploy in its schools resources and standards that are rationally, substantially, and verifiably connected to teaching children. It isn't a lot to ask, but asking it raises doubts about many of our state's key education policies.

Requiring at least a substantially rational plan for education is a problem in this state because many of our most important policies are so befuddled or misdirected as to be irrational. They lack real and visible links to things known to meet children's needs. For instance, the state spends billions of dollars on schools without any binding principle guaranteeing that education aid goes where it's needed. During the recent budget crisis, this left rich schools robbing

millions of dollars from poor schools. State graduation and advancement standards are so loose that in struggling cities the neediest are leaving schools with diplomas but without the education we promise them. State standards are leaving teachers with uselessly perfect evaluations and pay that follows only seniority and degrees instead of reflecting need and good teaching. With the state requiring expensive services but doing nothing to see they're going to the right people in the right way, special education spending is also adrift. All of this happens because the state is torn between the need for communal and objective standards and the apparently irresistible pressure for the idiosyncratic *status quo*. Instead of the state honoring its promise of adequate schools, this paralysis has left rich school districts to flourish and poor school districts to flounder.

To keep its promise of adequate schools for all children, the state must rally more forcefully around troubled schools. It can't possibly help them while standing on the sidelines imposing token statewide standards. And while only the legislature can decide precisely how much money to spend on public schools, the system cannot work unless the state sticks to an honest formula that delivers state aid according to local need.

Having a special promise of adequate schools in our highest law shouldn't put the courts in charge of schools, but it should at least mean this much:

children have a judicially enforceable right to first principles governing our schools that are reasoned, substantial, and verifiably connected to teaching.

2. The state is responsible for the condition of our schools: Its duty to educate is non-delegable.

The state is responsible for Connecticut public schools, not local school districts.

The Connecticut constitution, in article eighth, §1, says: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

There is no misreading article eighth, §1. It says the state—specifically the General Assembly—must fulfill the promise of free public schools. In 2012 in *Pereira v. State Board of Education* the Supreme Court didn't hesitate to underline this, holding: "Obviously, the furnishing of education for the general public is a state function and duty."[1]

The constitution gives the General Assembly leeway about how to keep this promise, but it isn't endless. Like anyone else with a job in hand, the state can get help— from state employees, local school districts, and others. But, that doesn't mean the state can point the finger of blame at these helpers when things go wrong. As the *Pereira* Court ruled, whatever local boards of education do,

[1] 304 Conn. 1, 33.

they do "on behalf of the state."[2] This means that like other important legal duties the state's responsibility for what happens in schools is non-delegable.

Legal duties can spring from charters, statutes, or the courts, but duties that come from constitutions are the highest duties and sweep the others aside when they conflict. In 2009, in *Machado v. Hartford*, the Connecticut Supreme Court held that, wherever they come from, our most important duties are so important that responsibility for them may not be sloughed off onto others—fulfilling those duties is "nondelegable."[3]

Our courts have made this rule stick in far more mundane contexts than this. For instance, in 2001, in *Gazo v. Stamford*, the Court applied the widely known rule that "the owner or occupier of premises owes invitees a nondelegable duty to exercise ordinary care for the safety of such persons."[4] As the Court explained it, nondelegable duties create vicarious liability situations, in which "the law has ... broaden[ed] the liability for that fault by imposing it upon an *additional,* albeit innocent, defendant...namely, the party that has the nondelegable duty."[5] In *Ramsdell v. Union Trust Co.*, the Supreme Court held that the core functions of trustees are nondelegable.[6] In 2013, in *State v. Brown*, the Appellate Court held that even judges have constitutionally-mandated

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[2] *Id.*
[3] 292 Conn. 364, 371-72.
[4] 255 Conn. 245, 257.
[5] *Id.*
[6] 202 Conn. 57, 69.

nondelegable duties: they may not delegate to the state's attorney or defense counsel the duty to canvas plea bargainers about what it means to break their plea deals.[7]

In 2009, in *Teney v. Oppedisano*, the Superior Court held a plumber with warranty obligations liable for flood damage caused by an independent contractor because the plumber's duty to perform the work to the warranty standard was nondelegable.[8] In *Borovicka v. Oshkosh Corp.*, it confirmed the long-standing rule that liability for inherently dangerous activities is nondelegable.[9] In 2005, in *Cornelius v. Connecticut Dept. of Banking*, the Superior Court held that mortgage brokers must answer for the misdeeds of the appraisers they hire.[10]

And in 2009 in *Machado v. Hartford*, the Supreme Court enforced the long-standing rule that cities can't pass off liability for public roads by hiring private contractors—the law puts the duty to maintain them on the cities and no one else.[11] The court took as a bedrock assumption that "a vital public duty, once imposed by the state, generally is considered nondelegable."[12]

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[7] 145 Conn. App. 174, 181.
[8] 2009 WL 1055528,
[9] 2013 WL 2350516,
[10] 2005 WL 1757631, 5.
[11] 292 Conn. 364, 372-73.
[12] *Id.* at 372.

