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CONNECTICUT COALITION FOR JUSTICE IN
EDUCATION FUNDING, INC., ET AL. *v.*
GOVERNOR M. JODI RELL ET AL.
(SC 19768)

Rogers, C. J., and Palmer, Eveleigh, Robinson, Vertefeuille,
Alvord and Sheldon, Js.*

Syllabus

The named plaintiff, C Co., a voluntary membership organization incorporated to engage in activities that promote adequate state educational funding, and the individual plaintiffs, schoolchildren and parents thereof who reside in various municipalities, brought this action against the defendants, various state officials and members of the State Board of Education, seeking, inter alia, a declaratory judgment that the defendants' failure to provide suitable and substantially equal educational opportunities to the individual plaintiffs violated article eighth, § 1, of the Connecticut constitution, which provides that there shall always be free public elementary and secondary schools in this state, as well as the equal rights provision of article first, § 1, of the Connecticut constitution, and the equal protection provision of article first, § 20, of the Connecticut constitution, as amended by articles five and twenty-one of the amendments. The trial court granted the defendants' motion to strike certain counts of the plaintiffs' complaint on the ground that article eighth, § 1, did not guarantee a right to a suitable public education, and the plaintiffs appealed to this court, which concluded that the trial court had improperly granted the defendants' motion to strike. In *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell* (295 Conn. 240), a plurality of this court agreed that the criteria enumerated by the New York Court of Appeals in *Campaign for Fiscal Equity, Inc. v. State* (86 N.Y.2d 307) (*Campaign I*) provided the essential components of a constitutionally adequate education, specifically, minimally adequate physical facilities and classrooms, minimally adequate instrumentalities of learning such as desks and reasonably current textbooks, minimally adequate teaching of reasonably up-to-date, basic curricula, and sufficient personnel adequately trained to teach. The plurality further concluded that article eighth, § 1, entitles schoolchildren to an education that is suitable to give them the opportunity to be responsible citizens who are able to participate fully in democratic institutions and that prepares them to either progress to institutions of higher education or attain productive employment. Justice Palmer, in a concurring opinion in *Rell*, agreed that the *Campaign I* criteria provided the appropriate constitutional standard, but rejected the plurality's suggestion that the standard was broader than those criteria insofar as that standard required the courts to examine educational outputs. On remand, the trial court determined that Justice Palmer's concurring opinion had provided the narrowest grounds for agreement among a majority of the justices, and, therefore, his opinion provided the controlling standard as to whether the state has fulfilled its obligations under article eighth, § 1. The court found that the plaintiffs had not proved by a preponderance of the evidence that the state failed to satisfy the *Campaign I* criteria as set forth in Justice Palmer's concurring opinion. The trial court also concluded, however, that the state's current educational system was unconstitutional under article eighth, § 1, because it did not deploy resources and standards that were rationally, substantially and verifiably connected to teaching children. The court further concluded that, in light of the fact that the state spent more funds on the poorer school districts than on the wealthier ones, there was no merit to the plaintiffs' equal protection claim that the state was failing to ensure that the poorer school districts and wealthier ones had substantially equal funding. The defendants appealed from the trial court's judgment to this court, claiming that the individual plaintiffs lacked standing because they failed to present any evidence that they were specifically injured and that the C Co. lacked associational standing. Moreover, the defendants claimed that the trial court improperly applied a constitutional standard of its

own devising after it had concluded that the state's schools met the *Campaign I* criteria. The plaintiffs filed a cross appeal, claiming that the trial court incorrectly concluded that the state's educational system met the *Campaign I* criteria and did not violate the equal rights and protection provisions of the state constitution. *Held*:

1. The trial court correctly determined that the individual plaintiffs had standing, as the complaint raised a colorable claim that their specific, personal, and legal interest in receiving the opportunity for an education that complied with the state constitution was being specially and injuriously affected by the defendants' acts or omissions.
2. C Co. met all of the prongs of the test for associational standing set forth in *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell* (199 Conn. 609):
 - a. The defendants could not prevail on their claim that C Co. did not satisfy the first prong of the *Worrell* test, that its members would otherwise have had standing to bring the present action, which was based on their claim that the parent members of C Co. were not true members because they did not have the right to vote to elect the board of directors, which had the authority to initiate and pursue litigation: the right to vote was not an essential characteristic of membership in C Co. for purposes of establishing the first prong of the *Worrell* test when, as in the present case, there was other evidence of representation and control sufficient to demonstrate that C Co. represented the views of the parent members, as there were two parent members who served on C Co.'s steering committee, and the fact that the parent members had voluntarily joined C Co. knowing that it had publicly advocated in favor of specific public school funding policies also provided sufficient evidence that C Co. represented their views; moreover, although C Co. had no parent members when the plaintiffs filed their original complaint and the trial court dismissed C Co.'s claims after finding that it lacked standing, it would elevate form over substance to hold that the trial court improperly allowed the plaintiffs to cure the jurisdictional defect that existed when the complaint was filed by amending their complaint to allege that C Co. then had parent members, as the original complaint was not dismissed because the individual plaintiffs had standing, C Co. would have been permitted to join the action pursuant to the relevant rule of practice (§ 9-3) after acquiring parent members and satisfying *Worrell*, and the defendants did not explain how the plaintiffs were allowed to reap any procedural advantage therefrom.
 - b. The potential conflicts of interest among C Co.'s members were not so profound as to deprive C Co. of associational standing under the second prong of the *Worrell* test, which requires that the interests that C Co. seeks to protect are germane to its purpose; there was no evidence that a majority of C Co.'s members disagreed with the claims asserted, C Co.'s primary litigation goal was not directly at odds with the interests of some of its members, no members objected to the initiation of the present action or expressed a belief that the relief sought would not be generally beneficial to the state's educational system, and there was no evidence that C Co. either was operating for a purpose other than that stated in its bylaws or brought this action without first informing its members or following the procedures in its bylaws.
 - c. C Co. satisfied the third prong of the *Worrell* test because neither the claim asserted nor the relief requested required the participation of C Co.'s individual members, as the trial court did not have to consider specific evidence as it pertained to the individual members in order to dispose of the claims presented; the *Campaign I* criteria focus exclusively on the characteristics of schools and not on individual achievement, and nothing in Justice Palmer's concurring opinion in *Rel* suggested that the determination as to whether the state was providing a minimally adequate educational opportunity must be made on the basis of individual student performance.
3. The trial court improperly applied a constitutional standard of its own devising in concluding that the state's educational system was unconstitutional, as that court, upon finding that the schools were minimally adequate under the narrow and specific *Campaign I* criteria, should have concluded that the state's educational system was constitutional under article eighth, § 1:
 - a. The improper standard that the trial court applied, whether the state deployed in its schools resources and standards that are rationally, substantially and verifiably connected to teaching children, was inconsis-

tent with Justice Palmer's concurring opinion in *Rell* and repeated statements in that opinion that courts are ill equipped and lack the specialized knowledge to address the complex and intractable problems of educational policy: although Justice Palmer's concurring opinion provided that the state must operate within the limits of rationality and that the educational system cannot be so lacking as to be unreasonable by any fair or objective standard, those statements meant that the state's efforts to comply with its obligations under article eighth, § 1, must reasonably address the minimal educational needs of the state's students as described in the *Campaign I* criteria, and any reasonableness component contained therein was not a separate rationality test applicable to all educational policies and programs; accordingly, the trial court, in applying a constitutional standard of its own devising, clearly violated separation of powers principles by failing to defer to the legislature and usurping the legislative responsibility to determine how additional funding beyond the constitutionally required minimum should be allocated and how to craft educational policies that, in its view, best balance the wide variety of interests at issue.

b. The plaintiffs could not prevail on their claim on cross appeal that the trial court's interpretation of the *Campaign I* criteria was improperly narrow, as that court properly determined initially that the narrow and specific *Campaign I* standard set forth in Justice Palmer's concurring opinion in *Rell* was the controlling constitutional standard: there was no evidence in Justice Palmer's concurring opinion that the narrow and specific *Campaign I* criteria that it identified for determining whether the state is providing minimally adequate educational resources would be subject to modification on remand, as Justice Palmer's concurring opinion made no reference to the subsequent history of *Campaign I* but, rather, emphasized that a broader standard was inappropriate, emphasized that the trial court should give great deference to the legislature's educational policy choices, and emphasized that the court's primary focus should be on the adequacy of educational inputs and not the level of educational achievement; moreover, although Justice Palmer's concurring opinion recognized that the plaintiffs' allegations were sufficiently broad and general so as to support a conclusion that the *Campaign I* criteria had not been met and to withstand a motion to strike, he did not suggest that the *Campaign I* criteria were part of a broader constitutional inquiry that included an analysis of whether the state's educational offerings were sufficient to overcome disadvantaging conditions outside of the state's control that affect educational outcomes; furthermore, there was no merit to the plaintiffs' claim that the trial court improperly failed to consider whether the state's educational offerings reasonably addressed the minimal educational needs of the state's children, as the trial court's finding that the state's educational offerings satisfied the *Campaign I* criteria for a minimally adequate educational opportunity necessarily encompassed a finding that those educational offerings reasonably addressed the minimal educational needs of the state's children.

4. The plaintiffs' claim that the trial court incorrectly concluded that the evidence did not support their claim that the *Campaign I* criteria were not satisfied was unavailing; the trial court's findings did not compel the conclusion that, as a matter of law, the defendants failed to provide the plaintiffs with a minimally adequate educational opportunity, as the facts on which the plaintiffs relied in support of that claim either did not compel the conclusion that the overall level of teaching in certain school districts was inadequate or did not relate to the narrow *Campaign I* criteria.

5. The plaintiffs failed to establish that the disparities between the funding of the neediest and least needy school districts violated article eighth, § 1, and article first, §§ 1 and 20, on the basis of the three part test in *Horton v. Meskill* (195 Conn. 24):

a. The defendants' claim that there can be no equal protection violation if the plaintiffs are receiving a minimally adequate educational opportunity under article eighth, § 1, was without merit; the fundamental right to education referred to in *Horton* was the right to a substantially equal educational opportunity, and this court has never suggested that discrimination in the provision of services is constitutionally excusable because some adequate level of benefits was provided to all schoolchildren.

b. The evidence did not support a prima facie showing by the plaintiffs that the disparities in educational funding between school districts with

large numbers of poor and needy students and school districts with small numbers of such students are more than de minimis; the evidence did not establish that the particular school districts to which the plaintiffs referred may be treated as proxies for school districts with the least and most number of poor and needy students, and the plaintiffs' evidence tended to undermine their equal protection claim because it showed that the relevant disparity in per pupil spending was less than in *Horton* and that the state was allocating more funds per pupil to the poorer school districts than the wealthier ones.

c. Regardless of whether the plaintiffs established a prima facie showing of more than de minimis disparities in funding, the defendants satisfied the second and third parts of *Horton*, which require proof that disparities in education spending are justified by a legitimate state policy and are not so great as to be unconstitutional; this court has recognized that there is a salutary role for preserving local school choice by guaranteeing minimum funds without imposing a ceiling on what a city or town might elect to spend on public education, the fact that wealthier school districts spent more per pupil than poorer districts by supplementing state educational funds with funds from local property taxes did not render the funding scheme unconstitutional, and the trial court's finding that state educational spending is skewed in favor of needier school districts showed that the disparities are not so great as to be unconstitutional.

*(Three justices concurring in part and dissenting
in part in one opinion)*

Argued September 28, 2017—officially released January 17, 2018**

Procedural History

Action for a judgment declaring, inter alia, that the plaintiff public schoolchildren have a state constitutional right to receive suitable and substantially equal educational opportunities, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Shortall, J.*, granted the defendants' motion to strike certain counts of the second amended complaint, from which the plaintiffs, upon certification by the Chief Justice pursuant to General Statutes § 52-265a that a matter of substantial public interest was at issue, appealed to this court, which reversed the trial court's judgment and remanded the case for further proceedings; thereafter, the case was transferred to the Complex Litigation Docket and the plaintiffs filed a third amended complaint; subsequently, the court, *Dubay, J.*, denied in part the defendants' motion to dismiss; thereafter, the matter was tried to the court, *Moukawsher, J.*; judgment in part for the plaintiffs, from which the defendants, upon certification by the Chief Justice pursuant to General Statutes § 52-265a that a matter of substantial public interest was at issue, appealed and the plaintiffs cross appealed to this court. *Affirmed in part; reversed in part; judgment directed.*

Joseph Rubin, associate attorney general, with whom were *Beth Z. Margulies*, *Eleanor M. Mullen*, and *Darren P. Cunningham*, assistant attorneys general, and, on the brief, *George Jepsen*, attorney general, and *John P. DiManno*, former assistant attorney general, for the appellants-cross appellees (defendants).

Joseph P. Moodhe, pro hac vice, with whom were *David N. Rosen*, *Olivia Cheng*, pro hac vice, and *Christel Y. Tham*, pro hac vice, and, on the brief, *Edward Bradley*, *Gregory P. Copeland*, *Cara A. Moore*, *Megan*

K. Bannigan, pro hac vice, *Emily A. Johnson*, pro hac vice, *John S. Kiernan*, pro hac vice, *Dustin N. Nofziger*, pro hac vice, *David B. Noland*, pro hac vice, and *Alexandra S. Thompson*, pro hac vice, for the appellees-cross appellants (plaintiffs).

Nancy B. Alisberg and *Samuel R. Bagenstos*, pro hac vice, filed a brief for the National Disability Rights Network et al. as amici curiae.

James P. Sexton, *Emily Graner Sexton* and *Marina L. Green* filed a brief for The Arc of the United States et al. as amici curiae.

Wendy Lecker filed a brief for the Education Law Center as amicus curiae.

Gabrielle Levin and *Joshua S. Lipshutz*, pro hac vice, filed a brief for the Connecticut Coalition for Achievement Now et al. as amici curiae.

Michael Roberts and *Scott Madeo* filed a brief for the Commission on Human Rights and Opportunities as amicus curiae.

Andrew A. Feinstein and *Jillian L. Griswold* filed a brief for twelve individuals with severe disabilities who have filed in fictitious names as amici curiae.

Opinion

ROGERS, C. J. “Next in importance to freedom and justice is popular education, without which neither justice nor freedom can be permanently maintained.” Letter from James A. Garfield accepting the presidential nomination (July 12, 1880), The American Presidency Project, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=76221> (last visited January 17, 2018). In the present case, we acknowledge that the plaintiffs have painted a vivid picture of an imperfect public educational system in this state that is straining to serve many students who, because their basic needs for, among other things, adequate parenting, financial resources, housing, nutrition and care for their physical and psychological health are not being met, cannot take advantage of the educational opportunities that the state is offering.¹ We are highly sympathetic to the plight of these struggling students. Indeed, we join our voice to the voices of those who urge the state to do all that it reasonably can to ensure not only that all children in this state have the bare opportunity to receive the minimally adequate education required by article eighth, § 1, of the Connecticut constitution,² but also that the neediest children have the support that they need to actually take advantage of that opportunity. It is not the function of the courts, however, to create educational policy or to attempt by judicial fiat to eliminate all of the societal deficiencies that continue to frustrate the state’s educational efforts. Rather, the function of the courts is to determine whether the narrow and specific criteria for a minimally adequate educational system under our state constitution have been satisfied. Once a determination of minimal adequacy has been made, courts simply are not in a position to determine whether schools in poorer districts would be better off expending scarce additional resources on more teachers, more computers, more books, more technical staff, more meals, more guidance counselors, more health care, more English instruction, greater preschool availability, or some other resource. Such judgments are quintessentially legislative in nature. Because we conclude that the trial court was correct in its initial determination that the plaintiffs failed to establish that the state’s educational offerings are not minimally adequate under article eighth, § 1, and in its determination that the state has not violated their equal protection rights under the state constitution, the plaintiffs cannot prevail on their claims that the state has not provided them with a suitable and substantially equal educational opportunity.

The individual plaintiffs³ and the named plaintiff, the Connecticut Coalition for Justice in Education Funding, Inc. (Coalition), brought this action seeking, among other things, a declaratory judgment that the defendants, various state officials and members of the State

Board of Education,⁴ failed to provide suitable and substantially equal educational opportunities to the individual plaintiffs in violation of article eighth, § 1, and article first, §§ 1 and 20, of the Connecticut constitution, as amended by articles five and twenty-one of the amendments.⁵ Applying the controlling legal standard, as set forth in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 295 Conn. 240, 342–43, 990 A.2d 206 (2010) (*Palmer, J.*, concurring in the judgment), the trial court held that the plaintiffs have not established that the state has failed to provide children in any school district in this state with minimally adequate teachers, educational facilities and instrumentalities, as required by article eighth, § 1. In addition, the court concluded that the plaintiffs had failed to establish a violation of the equal protection provisions of the state constitution, article first, §§ 1 and 20. The trial court then proceeded to apply, however, a new legal standard that is not supported by our precedent, pursuant to which that court considered numerous educational policies and practices that are not part of the controlling standard, and held that the state’s educational policies and spending practices violate article eighth, § 1, because they are not “rationally, substantially and verifiably connected to creating educational opportunities for children.”

The defendants appeal from the trial court’s decision that they have violated article eighth, § 1, and the plaintiffs cross appeal from the trial court’s rulings that they did not establish that the state has failed to provide minimally adequate educational opportunities to the children in any school district in the state and have not violated the plaintiffs’ equal protection rights under the state constitution.⁶ We conclude that the trial court properly found that the plaintiffs have failed to present sufficient evidence that the state is not providing children in this state with minimally adequate educational resources that satisfy the requirements of article eighth, § 1. We further conclude that, having made this determination, the trial court should have held that the defendants have not violated that constitutional provision, and it should not have gone on to apply a new constitutional test. Finally, we conclude that the trial court properly found that the plaintiffs failed to establish that the state has violated the equal protection provisions of the state constitution. We therefore conclude that the plaintiffs have failed to establish that the defendants have violated the plaintiffs’ rights under article eighth, § 1, and article first, §§ 1 and 20. Accordingly, we affirm in part and reverse in part the judgment of the trial court.

The record reveals the following procedural history and facts that either were found by the trial court or are undisputed. In 2005, the plaintiffs filed a complaint alleging, among other things, that the defendants had violated article eighth, § 1, and article first, §§ 1 and 20, of the state constitution by “failing to maintain a public

school system that provides [them] with suitable and substantially equal educational opportunities” Thereafter, the defendants filed a motion to strike certain portions of the complaint, claiming that these state constitutional provisions do not confer a right to “‘suitable’” educational opportunities and do not “‘guarantee equality or parity of educational achievement or results.’” The trial court concluded that the plaintiffs’ claims were justiciable, but that article eighth, § 1, did not guarantee a right to a suitable public education. Accordingly, the trial court granted the defendants’ motion to strike the portions of the plaintiffs’ complaint making that claim.