If the work of plumbers, landlords and even judges is important enough to be non-delegable, the state's constitutional duty to provide free public schools is important enough to be non-delegable too.

The importance of the state's direct duty over education couldn't be clearer. In 1977, in *Horton v. Meskill* our Supreme Court held that because it is specifically enumerated in the constitution, "in Connecticut, elementary and secondary education is a fundamental right...." [13] As the court knew, labelling the right "fundamental" raised it to the most important level known to law. In the equal rights context, it said that nobody from the General Assembly down could diminish one person's right compared with another's unless the court strictly scrutinized it and found the difference justified by some compelling state interest.[14] Car dealers, plumbers and landlords take a back seat here. Other constitutionally guaranteed civil rights may rise to this level, but no rights are more important.

Still the state would rather be a little less directly responsible. It points to a tradition of local control that it almost never brings up except to get itself out of a jam. It isn't persuasive here because most of the time in cases like the 1980 Supreme Court case *City Council v. Hall*, the state loudly reminds local governments that they are merely its creatures, and that "the only powers a

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[13] 172 Conn. 615, 648.
[14] *Id.* at 640.

municipal corporation has are those which are expressly granted to it by the state."[15]

The state insists the Supreme Court has recognized the importance of local control. But that does not mean it has recognized its primacy. In *Horton v. Meskill*, for example, the court discussed the valuable benefits of local control but saw them as no obstacle to imposing an educational financing plan that sent more money to poor towns than rich ones.[16]

It's obvious that local control can be a good thing: the education commissioner and others testified to its strengths—where it is working. But this requires nothing more than acknowledging that little intervention is needed where little problems reside. Knowing this takes nothing away from insisting that where great problems persist, great efforts may be required. The state may not have to rush to interfere in most schools, but when it needs to interfere, the state should not be able to claim that it's powerless.

It certainly can't say its hands are tied when it tied the knots itself. In describing its limits the state points mostly to restraints it has included in the General Statutes. State witnesses pointed again and again to these laws to say that the bulk of authority over education rests with local boards of education. But

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[15] 180 Conn. 243, 248.
[16] 172 Conn. at 638.

if the state isn't giving children a constitutionally required fair chance in school, it may not use its own laws as an excuse.

The standards at issue here are casualties of the state's view that education is by right a local affair. This has left most of the key state standards trying to look like statewide rules while being little more than guidance. Yet any review of the statutes shows that the state is being forced to recognize that it can't simply send money and hope for the best. Almost 15 years ago, following the federal No Child Left Behind Act, the legislature passed General Statutes § 10-223e setting up new ways for the state to take over dysfunctional school systems. Over the years, the state has intervened in varying ways in Bridgeport, Hartford, New London, Windham, and Winchester. The state knows it can't keep up the pretense that local schools are local problems, but it seems numb to the logical implications.

The state's direct responsibility is important to deciding this case. The court has to decide if the state is keeping its promise about education. If it isn't, the court has to decide what to do about it. This would require the court to weed out any General Statutes holding the effort back. Orders might have to limit state power, but given the state's direct and non-delegable responsibilities, court orders could also increase the power of the State Board of Education and Department of Education over troubled school systems and the agents they use to

keep the state's promises to children. Depending on the depths of the problems revealed in some districts, those powers might change considerably.

3. The courts may impose reason in state spending, but they may not dictate precisely how much to spend beyond a bare minimum.

The first job is to explore the limits of judicial power and decide if they are broad enough to address the problems pointed out at trial and the solutions mooted.

The basic promise in article eighth, §1, is simple and is simple to repeat: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

In 2010 in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, four of the seven justices of the Connecticut Supreme Court sent this case here for trial after reading this promise to require that our education system must be minimally adequate.[17] Three justices said the education provision meant that the constitution "guarantees Connecticut's public school students educational standards and resources suitable to participate in democratic institutions, and to

[17] 295 Conn. 240.

prepare them to attain productive employment and otherwise contribute to the state's economy or to progress on to higher education."[18]

Justice Palmer was the fourth and deciding vote for holding that the constitution requires an adequate education. Like concurring Justice Schaller, Justice Palmer saw that some standard of minimum adequacy is required to avoid doing "violence to the meaning of the term 'school'" in the constitution.[19] But to respect the rights of the legislature he defined the adequacy needed to pass constitutional muster more narrowly than the other three justices. [20]

Ultimately, Justice Palmer was more restrained than the three-judge plurality, but he was still at a point on the same continuum with them. The continuum was the legislature's duty to calculate educational resources and standards rationally. The plurality said it would strike down an educational program inadequate to prepare children for college, careers, and democracy. But the plurality said it would "stay its hand" on remedies awaiting legislative action unless the state lacked "a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education ..."[21]

Justice Palmer, by contrast, said he would not even find a constitutional adequacy violation unless the irrationality point had been reached, and the state's

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[18] *Id.* at 244-45.
[19] *Id.* at 331..
[20] *Id.* at 321.
[21] *Id.* at 317 n.59.

program "is so lacking as to be unreasonable by any fair or objective standard."[22] He emphasized that the legislature might come up with a variety of solutions, but it must operate "within the limits of rationality."[23] This means that the most the four justices agreed on was that irrational public school resources and standards are unconstitutional.

This doesn't ask that much. Rationality doesn't mean the state must show a "compelling interest" for everything it does or that the education provision subjects its decisions about schools to "strict scrutiny." It just means that irrational standards and programs are unconstitutional. So for a violation to be found, the evidence must show in Justice Palmer's words that "core or essential components"[24] or in the plurality's words that the "resources and standards"[25] are irrational.

What does "irrational" mean in this context? It can't mean that the constitution's education provision requires nothing more than traditional equal protection case law that seeks out a "rational" basis for legislative distinctions. That's the lowest standard that could possibly apply. That standard led the

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[22] *Id* at 321.
[23] *Id.* at 336.
[24] *Id.* at 343.
[25] *Id.* at 320.

Supreme Court in 2004 in *State v. Long* to say that for a distinction to be irrational is to "negative every conceivable basis which might support it ...."[26]

Applying this lowest possible standard here would contradict *Horton v. Meskill* where the Supreme Court held that education is a fundamental right.[27] As reflected in *Horton*, this usually means in equal rights cases that the laws at issue face some form of strict scrutiny.[28] Strict scrutiny is the highest possible standard that could apply. That standard only applied—the court only said education was a fundamental right—because the constitution's education provision requires specific action from the state about schools.[29] It would hardly make sense to take words that gave birth in one context to the highest duty and use them in another context to impose the lowest duty.

In *Horton*, the Supreme Court suggested that the way to resolve this is to remember that education cases are "in significant aspects *sui generis* and not subject to analysis by accepted conventional tests or the application of mechanical standards."[30] This means that when the majority of the Supreme Court in this case said the state's efforts must be "reasonable" and "rational" the words must reflect education's unique status in the constitution as something the state must do rather than merely something it must not do. A call for action on

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[26] 268 Conn. 508, 534, cert. denied, 543 U.S. 969.
[27] 172 Conn. at 648-49.
[28] *Id* at 649.
[29] *Id.*
[30] 172 Conn. 615,645 .

education in the highest law of the land unavoidably leads Connecticut citizens to expect something more than a token effort. For this reason, the court can't have meant to confine these words to the minimal equal protection analysis that applies to rights that aren't fundamental commands. The court must have expected something more.

So while we have to focus on rationality, we should at least expect that it means some rational thing substantial enough to be seen and verifiable enough to be measured. Anything less would hardly have required a trial. The state could have met it by adopting a budget and spending as much as a dollar or so, and the constitution's promise of free public schools would be empty. But insubstantial efforts can hardly satisfy a specific constitutional command. To keep from frustrating legitimate public expectations, we don't have to demand that the state's efforts be perfect or follow any particular fixed idea, but we can certainly expect that these efforts will be more than illusory; we can expect that they have real worth, solidity, value, meaning—we can expect them to be substantial, and to be seen to be so.

They must be seen to be so because the efforts can't be credible if we have to guess whether they exist. We can't possibly judge the adequacy of the state's work unless that work and its connection to teaching children are verifiable. We should be able to study budget formulas to see if they reasonably account for the

differing needs of districts. Standards should be clear enough so we can tell if they reasonably connect what they do with what they are supposed to do. With visible statistical evidence we can measure the effects of these standards in the schools. But the judiciary can hardly play a realistic role in protecting children's educational opportunities if there are no governing principles for the state to follow, and the courts are left counting the desks and supplies in every classroom in Connecticut. This would move the judiciary from policing first principles to being the first principal in every school in the state. The state simply cannot fulfill hopes fairly raised by our constitutional promise by adopting empty, unrecognizable, or non-existent policies: only discernible policies should be credited with being policies at all.