Thereafter, the Chief Justice granted the plaintiffs’ application for certification to appeal to this court pursuant to General Statutes § 52-265a. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 243–44. In a split opinion, a majority of this court concluded that the trial court had improperly granted the defendants’ motion to strike. *Id.*, 320; *id.*, 320–21 (*Palmer, J.*, concurring in the judgment). As the following discussion of the positions taken by the justices in their respective opinions makes clear, because Justice Palmer’s concurring opinion provided the narrowest grounds of agreement, it was controlling. See *State v. Ross*, 272 Conn. 577, 604 n.13, 863 A.2d 654 (2005) (“[w]hen a fragmented [c]ourt decides a case and no single rationale explaining the result enjoys the assent of [a majority], the holding of the [c]ourt may be viewed as the position taken by those [m]embers who concurred in the judgments on the narrowest grounds” [internal quotation marks omitted]), quoting *Marks v. United States*, 430 U.S. 188, 193, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977).

Justices Norcott, Katz and Schaller concluded in a plurality opinion that the plaintiffs’ claims were justiciable and, therefore, that this court had subject matter jurisdiction over the appeal. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 269 (plurality opinion). The plurality then agreed with “the New York Court of Appeals’ explication of the ‘essential’ components requisite to this constitutionally adequate education, namely: (1) ‘minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn’; (2) ‘minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks’; (3) ‘minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies’; and (4) ‘sufficient personnel adequately trained to teach those subject areas.’ [*Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 317, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (*Campaign I*)]; see also, e.g., [*Abbeville County School District v. State*, 335 S.C. 58, 68, 515 S.E.2d 535 (1999)] (state constitution requires provision

to students of ‘adequate and safe facilities in which they have the opportunity to acquire: [1] the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; [2] a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and [3] academic and vocational skills’); *Pauley v. Kelly*, 162 W. Va. 672, 706, 255 S.E.2d 859 (1979) (provision of constitutionally adequate education ‘implicit[ly]’ requires ‘supportive services: [1] good physical facilities, instructional materials and personnel; [2] careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency’).” *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 316.

The plurality further concluded that “article eighth, § 1, entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting. A constitutionally adequate education also will leave Connecticut’s students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state’s economy. To satisfy this standard, the state, through the local school districts, must provide students with an objectively meaningful opportunity to receive the benefits of this constitutional right.” (Footnote omitted; internal quotation marks omitted.) *Id.*, 314–15.

The plurality emphasized, however, that a public education system “need not operate perfectly” to be constitutionally adequate; (internal quotation marks omitted) *id.*, 315–16, quoting *Neeley v. West Orange-Cove Consolidated Independent School District*, 176 S.W.3d 746, 787 (Tex. 2005); and that constitutional adequacy is determined not by “ ‘what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system.’ ” *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 316, quoting *Sheff v. O’Neill*, 238 Conn. 1, 143, 678 A.2d 1267 (1996) (*Borden, J.*, dissenting); see also *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 318–20 (discussing cases supporting notion that article eighth, § 1, was not intended to require state to provide remedies for all social ills that might hinder ability of students to take advantage of educational opportunities). Thus, the plurality recognized that “the education clause [of our state constitution] is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs in their complaint” *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 320. Having concluded that the plaintiffs’ claims pursuant to article eighth, § 1, were justiciable and that the constitutional

provision contains a qualitative component, the plurality concluded that the trial court had improperly stricken the plaintiffs' claims pursuant to that provision. See *id.*

In his concurring opinion, Justice Palmer agreed with the plurality that the plaintiffs' claims were justiciable, although he did not entirely agree with the plurality's analysis of that issue. *Id.*, 322 (*Palmer, J.*, concurring in the judgment). With respect to the "qualitative component" of the right guaranteed by article eighth, § 1, Justice Palmer concluded that that provision "requires only that the legislature establish and maintain a minimally adequate system of free public schools." *Id.*, 332. Specifically, Justice Palmer agreed with the four criteria adopted by the New York Court of Appeals in *Campaign I*, *supra*, 86 N.Y.2d 317, and adopted by the plurality as part of its constitutional standard. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, *supra*, 342 (*Palmer, J.*, concurring in the judgment). In addition, Justice Palmer concluded that "a safe and secure environment also is an essential element of a constitutionally adequate education."⁷ *Id.*, 342 n.15. Justice Palmer ultimately concluded that, although "portions of the plaintiffs' complaint reasonably may be read as asserting a right to a quality of education under article eighth, § 1, that exceeds the parameters of the right" as he conceived it, their allegations were sufficiently broad to withstand a motion to strike under this standard. *Id.*, 346 n.20.

Justice Palmer expressly rejected, however, the plurality's suggestion that it was appropriate "to craft the constitutional standard in broad terms." (Internal quotation marks omitted.) *Id.*, 342 n.17 (*Palmer, J.*, concurring in the judgment); see also *id.*, 317 (plurality opinion) ("[w]e recognize that our explication of a constitutionally adequate education under article eighth, § 1, is crafted in broad terms"). Justice Palmer contended that, "the broader the standard, the more vague it is likely to be. In addition, the broader the standard, the more difficult it will be for the parties and the court to understand and apply it. . . . Although some constitutional standards must be defined in broad terms because of their applicability to a vast number of fact patterns, this is not such a case; for purposes of a case like the present one, in which it is critically important to give as much guidance to the court and the parties as possible, the more clearly defined the standard, the better. Cf. *Moore v. Ganim*, 233 Conn. 557, 629, 660 A.2d 742 (1995) (*Peters, C. J.*, concurring) ('well established jurisprudential doctrine counsels us to construe ambiguous constitutional principles narrowly')." *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, *supra*, 342–43 n.17 (*Palmer, J.*, concurring in the judgment).

In addition, Justice Palmer disagreed with the plurali-

ty's decision to the extent that it could be interpreted to require the courts to examine educational outputs when determining the constitutional adequacy of the state's educational offerings.⁸ See *id.*, 345 n.19 (*Palmer, J.*, concurring in the judgment) (rejecting plurality's assertion that "[a] constitutionally adequate education . . . will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy" because court's focus should be on adequacy of educational inputs, not level of achievement [internal quotation marks omitted]). This is because, although "schools are important socializing institutions in our democratic society, they cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students." (Internal quotation marks omitted.) *Id.*, 344–45 (*Palmer, J.*, concurring in the judgment). "[B]ecause student achievement may be affected by so many factors outside the state's control, including, perhaps most particularly, the disadvantaging characteristics of poverty . . . educational inputs must provide the primary basis for that determination." (Citation omitted; internal quotation marks omitted.) *Id.*, 345 n.19 (*Palmer, J.*, concurring in the judgment).

Justice Palmer also repeatedly emphasized that "the legislature is entitled to considerable deference with respect to both its conception of the scope of the right and its implementation of the right"; *id.*, 332 (*Palmer, J.*, concurring in the judgment); because "courts are ill equipped to deal with issues of educational policy; in other words, courts lack [the] specialized knowledge and experience to address the many persistent and difficult questions of educational policy that invariably arise in connection with the establishment and maintenance of a statewide system of education. . . . Thus, these issues are best addressed by our elected and appointed officials in the exercise of their informed judgment." (Citation omitted; internal quotation marks omitted.) *Id.*, 335–36 (*Palmer, J.*, concurring in the judgment); see also *id.* 321 (courts should not "second-guess the reasoned judgment of the legislative and executive branches with respect to the education policy of this state"); *id.*, 328–29 (courts should defer "to the reasoned determination of the political branches with respect to the precise parameters of the right" to free public education); *id.*, 335 (courts should defer "to the reasoned judgment of the political branches with respect to the determination, in practice, of the parameters of the right" to free public education); *id.*, 336 ("within the limits of rationality, the legislature's efforts to tackle the problems [of education] should be entitled to respect" [internal quotation marks omitted]); *id.*, 335 ("[t]he judicial branch must accord the legislative

branch great deference in this area”); id., 336 (“[s]pecial deference is warranted in the present case due to the fact that the framers reserved to the legislature the responsibility of implementing the mandate of a free public education”); id., 337 (“[a]nother compelling reason for judicial restraint in matters relating to educational policy is the potential that exists for a costly and intrusive remedy”); id., 338 (“the significant separation of powers issues that any . . . remedy invariably would spawn must be given due consideration in determining the scope of the right” to free public education); id., 341–42 (courts must employ “a mode of constitutional interpretation that affords considerable deference to the legislature with respect to the manner in which the right to a minimally adequate free public education is conceived and implemented”); id., 344 n.18 (approach of New York Court of Appeals in *Campaign I* “gives due regard to the prudential considerations that militate strongly in favor of judicial restraint in such matters”). Indeed, Justice Palmer recounted that “education . . . presents a myriad of intractable economic, social, and even philosophical problems. . . . The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them, and that, within the limits of rationality, the legislature’s efforts to tackle the problems should be entitled to respect. . . . On even the most basic questions in this area the scholars and educational experts are divided.” (Internal quotation marks omitted.) Id., 336 (*Palmer, J.*, concurring in the judgment). “In such circumstances, the judiciary is well advised to refrain from imposing on the [state] inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.”⁹ (Internal quotation marks omitted.) Id. (*Palmer, J.*, concurring in the judgment).

Thus, a majority of this court—Justices Norcott, Katz, Palmer and Schaller—agreed that the trial court had improperly struck the plaintiffs’ claims, although Justice Palmer did not agree with the qualitative component of the right to free public education under article eighth, § 1, as described in the plurality opinion. Accordingly, this court remanded the case to the trial court for further proceedings on the claim that the defendants had failed to provide the plaintiffs with a suitable public education.