Taking these three points together means that if the court is to conclude that the state is not affording Connecticut children adequate educational opportunities, it must be proved that the state's educational resources or core components are not rationally, substantially, or verifiably connected to creating educational opportunities for children.

This must be proved against a high standard. As the Supreme Court held in *Kerrigan v. Commissioner of Public Health* in 2008, constitutional violations have to be proved beyond a reasonable doubt.[31] The plaintiffs say proof by a

[31] 289 Conn. 135, 155.

preponderance of the evidence should be enough in this unusual case involving an affirmative state obligation concerning education. But the Supreme Court chose to "acknowledge" the higher standard in its analysis of an education claim in 1985 in its second review of *Horton v. Meskill.* [32] More tellingly, the plurality in this case held it up as a check against raids on legislative prerogatives, noting that "deciding that a statute is unconstitutional, either on its face or as applied, is a delicate task in any event, and one that the courts perform only if convinced beyond a reasonable doubt of the statute's invalidity."[33] If the three justices leaning closest to the plaintiffs' position thought a high standard of proof applies, we can assume that the justices firmly against the plaintiffs would rely on it even more heavily. This court will require proof beyond a reasonable doubt.

The Supreme Court never got to consider any proof or apply any standard about what the constitution required. It 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."[34] All four justices finding a constitutional minimum deemed the "core or essential components"[35] the "resources and standards"[36] subject to review. But the opinion only considered the education provision in the limited context of case law about the resources devoted to schools.

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[32] 195 Conn. 24, 35.
[33] 295 Conn. 240, 267.
[34] Id. at 318.
[35] *Id.* at 343 (Justice Palmer).
[36] *Id.* at 320 (Plurality).

These justices all cited a 1995 standard on minimum resources from the New York Court of Appeals in *Campaign for Fiscal Equity, Inc. v. State*.[37] The plurality seemed to view the New York standard as a starting point because it went on to review later New York case law that expanded on it. But Justice Palmer appeared to view it as enough to consider about resources; he didn't even cite the more expansive decisions. Interpreting constitutional language similar to Connecticut's, the New York court listed what it considered basic enough features from which to discern a school rationally:

> minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.[38]

This is a fairly easy standard for schools to meet, and even on its face it's unlikely to force the state to increase the raw amount of money it spends each year. But if this is the narrowest ground a majority of the upper court can agree on concerning a minimum level of resources, this court has to follow it.

Our Supreme Court approved of this narrowest-grounds of agreement approach in 2005 in *State v. Ross* where it quoted the U.S. Supreme Court saying that "[w]hen a fragmented Court decides a case and no single rationale explaining

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[37] *Id.* at 301, 316 (citing 86 N.Y.2d 307).
[38] *Id.* at 317.

the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds ...."[39] The plaintiffs cite the District of Columbia Court of Appeals ruling in 1991 in *King v. Palmer*[40] to argue this is not true if the two sets of opinions are mutually exclusive. The problem for the plaintiffs is that the justices' positions are not mutually exclusive. Justice Palmer merely takes a more restrained view of the same belief that the plurality holds. This means four justices agree that Justice Palmer is right. Three of them simply think he should have gone further.

The narrowest-grounds rule favors Justice Palmer's view on what the constitution requires. But there isn't a lot of law on this point in Connecticut, so it's worth saying that even if the court didn't have to follow the common thread in his opinion, this limited approach would still be right. Beyond a bare minimum, the judiciary is constitutionally unfit to set the total amount of money the state has to spend on schools.

Courts are constitutionally unfit because they can't sort out competing legislative spending priorities or even competing constitutional spending priorities. This is why any constitutional standard the courts set for overall spending levels must be modest. Courts look at the issues and the evidence

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[39] 272 Conn. 577, 604 n. 13, quoting, *Marks v. United States*, 430 U.S. 188, 193 (1977).
[40] 950 F.2d 771 (*en banc*).

brought to them in specific cases. Judges see issues under a microscope. As the Connecticut Supreme Court held in *Travelers Ins. Co. v. The Netherlands Ins. Co.* in 2014, courts only consider cases or controversies.[41] A court does not hold sway over the general welfare. The case or controversy requirement means a court doesn't hold public hearings on the entire state budget nor can it launch its own investigations. The legislature's concern by contrast is the entire public welfare.

The plaintiffs hired as an expert witness Henry Levin, a Columbia University professor specializing in educational economics. He recognized that the costs and benefits of education spending must be weighed against other spending priorities before they can be imposed. The plaintiffs know that only the General Assembly does this. The legislature uses no microscope. It faces the full tidal wave of public demand. It considers every public matter and weighs it against the interests that compete with it for funding. In weighing those interests against each other, unlike the courts, the legislature can seek out whatever information it chooses. It is nonsense under such a system for a court to set expansive goals for the schools and direct whatever spending it takes to achieve them when it hasn't even thought about how its orders might undercut spending on other important rights, including those protected by the constitution.

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[41] 312 Conn. 714, 730.

This court already sits in the shadow of other lawsuits pressing constitutional demands for money. For over 20 years, *Juan F. v. O'Neill* has left a federal judge in the name of the constitution dictating state spending on child protection issues.[42] How can this court decide how much to spend teaching children against another court ordering how much to spend to keep them from abuse or neglect? Following our Supreme Court's 1996 decision in *Sheff v. O'Neill*, billions of dollars have been spent addressing Hartford students' race discrimination claims.[43] Is an integrated education worth more or less money than an adequate education? Should the court drag the *Sheff* and *Juan F.* parties before it to explore the issues? Or should the court blindly pile on top of those mandates whatever else it thinks might be needed and let the chips fall where they may? What about the stipulated settlement in *Shafer v. Bremby* requiring the state to speed up processing Medicaid claims? What about *Briggs v. Bremby* where a federal court ordered the state to speed up processing food stamp claims?[44] What does the court say to prisoners without beds or decent lawyers? To challenges filed on behalf of the mentally ill? Any ruling taking an overly-broad view of judicial discretion over education spending would squeeze the money being spent on those cases and what might be spent on them. It also would take money from causes without cases of their own—all without even

[42] 2:89 CV 859 (D.Conn)(SRU).
[43] 3:12 CV 0035 (D.Conn)(AWT).
[44] 792 F.3d 239.

considering whether they exist—all without weighing their importance against the claims made here. It can't matter that some courts have already taken expansive views of their constitutional authority over government spending. It doesn't change the good reasons against this view. It only suggests the judiciary should consider that the standard it sets in one matter may adversely affect other matters.

It doesn't help to try to mask the judiciary's role either. Orders that indirectly drain public money still drain it. Just as much damage is done by declaring legislative efforts unconstitutional and deferring action to the legislative branch "subject to judicial review." Nominally deferring to the legislature on a remedy while menacing it with potential action, still chooses the priority of one claim to public funds over others without even identifying and weighing the competing rights.

Arguably, this is what the Connecticut Supreme Court did in 1996 in *Sheff v. O'Neill*[45] and in 1977 in *Horton v. Meskill.* [46] Most notably the *Sheff* Court declared: "the needy schoolchildren of Hartford have waited long enough" and concluded that "[w]e direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective

[45] 238 Conn 1.
[46] 172 Conn. 615.

agendas."[47] This approach does not apply here. *Sheff* considered what it called the unique circumstance of race discrimination,[48] and *Horton* was an equal protection case which expressly rejected the notion of considering "adequacy."[49] Perhaps that's why the Supreme Court majority in this case did not apply this thinking.

Only three of seven justices in this case suggested an expansive view of judicial power might be adopted and followed by judicial monitoring of a legislative response. Writing for them in the plurality opinion, Justice Norcott said that the court's job was to "articulate the broad parameters of that constitutional right, and to leave their implementation to...the political branches of state and local government ...."[50] He wrote that so long as the other branches rationally act within those parameters, "the judicial department properly stays its hand ...."[51]

In adopting his "unreasonable by any fair or objective standard" test, Justice Palmer rejected this approach:

> I take a different view from the plurality with respect to the scope of the right guaranteed by article eighth, § 1. In particular, I believe that the executive and legislative branches are entitled to considerable deference with respect to the determination of what it means, in practice, to provide for a minimally adequate, free public education. Thus, it is the prerogative

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[47] 238 Conn. at 3, 46.
[48] *Id.* at 25.
[49] 172 Conn at 645-46.
[50] 295 Conn. at 317, n.59.
[51] 295 Conn. at 282.