Thereafter, the plaintiffs filed a third amended complaint containing four counts, which is the operative pleading for purposes of this appeal.¹⁰ The plaintiffs claimed that “[b]y failing to maintain a public school system that provides the plaintiffs with suitable and substantially equal educational opportunities, the state is violating article eighth, § 1, and article first, §§ 1 and

20, of the state constitution” (first count); “[b]y failing to maintain a public school system that provides the plaintiffs with suitable educational opportunities, the state is violating article eighth, § 1, of the state constitution” (second count); “[b]y failing to maintain a public school system that provides the plaintiffs with substantially equal educational opportunities, the state is violating article eighth, § 1, and article first §§ 1 and 20, of the state constitution” (third count); and “the state’s failure to maintain a public school system that provides the 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 [s]tate [c]onstitution and 42 U.S.C. § 1983” (fourth count).¹¹

The defendants filed a motion to dismiss the complaint on the grounds that the plaintiffs’ claims were not ripe for adjudication in light of certain education reforms that the legislature enacted in 2012, that their claims were moot in light of these reforms and that the Coalition lacked associational standing to raise claims that its rights under article eighth, § 1, and article first, §§ 1 and 20, had been violated. The trial court, *Dubay, J.*, deferred ruling on the first two claims until a full trial on the merits had occurred and denied the motion to dismiss the Coalition’s claims for lack of standing.

Thereafter, the case was tried before the court, *Moukawsher, J.*¹² In their posttrial brief, the defendants renewed their jurisdictional claims and, in addition, claimed that the individual plaintiffs lacked standing because, among other reasons, they had failed to establish any harm to any specific plaintiff. The trial court rejected the defendants’ jurisdictional claims. The court then determined that Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 320, provided the narrowest grounds of agreement among the four justices who had concluded that the plaintiffs’ claims were justiciable and that article eighth, § 1, contains a qualitative component, and, therefore, his opinion was controlling. See *State v. Ross*, supra, 272 Conn. 604 n.13. Applying the *Campaign I* criteria that Justice Palmer had adopted,¹³ the trial court specifically found that (1) “[t]he plaintiffs [have not] 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,” (2) “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 [desks, chairs, pencils and reasonably current textbooks],” and (3) “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 prepon-

derance of the evidence.”¹⁴ Accordingly, the court held that the *Campaign I* criteria were satisfied.

The court then observed that, since 2012, the state had funneled “over \$400 million in new money” into the state’s thirty lowest performing school districts. In addition, the state had provided \$13 million in financial support to fourteen “failing schools,” plus \$4 million per year for school improvement grants to approximately thirty “high needs” schools. Finally, the court noted that there are numerous state and federal programs that are designed to provide meals to needy students, even during the summer, to invite parents into schools to share in learning, to attend to the needs of homeless students, to prevent sexually transmitted diseases, to attend to the needs of young parents and pregnant students, and to provide mental health support. The court found that “[a]ll of this extra spending benefits poor districts but not wealthier districts. [This] is on top of basic education aid that has a history of strongly favoring poor districts over wealthier ones. This heavy tilt in state education aid in favor of the state’s poorer communities shows the state is devoting to needy schools a great deal more in resources than is required by the modest standard [set forth by the *Campaign I* criteria and adopted by Justice Palmer].” Thus, the trial court expressly found that the state’s educational offerings in needy districts are constitutionally adequate under *Campaign I*.¹⁵ The court also concluded that this “tilt” was “fatal to the plaintiffs’ equal protection claim” under article first, §§ 1 and 20, that the state has failed to provide substantially equal educational funding to needy and wealthy school districts.

The trial court then concluded, however, that, notwithstanding its conclusion that the state had satisfied the *Campaign I* criteria set forth in Justice Palmer’s controlling opinion, the state’s educational system would not satisfy the requirements of article eighth, § 1, unless the state “deploy[ed] in its schools resources and standards that are rationally, substantially and verifiably connected to teaching children.” The trial court apparently derived this standard from Justice Palmer’s statements that the state’s educational programs and policies would be unconstitutional if they were “so lacking as to be unreasonable by any fair or objective standard”; *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 321 (*Palmer, J.*, concurring in the judgment); and that the state must operate “within the limits of rationality.” (Internal quotation marks omitted.) *Id.*, 336 (*Palmer, J.*, concurring in the judgment). The trial court reasoned that this rationality standard could not be the same as the low “[r]ational basis” standard for determining the constitutionality of legislative acts; *State v. Long*, 268 Conn. 508, 535, 847 A.2d 862 (“Rational basis review is satisfied so long as there is a plausible policy reason for the classification [I]t is irrelevant whether the con-

ceivable basis for the challenged distinction actually motivated the legislature.” [Internal quotation marks omitted.], cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004); because this court held in *Horton v. Meskill*, 172 Conn. 615, 646, 376 A.2d 359 (1977) (*Horton I*), that “in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized.” Applying this “rationally, substantially and verifiably connected” standard that had not previously been specified in Justice Palmer’s concurring opinion, the trial court concluded that the state’s current “school program” is unconstitutional because “[the state] has no rational, substantial and verifiable plan to distribute money for education aid and school construction,” it has no “objective and mandatory statewide graduation standard,” “there is no way to know who the best teachers are and no rational and substantial connection between their compensation and their effect on teaching children,” and the state’s program of special education spending is irrational. The court ordered the defendants to submit to the court plans to remedy these constitutional deficiencies within 180 days of the date of the judgment.¹⁶

The defendants then filed this appeal, in which they renew their claims that the individual plaintiffs lack standing because they have failed to present evidence that any of them has been specifically injured by the defendants’ acts or omissions and that the Coalition lacks associational standing to raise claims under article eighth, § 1, and article first, §§ 1 and 20. The defendants also claim that, after the trial court found that the state’s schools met the *Campaign I* criteria adopted by Justice Palmer, that court improperly went on to apply a constitutional standard of its own devising. The defendants further contend that, even if the trial court properly adopted this new constitutional standard, it improperly applied it to conclude that the educational system is unconstitutional under article eighth, § 1. On cross appeal, the plaintiffs contend that the trial court improperly concluded that (1) the state’s educational system meets the *Campaign I* criteria for determining the adequacy of the state’s schools under article eighth, § 1, and (2) the state’s educational system does not violate their equal protection rights under article first, §§ 1 and 20.¹⁷

We conclude that all of the plaintiffs have standing. We also conclude that the trial court properly held that the plaintiffs failed to establish that the state’s schools do not satisfy the *Campaign I* criteria, which is the controlling constitutional standard under Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.* We agree with the defendants, however, that the trial court went on to improperly apply a constitutional standard of its own devising after concluding that the state’s schools satis-

fied the controlling *Campaign I* criteria. Finally, based on the factual findings of the trial court, we conclude that the trial court properly determined that the plaintiffs failed to establish that the educational system in this state violates the equal protection provisions of the state constitution by failing to ensure that the poorer school districts had funding that is substantially equal to the wealthier school districts.

I

JURISDICTIONAL CLAIMS

We begin by addressing the defendants' jurisdictional claims that the individual plaintiffs lack standing because none of them has been specifically injured and that the Coalition lacks associational standing to raise its claims pursuant to article eighth, § 1, and article first, §§ 1 and 20. We disagree.

A

Standing of Individual Plaintiffs

It is well established that, “to have standing . . . 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. West Hartford*, 285 Conn. 309, 324, 939 A.2d 1146 (2008). “Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests.” (Internal quotation marks omitted.) *Electrical Contractors, Inc. v. Dept. of Education*, 303 Conn. 402, 411, 35 A.3d 188 (2012). “[A] trial court's determination that it lacks subject matter jurisdiction because of a plaintiff's lack of standing is a conclusion of law that is subject to plenary review on appeal.” (Internal quotation marks omitted.) *Isabella D. v. Dept. of Children & Families*, 320 Conn. 215, 228, 128 A.3d 916, cert. denied, ___ U.S. ___, 137 S. Ct. 181, 196 L. Ed. 2d 124 (2016).

In the present case, the plaintiffs' complaint alleged that “[t]he state's failure to provide suitable education opportunities is evidenced by the fact that many plaintiffs attend schools that do not have the resources necessary to educate their high concentrations of poorly performing students” and that “[t]he state's failure to provide substantially equal educational opportunities is evidenced by the fact that, when compared to [other] students, a disparate number of the plaintiff students attend schools that do not have the resources necessary to educate their high concentrations of poorly performing students.” If the plaintiffs had proved these allegations at trial, the trial court could have inferred a specific injury to the individual plaintiffs from the fact that they attended constitutionally inadequate schools.

Although we conclude in parts III and IV of this opinion that the plaintiffs failed to prove any constitutional violation, the failure of a plaintiff to *prove* a colorable claim of specific harm at trial does not deprive the trial court of subject matter jurisdiction. See *In re Jose B.*, 303 Conn. 569, 579, 34 A.3d 975 (2012) (rejecting “bizarre result that the failure to prove an essential fact at trial deprives the court of subject matter jurisdiction”). Accordingly, we conclude that the trial court properly determined that the complaint raised a colorable claim that the individual plaintiffs’ “specific, personal and legal interest” in receiving the opportunity for an education that complies with the qualitative component of article eighth, § 1, and their interest in receiving an educational opportunity that is substantially equal to the opportunity received by other public school students in accordance with article first, §§ 1 and 20, was being “specially and injuriously affected” by the defendants’ acts or omissions. *Andross v. West Hartford*, supra, 285 Conn. 324.

B

Coalition’s Associational Standing

We next address the defendants’ claim that the Coalition lacked associational standing. This court has held that “[a]n association has standing to bring [an action] on behalf of its members when: (a) its members would otherwise have standing to [bring the action] in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the [action].” (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 616, 508 A.2d 743 (1986) (*Worrell*). The defendants contend that the Coalition meets none of the prongs of the *Worrell* test. For the following reasons, we disagree.