> of the legislature to determine, within reasonable limits, what a minimally adequate education entails.[52]

The narrow ground of agreement among four justices in the upper court is that courts should be restrained in finding the violation, not merely in remedying it. The remaining justices thought the courts shouldn't get involved at all.

That leaves only one way to set a high constitutional threshold without blindly mandating more spending. It would be to find the constitution breached but say the court won't do anything about it. But this can't be done either. That approach was rejected in 1984 in *Pellegrino v. O'Neill* when our Supreme Court said the judiciary will not give advisory opinions.[53] The *Pellegrino* Court barred them in the face of constitutional claims about the underfunding of the judiciary. The court recognized its unfitness to decide how much to spend on the courts, and it approved of *Horton* only because that unusual case covered matters on which the court assumed it could act directly.[54]

Thus, if the court weren't limited by the minimal elements listed in the New York case, it would still reject an expansive view of its power to set overall state educational spending levels. Beyond a bare minimum, it is for the legislature to decide how much to spend on schools.

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[52] *Id.* at 321.
[53] 193 Conn. 670, 683.
[54] *Id.*

4. This state spends more than the bare minimum on schools.

While the legislature has the job of setting overall school spending, this doesn't mean it can spend less than the modest constitutional minimum. The legislature must spend at least enough to create things recognizable under contemporary standards as schools. Because it has done so—because Connecticut schools more than meet the New York minimum standard the upper court pointed to—the state has not violated the constitution by devoting an overall inadequate level of resources to the schools.

Connecticut schools already go far beyond the New York minimum. The state spends a billion dollars a year on just that case's concern about school buildings. In recently completed or underway projects in Bridgeport alone, the state has committed $378 million to new buildings. While statewide enrollment has been declining for over a decade, spending on buildings has increased. And according to Michele Dixon, an educational consultant with the state office overseeing school construction grants, the state basically never turns down a project. The state shapes them, but especially in poor districts, it ultimately approves them and then pays most of the bill. With the billions of dollars spent in recent years on magnet schools aimed at desegregation, it has paid even more, particularly with Hartford-area magnet schools built in the wake of *Sheff v. O'Neill*, where it has paid 100% of the bill.

There is anecdotal evidence of physical deficiencies in some schools—a leaky roof here, a unreliable boiler there—but nothing to suggest a statewide failure to provide adequate facilities, including classrooms which provide enough light, space, heat, and air to permit children to learn. Where there are problems as in Windham or New London they appear to be already on the state's list to be fixed and fixed mostly with state money. The plaintiffs haven't proved by a preponderance of the evidence, or beyond a reasonable doubt, that the state's schools lack enough light, space, heat, and air to permit children to learn.

No witness or document suggests that children lack desks, chairs, pencils, and reasonably current textbooks either. Again, there is some anecdotal evidence that teachers in some schools find themselves using older textbooks and some teachers buy supplies. But there is no proof of a statewide problem caused by the state sending school districts too little money. Many teachers supplement their materials from internet sources and most children have some access to computers. There are certainly some hardships with computers and significant disparities in computer access, but against a minimal standard the plaintiffs have not proved by a preponderance and certainly not beyond a reasonable doubt that there is a systemic problem that should spark a constitutional crisis and an order to spend more on school supplies.

Connecticut children have minimally adequate teachers teaching, reasonably up-to-date basic curricula such as reading, writing, mathematics,

science, and social studies. Connecticut uses a nationally recognized test called Praxis to certify teachers. Both sides of this lawsuit commended it. The Department of Education maintains an array of teacher training materials online and in the field to support teachers, including help with curriculum initiatives. In impoverished districts with troubled schools, it provides very direct help, including extra money for interventionists, teacher coaches, and technical support. No one suggests that teaching in Connecticut is broadly incompetent. The claim is that opportunities for good teaching are not being rationally marshaled in favor of needy kids. Judged against a low minimum and judged as a system, the plaintiffs have plainly not met their burden to show beyond a reasonable doubt that Connecticut lacks minimally adequate teaching and curricula nor have they proved it by a preponderance of the evidence.

That Connecticut is spending enough to meet a low constitutional threshold is made even clearer by the host of extras the state provides beyond the conservative minimum. Since 2012, over $400 million in new money has flowed into the 30 lowest performing schools under the state's Alliance Districts program. Its Commissioner's Network of schools currently focuses additional resources and interventions on 14 individual failing schools. In 2015, it yielded for them some $13 million in additional financial support. On top of this, the state currently allots roughly $4 million a year for school improvement grants to around 30 high needs schools. When temporary federal funds following the