1

First Prong of the *Worrell* Test

The defendants contend that the Coalition does not satisfy the first prong of the *Worrell* test for associational standing because the only individual members of the Coalition that would have personal standing to raise the claims set forth in the complaint are the members who are the parents of students attending public schools, and the parents “are not in fact ‘members’ in any real sense” because they lack voting rights in the Coalition.¹⁸ The defendants point out that, when this action was initiated in 2005, the Coalition’s bylaws provided that the Coalition “shall act by and through its [b]oard of [d]irectors. . . . The [b]oard’s powers include, but are not limited to, the power to initiate and pursue litigation . . . and to make spending decisions.” The bylaws also provided for several categories of membership, including individual members, which

is the category that would include parents. All classes of membership *except* the class of individual members had the right to elect a member or members from their class to serve on the Coalition's board of directors.

The 2013 version of the Coalition's bylaws authorized a membership class specifically for parents. Parent members still did not have the right to vote,¹⁹ but they did have the right to participate in general membership meetings. The bylaws also provided that the powers of *all* members of the Coalition "include, but are not limited to, the power to initiate and pursue litigation, to hire experts and other staff, and to make spending decisions." In addition, the bylaws provided that two parent members would be members of the Coalition's steering committee, which, among other duties, had the responsibility to oversee the Coalition's routine business, to "steer policies and promote strategies aimed at ensuring progress toward achieving the goals and objectives" of the Coalition, to "provide ongoing direction, advice, and support to [a]gents of the [c]orporation," and to "modify the budget as is reasonable and necessary"

The defendants contend that the parents were not true members of the Coalition because the 2005 version of the Coalition's bylaws "gave the power to initiate and pursue litigation to a board over which the parent members had no voice whatsoever" because they lacked voting rights. The defendants also contend that, despite the provisions of the 2013 bylaws allowing parent members to belong to the Coalition's steering committee and to have the same powers as other members "to initiate and pursue litigation, to hire experts and other staff, and to make spending decisions," these powers were illusory because the parent members still had no right to vote. Thus, the defendants claim, the parent members are not true members of the Coalition, but "are simply pawns added in an attempt to provide standing."

The decision of the United States Supreme Court in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977), from which the *Worrell* test is derived; see *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, supra, 199 Conn. 615–16; provides some guidance on this issue. In *Hunt*, the defendant, the governor of North Carolina, contended that the plaintiff, a Washington state agency charged with promoting and protecting the apple industry of the state of Washington (commission), lacked associational standing to bring a claim challenging the constitutionality of a North Carolina statute because the commission did not have any personal stake in the outcome of the litigation, and it was not a proper representative of the apple growers and dealers, who might have such a personal stake, because the apple growers and dealers were not members of the commission. See *Hunt v. Washington State*

Apple Advertising Commission, supra, 336–37, 341–42. The United States Supreme Court held that, “while the apple growers and dealers are not ‘members’ of the [c]ommission in the traditional trade association sense, they possess all of the indicia of membership in an organization. They alone elect the members of the [c]ommission; they alone may serve on the [c]ommission; they alone finance its activities, including the costs of this lawsuit, through assessments levied upon them. In a very real sense, therefore, the [c]ommission represents the [s]tate’s growers and dealers and provides the means by which they express their collective views and protect their collective interests.” Id., 344–45. Accordingly, the court concluded, the commission had associational standing. Id., 345.

We conclude that, contrary to the defendants’ claim in the present case, *Hunt* does not stand for the proposition that the right to vote is an essential characteristic of membership in an association for purposes of establishing the first prong of the *Worrell* test. Although the court in *Hunt* observed that the apple growers and dealers elected the commission’s members and financed its activities, the court did not say that those facts were *necessary* to establish associational standing if there was other evidence of representation and control. Rather, the court determined that the facts that the apple growers and dealers served on the commission and that the commission represented their interests and provided a means for them to express their collective views were indicia of membership for purposes of establishing associational standing. See *Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149, 157–59 (2d Cir. 2012) (characterizing *Hunt* as holding that “representation and control” are indicia of membership that gives rise to associational standing); see also *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, 40 F. Supp. 3d 632, 640 (W.D. Pa. 2014) (“[J]ust because [the association’s members] lacked voting rights when this [action] was commenced, that factor alone is not sufficient to defeat associational standing Nothing in *Hunt* indicates that the factors delineated there are the only factors to be considered. . . . Rather, the purpose of the *Hunt* inquiry is to determine whether an organization provides its members with the means to express their collective views and protect their collective interests.” [Internal quotation marks omitted.]).

In any event, *Hunt* involved a plaintiff that was not a true voluntary membership association. See *Hunt v. Washington State Apple Advertising Commission*, supra, 432 U.S. 342 (“the [c]ommission is not a traditional voluntary membership organization such as a trade association, for it has no members at all”). At least one court has held that, when a plaintiff *is* a true voluntary membership organization, as in the present case, *Hunt*’s “indicia of membership” test does not

apply. *California Sportfishing Protection Alliance v. Diablo Grande, Inc.*, 209 F. Supp. 2d 1059, 1066 (E.D. Cal. 2002) (*Hunt's* “indicia of membership” test does not apply to true voluntary membership association); see *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, supra, 40 F. Supp. 3d 643 (members’ lack of voting rights did not defeat associational standing of voluntary membership association).

Nevertheless, even if some evidence of representation and control were required to establish membership, even for a true voluntary membership association, we conclude that the fact that two parent members of the Coalition serve on its steering committee provides sufficient evidence of their control, and the fact that the parent members have voluntarily joined the Coalition knowing that it has publicly advocated in favor of specific public school funding policies provides sufficient evidence that the Coalition represents their views. See *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, supra, 40 F. Supp. 3d 640 (“[t]he affirmative action of an organization’s constituents to affiliate with the organization in order to support its advocacy efforts, and to disaffiliate with the organization when they are dissatisfied with those efforts, may provide nearly as much practical influence on management as the bare right to vote for directors” [internal quotation marks omitted]). Indeed, we cannot perceive why the parent members would, by maintaining their membership status, allow the Coalition to use them as “pawns . . . in an attempt to provide standing,” as the defendants claim, if the Coalition was not representing their views or protecting their interests as they perceive them. We conclude, therefore, that the fact that the parent members lack voting rights does not defeat the Coalition’s associational standing.

The defendants also claim, however, that, even if the parent members are now actual members of the Coalition for purposes of the first prong of the *Worrell* test, because the Coalition had no parent members when this action was initiated in 2005 the Coalition lacked standing at that time, and a subject matter jurisdictional defect that existed when the complaint was filed cannot be cured by a subsequent amendment. The following additional procedural history is relevant to our resolution of this claim. After the plaintiffs filed their original complaint in 2005, the defendants filed a motion to dismiss the Coalition’s claims for lack of standing under *Worrell*. The trial court, *Shortall, J.*, granted the motion. In his memorandum of decision, Judge Shortall noted that, according to an affidavit filed by counsel for the Coalition, and contrary to the allegations of the original complaint, the Coalition had no parent members when the complaint was filed. Although the plaintiffs had filed an amended complaint alleging that the Coalition now had parent members, and submitted an affidavit to that effect, the amended

complaint did not allege that the parent members were “parents of students in the public schools of Connecticut.” Accordingly, the court concluded that the Coalition did not meet the first prong of the *Worrell* test.

Thereafter, the plaintiffs sought leave to file a second amended complaint in order to cure the standing deficiency by including an allegation that the Coalition’s parent members were parents of students in the Connecticut public schools. The trial court granted the request for leave to amend over the objection of the defendants. As we have previously explained in this opinion, the trial court subsequently granted the defendants’ motion to strike portions of the second amended complaint, and the plaintiffs appealed from that ruling to this court pursuant to § 52-265a. After this court reversed the decision of the trial court and remanded the case for further proceedings, the plaintiffs were granted leave to file a third amended complaint and defendants filed another motion to dismiss the Coalition’s claims for lack of standing. The trial court, *Dubay, J.*, denied the motion.

The defendants claim that Judge Dubay improperly denied their motion to dismiss the Coalition’s claims because, at the time that the original complaint was filed, the Coalition had no parent members who would have had standing to bring this action in their own right, and a jurisdictional defect cannot be cured retroactively. To support this claim, the defendants rely on *Fairchild Heights Residents Assn., Inc. v. Fairchild Heights, Inc.*, 131 Conn. App. 567, 574 n.8, 27 A.3d 467 (2011) (“[t]he lack of subject matter jurisdiction . . . cannot be cured retrospectively” [internal quotation marks omitted]), rev’d in part on other grounds, 310 Conn. 797, 82 A.3d 602 (2014), and *Connecticut Associated Builders & Contractors v. Hartford*, 251 Conn. 169, 186, 740 A.2d 813 (1999) (determining subject matter jurisdiction on basis of facts at time that original complaint was filed). We conclude that these cases are distinguishable.

In *Fairchild Heights Residents Assn., Inc.*, the plaintiff claimed that the defendant had violated various provisions of General Statutes § 21-82 (a) governing, inter alia, a landlord’s responsibilities in operating a mobile home park. See *Fairchild Heights Residents Assn., Inc. v. Fairchild Heights, Inc.*, supra, 131 Conn. App. 574. The defendant claimed on appeal that the trial court lacked subject matter jurisdiction because the plaintiff had failed to exhaust its remedies pursuant to a statutory scheme for addressing complaints related to mobile home parks. *Id.*, 571, 576. The Appellate Court agreed. *Id.*, 577. In a footnote, the Appellate Court noted that, although the trial court had tried the case on the basis of the plaintiff’s amended complaint, “[t]he operative complaint for jurisdictional purposes is that included with the writ of summons. The lack of subject

matter jurisdiction to render a final judgment cannot be cured retrospectively.” (Internal quotation marks omitted.) *Id.*, 574 n.8.

In *Connecticut Associated Builders & Contractors v. Hartford*, *supra*, 251 Conn. 171, the named plaintiff, a trade association, and two plaintiff subcontractors, claimed that the defendant’s procedures for bidding on a municipal construction contract violated various state and local statutes as well as the state and federal constitutions. *Id.* This court concluded that the subcontractors lacked standing because the statutes on which they relied were designed to protect the public, not bidders. *Id.*, 184. This court also concluded that the trade association lacked standing because none of its members would have had standing to challenge the bidding procedures “[a]t the time of the filing of the complaint” *Id.*, 186.

Thus, *Fairchild Heights Residents Assn., Inc. v. Fairchild Heights, Inc.*, *supra*, 131 Conn. App. 574, and *Connecticut Associated Builders & Contractors v. Hartford*, *supra*, 251 Conn. 169, are distinguishable from the present case because, in both of those cases, the *original complaint* should have been dismissed because no plaintiff had standing. If the trial court had rendered a judgment of dismissal in those cases, the plaintiffs would not have been permitted to cure the jurisdictional defects with subsequent pleadings because there no longer would have been any pending action in which to file them. In contrast, the original complaint in the present case was not dismissed when the trial court initially determined that the Coalition lacked standing because the individual plaintiffs named in the original complaint still had standing as parents of students in Connecticut schools. Accordingly, the sole effect of dismissing the Coalition’s claims was to remove the Coalition as a plaintiff. When the Coalition subsequently gained associational standing to raise the claims, however, we can perceive no reason why it would not have been permitted to join the action as a plaintiff pursuant to Practice Book § 9-3, assuming, of course, that it satisfied all prongs of the *Worrell* test.²⁰ We conclude, therefore, that it would elevate form over substance to hold that the trial court improperly allowed the plaintiffs to cure the jurisdictional defect with respect to the Coalition’s claims by amending the complaint. The defendants have not explained how allowing the plaintiffs to amend their complaint, instead of requiring the Coalition to file a motion to join the action as a plaintiff, could have allowed the plaintiffs to reap any procedural advantage or caused any detriment to the defendants. Accordingly, we reject the defendants’ claim that the Coalition lacks associational standing under the first prong of *Worrell* because none of its members had standing to bring this action in their own right when the original complaint was filed.

Second Prong of the *Worrell* Test

The defendants also claim that the Coalition fails the second prong of the *Worrell* associational standing test, i.e., that “the interests [that the Coalition] seeks to protect are germane to the organization’s purpose”; *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, supra, 199 Conn. 616; because “its membership is irremediably riddled with inherent conflicts regarding educational policy issues germane to this case.” Specifically, the defendants claim that the Coalition’s membership includes, among others, municipalities and local school boards with diverse locations and demographics, teachers’ unions and parents. The defendants contend that, although all members might agree on one point—the need for the state to put more money into the educational system—they would not agree on how the money should be distributed. The defendants point out that potential changes in funding that would benefit one school district might harm another district. The defendants also point out that one member of the Coalition, the Connecticut Association of Public School Superintendents, is opposed to laws governing binding arbitration for teacher pay. According to the defendants, this position is squarely at odds with the interests of the two teachers’ unions that are members of the Coalition. As another example, the defendants point out that one member of the Coalition, the city of Bridgeport, has taken the position through the testimony of its superintendent of schools that teacher termination laws and due process requirements should be changed to make it easier to terminate ineffective administrators and teachers, a position with which the teachers’ unions also would disagree. We conclude that these potential conflicts do not deprive the Coalition of associational standing.

As noted by the United States Court of Appeals for the Seventh Circuit, courts “have not been uniform in their approach to the presence of conflicts of interest in an association seeking standing.” *Retired Chicago Police Assn. v. Chicago*, 7 F.3d 584, 603 (7th Cir. 1993). Specifically, some courts have concluded that conflicts among the members of an association are simply “not relevant to whether associational standing ought to be permitted”; *id.*, 603–605 (discussing cases); while other courts have concluded that, under certain circumstances, conflicts of interest may be so profound as to deprive the association of standing. *Id.*, 605–607 (discussing cases).²¹

The courts that have held that conflicts of interest among members of an association generally do not deprive the association of standing have relied on the decision of the United States Supreme Court in *International Union, United Automobile, Aerospace & Agri-*

cultural Implement Workers of America v. Brock, 477 U.S. 274, 290, 106 S. Ct. 2523, 91 L. Ed. 2d 228 (1986) (*Brock*). See, e.g., *Retired Chicago Police Assn. v. Chicago*, supra, 7 F.3d 603–605 (discussing cases). In *Brock*, the court acknowledged that the position taken by an association in a particular litigation “might reflect the views of only a bare majority—or even an influential minority—of the full membership.” *Brock*, supra, 289. Nevertheless, the court concluded that the potential for a conflict of interest was outweighed by the benefits provided by associational standing, namely, that many associations have “a [preexisting] reservoir of expertise and capital” upon which its members can draw and that associations provide people with “an effective vehicle for vindicating interests that they share with others.” *Id.*, 289–90. In addition, the court in *Brock* noted that any harm to a member of an association who did not agree with the position taken by the association would not be irreparable because, if an association is not “able to represent adequately the interests of all their injured members,” a judgment won by the association “might not preclude subsequent claims by the association’s members without offending due process principles.” *Id.*, 290; see also *Retired Chicago Police Assn. v. Chicago*, supra, 605 (summarizing authority from United States Third Circuit Court of Appeals that when there is no evidence that position taken by association is “contrary to the interests of a majority of its members, and there [is] nothing on the record to indicate that [the association] had failed to follow [its] own internal rules before joining the litigation, [a] perceived conflict of interest [does] not bar associational standing”); *Humane Society of the United States v. Hodel*, 840 F.2d 45, 56 (D.C. Cir. 1988) (If “forces that cause individuals to band together guarantee some degree of fair representation, they surely guarantee as well that associational policymakers will not run roughshod over the strongly held views of association members in fashioning litigation goals. . . . [The germaneness test] requires . . . that an organization’s litigation goals be pertinent to its special expertise and the grounds that bring its membership together.” [Footnote omitted; internal quotation marks omitted.]); *National Maritime Union of America, AFL-CIO v. Commander, Military Sealift Command*, 824 F.2d 1228, 1234 (D.C. Cir. 1987) (“the mere fact of conflicting interests among members of an association does not of itself defeat the association’s standing to urge the interests of some members in litigation, even though success may harm the legal interests of other members”); *Laflamme v. New Horizons, Inc.*, 605 F. Supp. 2d 378, 396–97 (D. Conn. 2009) (same).

Other courts, however, have recognized that there may be circumstances under which conflicts among the members would deprive an association of standing. For example, the United States Court of Appeals for the

Fourth Circuit has held that an association lacks associational standing when “conflicts of interest among members of [an] association require that the members must join the [action] individually in order to protect their own interests” by taking a position adverse to that taken by the association, and the association initiated the litigation without first informing its membership. *Maryland Highways Contractors Assn., Inc. v. Maryland*, 933 F.2d 1246, 1252–53 (4th Cir.), cert. denied, 502 U.S. 939, 112 S. Ct. 373, 116 L. Ed. 2d 325 (1991). Similarly, the United States Court of Appeals for the Seventh Circuit has held that an association lacked associational standing when it was “in effect suing certain of its members on behalf of other members.” *Retired Chicago Police Assn. v. Chicago*, supra, 7 F.3d 606, citing *Southwest Suburban Board of Realtors, Inc. v. Beverly Area Planning Assn.*, 830 F.2d 1374, 1381 (7th Cir. 1987). As noted by the court in *Retired Chicago Police Assn. v. Chicago*, supra, 606, in both of these cases “the conflict of interest among the members was profound. In *Maryland Highways [Contractors Assn., Inc.]*, the [action] not only worked to the direct detriment of the minority members of the [a]ssociation, but was undertaken by the [a]ssociation without observance of its own [bylaws]. In *Southwest Suburban [Board of Realtors, Inc.]*, [the court] noted that ‘what this [action] amounts to is [the association bringing an action against] certain of its members on behalf of other of its members.’” In addition, in both cases, “the associations were not really operating along the lines for which they had been organized. In each case, they were operating as less permanent structures merely for litigation purposes and not for the purposes stated in their charters.” *Id.*, 607.

With these principles in mind, we address the defendants’ claim in the present case that the conflicts of interest among the Coalition’s members deprive it of associational standing. Although the defendants’ claim highlights the immense complexity of the state’s educational system and the wide variety of interests that the state must consider when formulating educational policies—circumstances that certainly support the notion that courts have very limited institutional competence to craft educational remedies for the types of claims raised in the present case and, therefore, must be extremely cautious when inserting themselves into this area—we conclude that the conflicts of interests among the Coalition’s members are not so profound as to deprive the Coalition of associational standing. There is no evidence that a majority of the Coalition’s members disagrees with the Coalition’s claim that the defendants have deprived students in the state’s poorer school districts with a suitable and substantially equal educational opportunity in violation of article eighth, § 1, and article first, §§ 1 and 20; the Coalition’s primary litigation goal is not directly at odds with the interests

of part of its membership; no members objected to the Coalition initiating this action; no member of the Coalition has expressed the belief that the relief sought by the plaintiffs in this action would not be generally beneficial to the state's educational system; there is no evidence that any member has challenged or intends to challenge the Coalition's claims in this litigation in court;²² there is no evidence that the Coalition is operating for the purposes other than those stated in its bylaws;²³ and there is no claim that the Coalition brought this litigation without first informing its members or following the procedures in its own bylaws. In the absence of any such evidence, any harm resulting to any member of the Coalition as the result of this litigation would be simply "part of the cost of obtaining the benefits of the association." (Internal quotation marks omitted.) *Retired Chicago Police Assn. v. Chicago*, supra, 7 F.3d 604. Accordingly, we reject this claim.

Third Prong of the *Worrell* Test

The defendants next contend that the plaintiffs cannot satisfy the third prong of the *Worrell* test, i.e., that "neither the claim asserted nor the relief requested requires the participation of individual members in the [action]." (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, supra, 199 Conn. 616. Specifically, the defendants contend that a court cannot determine whether the individual members of the Coalition "have been denied their constitutional right to a substantially equal and minimally adequate public education without considering specific evidence as to those individuals." According to the defendants, this is so because "[t]he minimum services needed for a precocious reader, an 'average' student, a multiply handicapped student, a student from a troubled home life, a student whose native language is not English, a student with mild cognitive impairment, or any other student, are plainly all different."

We disagree that the plaintiffs have not satisfied the third prong of the *Worrell* test. Nothing in Justice Palmer's concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 320, suggests that the determination as to whether the state is providing a minimally adequate educational opportunity that complies with article eighth, § 1, must be made on a student by student basis, taking into consideration the special needs and abilities of each individual. To the contrary, the *Campaign I* criteria that Justice Palmer adopted focus exclusively on the characteristics of *schools*; id., 342 (*Palmer, J.*, concurring in the judgment) (citing *Campaign I* criteria); and he emphasized that the focus of the court's inquiry should be on educational inputs, not individual achievement. Id., 345 n.19 (*Palmer, J.*, concurring in

the judgment). Accordingly, as we have already explained in part I A of this opinion, injury to all individual students could be inferred from proof that the state's schools do not meet the *Campaign I* criteria even in the absence of evidence that each individual student has suffered some identifiable harm. Accordingly, we reject this claim.

II

WHETHER THE TRIAL COURT APPLIED AN IMPROPER CONSTITUTIONAL STANDARD TO THE PLAINTIFFS' CLAIMS PURSUANT TO ARTICLE EIGHTH, § 1

We next address the defendants' claim that the trial court, after determining that plaintiffs did not establish that the state has failed to provide children in any school district in this state with a minimally adequate educational system under the *Campaign I* criteria, improperly applied a constitutional standard of its own devising to conclude that the defendants have violated the plaintiffs' rights under article eighth, § 1. The plaintiffs disagree and argue that, if we agree with the defendants' claim, the trial court's interpretation of the *Campaign I* criteria nonetheless was unduly narrow. We agree with the defendants and conclude that the trial court properly interpreted and applied the *Campaign I* criteria adopted by Justice Palmer in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, but then went on to improperly apply a constitutional standard of its own devising.

A

We begin with the standard of review. The scope of the right guaranteed by article eighth, § 1, is a question of law subject to plenary review. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 270–71 (plurality opinion) (considering scope of right guaranteed by article eighth, § 1, as matter of law); id., 342–43 (*Palmer, J.*, concurring in the judgment) (same).

As we have previously explained herein, the trial court concluded after a trial that the *Campaign I* criteria for a minimally adequate system of free public schools were met. The trial court also concluded, however, that the state's educational system would not satisfy article eighth, § 1, unless the state “deploy[ed] in its schools resources and standards that are rationally, substantially and verifiably connected to teaching children.” The trial court apparently derived this standard from Justice Palmer's statements that the state's educational programs and policies would be unconstitutional if they were “so lacking as to be unreasonable by any fair or objective standard”; *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 321 (*Palmer, J.*, concurring in the judgment);

and that the state must operate “within the limits of rationality” (Internal quotation marks omitted.) *Id.*, 336 (*Palmer, J.*, concurring in the judgment). The trial court concluded that this “rationality” requirement could not be the low rational basis standard because this court had held in *Horton I*, *supra*, 172 Conn. 646, that “in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized.” Applying this “rationally, substantially and verifiably connected” standard, the trial court concluded that the state’s current “school program” is unconstitutional because “[the state] has no rational, substantial and verifiable plan to distribute money for education aid and school construction,” it has no “objective and mandatory statewide graduation standard,” “there is no way to know who the best teachers are and no rational and substantial connection between their compensation and their effect on teaching children,” and the state’s program of special education spending is irrational.

The defendants claim on appeal that, once the trial court concluded that the *Campaign I* criteria were met, that court should have concluded that the state’s educational system does not violate article eighth, § 1, and it should not have gone on to consider whether the state “deploy[ed] in its schools resources and standards that are rationally, substantially and verifiably connected to teaching children.” We agree. We conclude that Justice Palmer’s statements that the state’s educational programs and policies cannot be “so lacking as to be unreasonable by any fair or objective standard” and that the state must operate “within the limits of rationality” mean that the efforts that the state makes to comply with its obligations under article eighth, § 1, must *reasonably* address the minimal educational needs of the state’s students, as described in *Campaign I*, and that the standard applied by the trial court is inconsistent with Justice Palmer’s repeated statements that courts are ill equipped to address the complex and intractable problems of financing and managing a statewide public school system. (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, *supra*, 295 Conn. 321, 326, 336 (*Palmer, J.*, concurring in the judgment). We further conclude that, having found that the schools are minimally adequate under the *Campaign I* criteria, the trial court should have determined that the state has fulfilled its obligations under article eighth, § 1, and, therefore, the trial court improperly applied the “rationally, substantially and verifiably connected to teaching children” standard to conclude that the state’s educational system is unconstitutional.

As we have indicated, under the *Campaign I* standard, the state must provide (1) “minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children

to learn,” (2) “minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks,” (3) “minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies,” and (4) “sufficient personnel adequately trained to teach those subject areas.” *Campaign I*, supra, 86 N.Y.2d 317.²⁴ Inasmuch as the phrase “minimally adequate” is not self-defining, a trial court making the determination as to whether this standard has been met necessarily is required to exercise some degree of judgment. It is reasonable to conclude, therefore, that Justice Palmer’s statements that the state must operate “within the limits of rationality”; (internal quotation marks omitted) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 336 (*Palmer, J.*, concurring in the judgment); and that the educational opportunity provided by the state cannot be “so lacking as to be unreasonable by any fair or objective standard”; id., 321 (*Palmer, J.*, concurring in the judgment); meant simply that the trial court should determine whether the specific educational facilities, instrumentalities, curricula and personnel that the state is required to provide, as described in *Campaign I*, reasonably address the minimal educational needs of this state’s children, that is, whether the state’s offerings are sufficient to enable a student who takes advantage of them to become a functional member of society.²⁵ For example, if the plaintiffs had shown that the state was providing elementary school students with books and curricula intended for only advanced college students, a court could conclude that the state was not reasonably meeting the minimal educational needs of these students—in other words, that these instrumentalities and curricula were not minimally adequate. Similarly, if no reasonable person could conclude that a single heat lamp is sufficient to heat a classroom during the winter, a school that routinely used this heating method would not be minimally adequate.

Justice Palmer never suggested, however, that, after determining that the specific instrumentalities, facilities, curricula and personnel that the state is required to provide in its elementary and secondary schools reasonably address the minimal educational needs of their students, the courts must nevertheless examine *all* of the state’s educational policies and programs, such as its funding formulas, school construction policies, graduation standards, teacher evaluation practices, teacher compensation practices and special education policies, to ensure that they are “rationally, substantially and verifiably connected to teaching children.” Rather, if the state is providing a minimally adequate educational opportunity to all of its elementary and secondary school students under the *Campaign I* criteria, the fact that some educational policies and programs are not, in the trial court’s personal view, “rationally, substantially

and verifiably connected to teaching children” is constitutionally irrelevant. For example, if a court concludes that the state’s educational system satisfies the *Campaign I* criteria, the fact that the state spends large sums of money on special education that, in the court’s personal view, would be better spent on hiring teachers for regular classrooms is no more relevant than the fact that the state spends large sums of money on its Medicaid program or on road construction. It is irrefutable that the court’s role is not to determine how programs should be funded, both within the educational system and beyond, but, instead, only to ensure that the state is meeting the minimal constitutional requirements for education.

Indeed, Justice Palmer expressly recognized that “courts are ill equipped to deal with issues of educational policy” and “lack [the] specialized knowledge and experience to address the many persistent and difficult questions of educational policy that invariably arise in connection with the establishment and maintenance of a statewide system of education.” (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 335 (Palmer, J., concurring in the judgment). Thus, the constitutional standard that the trial court applied in the present case would entangle the courts in the very policy determinations that Justice Palmer repeatedly warned against,²⁶ thereby creating a very substantial likelihood that the court would violate constitutional separation of powers principles. See id., 314 (plurality opinion), quoting *Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14, 27–28, 861 N.E.2d 50, 828 N.Y.S.2d 235 (2006) (“[t]he role of the courts is not . . . to determine the best way to calculate the cost of a sound basic education . . . but to determine whether the [s]tate’s proposed calculation of that cost is rational” because of “limited access of the [j]udiciary to the controlling economic and social facts, but also [because of] our abiding respect for the separation of powers upon which our system of government is based” [internal quotation marks omitted]); see also *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 326 (Palmer, J., concurring in the judgment), quoting R. Levy, “Gunfight at the K-12 Corral: Legislative vs. Judicial Power in the Kansas School Finance Litigation,” 54 U. Kan. L. Rev. 1021, 1033–34 (2006) (“Defining levels of adequacy requires that courts become involved in determining educational policies—the goals and the methods of delivering education—in a way that equity litigation does not. Likewise, fashioning remedies for violations of adequacy requirements is more problematic because legislatures may be reluctant to provide sufficient funding and because judicial enforcement of remedies against the legislature presents practical difficulties and raises serious [separation of powers concerns].”); *Connecticut Coalition for Justice in*

Education Funding, Inc. v. Rell, supra, 338 (*Palmer, J.*, concurring in the judgment) (“the significant separation of powers issues that [crafting a judicial remedy for a violation of article eighth, § 1] invariably would spawn must be given due consideration in determining the scope of the right”).

Relatedly, requiring courts to determine, as an issue entirely distinct from the question of whether the state is providing minimally adequate schools under the narrow and specific *Campaign I* criteria, whether the state’s educational policies and programs “are rationally, substantially and verifiably connected to teaching children” would be entirely inconsistent with Justice Palmer’s rejection of the plurality’s suggestion that it would be appropriate “to craft the constitutional standard ‘in broad terms’ [because] the broader the standard, the more vague it is likely to be. In addition, the broader the standard, the more difficult it will be for the parties and the court to understand and apply it.” *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 342–43 n.17 (*Palmer, J.*, concurring in the judgment). Accordingly, we agree with the defendants that, upon finding that the state’s educational system reasonably satisfies the narrow and specific *Campaign I* criteria, the court should have found that the system is constitutional under article eighth, § 1.

The plaintiffs contend that this conclusion cannot be reconciled with Justice Palmer’s suggestion that an “education funding system [that] is ‘arbitrary and inadequate,’ and not related to the actual costs of providing an education that meets constitutional standards” would be unconstitutional. *Id.*, 346 n.20 (*Palmer, J.*, concurring in the judgment). We conclude, however, that, for the reasons that we have already given, this statement merely supports the notion that state funding must be sufficient to allow schools to meet the minimally adequate *Campaign I* criteria. Indeed, the plaintiffs ultimately contend in their reply brief to this court that the conclusion that the trial court drew from the evidence should not have been that the state’s graduation standards, teacher evaluation and compensation schemes, and spending on special education are irrational, but that “many districts with high needs populations are not receiving adequate resources to provide an adequate educational opportunity to many of their students.”²⁷ Thus, the plaintiffs appear to concede that, to the extent that Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, contained a reasonableness component, that component is part and parcel of the constitutional standard for determining the minimal adequacy of the state’s educational offerings and not a separate rationality test applicable to *all* educational policies and programs, even when the *Campaign I* criteria have been satisfied. Accordingly, we agree with the defendants

that, having found that the educational resources provided by the state reasonably meet the minimal needs of the state's students—that is, the state's educational offerings, even in the poorest school districts, are sufficient to enable students who take advantage of them to become functional members of society—and that the *Campaign I* criteria were therefore met, the trial court should have concluded that the state's educational system satisfies article eighth, § 1, and it should not have gone on to apply a constitutional standard of its own devising. By doing so, not only did the trial court fail to defer to the legislature, it also usurped the legislative responsibility to determine how additional funding, beyond the constitutionally required minimum, should be allocated and how to craft educational policies that, in its view, best balance the wide variety of interests at issue. This action was in clear violation of separation of powers principles.

B

The plaintiffs claim on cross appeal that, if we agree with the defendants' claim that the trial court improperly applied the “rationally, substantially and verifiably connected to teaching children” standard to conclude that the defendants have violated article eighth, § 1, we should also determine that the trial court's interpretation of the *Campaign I* criteria was unduly narrow. We disagree.

The plaintiffs contend that the subsequent history of the *Campaign I* case shows that the court in *Campaign I* contemplated a far broader standard than the trial court applied in this case. The plaintiffs point out that, after the court in *Campaign I* remanded the case for application of the standard that it had adopted, the trial court conducted a searching and detailed examination of New York City's educational system and concluded that the *Campaign I* standard was not met. See *Campaign for Fiscal Equality, Inc. v. State*, 187 Misc. 2d 1, 4, 719 N.Y.S.2d 475 (2001) (*Campaign II*).²⁸ The New York Court of Appeals ultimately upheld the trial court's determination on appeal. *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 903, 801 N.E.2d 326, 769 N.Y.S.2d 106 (2003) (*Campaign III*) (affirming portion of decision of Appellate Division of the New York Supreme Court dismissing plaintiffs' “title VI”²⁹ claim and reversing portions of order finding error in *Campaign II*). The plaintiffs contend that this shows that the *Campaign I* standard demands the type of searching and detailed analysis that the New York Court of Appeals approved in *Campaign III*.

We are not persuaded. Rather, a review of the subsequent history of *Campaign I* shows why Justice Palmer's concurring opinion did *not* contemplate that the trial court would apply the broader standard that the New York trial court applied in *Campaign II*. The trial court in *Campaign II* considered on remand a broad

range of factors that were not specifically mentioned in *Campaign I*. See footnote 28 of this opinion. The trial court also applied a comparative standard, repeatedly considering whether the educational instrumentalities, facilities, curricula and personnel provided by New York City schools were equivalent to those provided elsewhere in the state,³⁰ despite the fact that nothing in *Campaign I* had suggested that, in determining whether New York City's school system was minimally adequate, the trial court should consider the level of resources provided by other school districts.

Moreover, the trial court in *Campaign II* was not persuaded by the state's contention that it was "required only to provide the *opportunity* for a sound basic education" and that "students' failure to seize this opportunity is a product of various socioeconomic deficits experienced by the large number of [at risk] students in New York City public schools." (Emphasis in original.) *Campaign II*, supra, 187 Misc. 2d 63. The court stated that "the [s]tate must only provide the opportunity for a sound basic education, but this opportunity must be placed within reach of all students. The court rejects the argument that the [s]tate is excused from its constitutional obligations when public school students present with socioeconomic deficits."³¹ *Id.* Thus, the standard that the trial court applied in *Campaign II*, which was implicitly approved by the New York Court of Appeals in *Campaign III*, was clearly a different and far broader standard than the one set forth in *Campaign I*.

We see no evidence in Justice Palmer's concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, that he contemplated that the narrow and specific criteria that he had identified for determining whether the state is providing minimally adequate educational resources would be subject to modification on remand. To the contrary, he repeatedly emphasized that a broader standard was inappropriate, that the trial court should give great deference to the legislature's educational policy choices, and that the court's primary focus should be on the adequacy of educational inputs, not on the level of educational achievement. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 342 n.17, 345 n.19 (*Palmer, J.*, concurring in the judgment). Moreover, unlike the justices in the plurality, Justice Palmer made no direct reference to the subsequent history of *Campaign I* in his concurring opinion. See *id.*, 302 (plurality opinion) (*Campaign III* "further developed [the *Campaign I*] standard to provide that students have a right to a meaningful high school education, one which prepares them to function productively as civic participants, although not necessarily a high school diploma" [internal quotation marks omitted]). Indeed, Justice Palmer expressly *rejected* the part of the plurality's standard that, like *Campaign III*, focused

on educational outputs. See *id.*, 345 n.19 (*Palmer, J.*, concurring in the judgment). We conclude, therefore, that, at least initially, the trial court properly determined that the narrow and specific *Campaign I* standard, as set forth in Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, *supra*, 295 Conn. 342, is the controlling constitutional standard, not the broader standard that the New York courts applied in *Campaign II* and *Campaign III*.

The plaintiffs also contend that the standard applied by the trial court was too narrow because Justice Palmer recognized that the *Campaign I* criteria “must be evaluated in light of current educational standards, which continue to evolve.” See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, *supra*, 295 Conn. 320–21 (*Palmer, J.*, concurring in the judgment) (educational opportunity provided by state pursuant to article eighth, § 1, must be “minimally adequate by modern educational standards”). In our view, however, this statement simply means that the fact that a school would be minimally adequate under 1850 educational standards does not necessarily mean that it is minimally adequate under modern standards. In other words, the fact that a school with a single classroom containing forty students ranging in age from six to eighteen, heated by a wood stove, and providing only handheld chalkboards for instruction may have been considered adequate in 1850 does not mean that the school would be adequate today.

The plaintiffs further rely on Justice Palmer’s suggestion that their allegations that “many [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students” and that “the state has failed to provide the resources necessary to intervene effectively on behalf of [at risk] students, that is, students who, because of [a] wide range of financial, familial, and social circumstances, [are] at greater risk of failing or experiencing other unwanted outcomes unless intervention occurs” were sufficient to withstand a motion to strike because, if proven, they might establish “a violation of the standard articulated in this opinion.” (Internal quotation marks omitted.) *Id.*, 346 n.20 (*Palmer, J.*, concurring in the judgment). Because these allegations focus on the special needs of at risk students and on educational outcomes, the plaintiffs contend, Justice Palmer must have intended for the trial court to consider those factors.

This interpretation simply cannot be squared, however, with Justice Palmer’s unequivocal statement elsewhere in his opinion that schools “cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the

academic achievement of those students.” (Internal quotation marks omitted.) Id., 345 (*Palmer, J.*, concurring in the judgment). In addition, although Justice Palmer was reluctant to conclude that “educational ‘outputs’ are *never* relevant to the determination of whether the state has complied with the requirements of article eighth, § 1”; (emphasis added) id., 345 n.19; he clearly indicated that “because student achievement may be affected by so many factors outside the state’s control, including, perhaps most particularly, the disadvantaging characteristics of poverty . . . educational inputs must provide the primary basis for that determination.”³² (Citation omitted; internal quotation marks omitted.) Id. (*Palmer, J.*, concurring in the judgment). Indeed, to conclude otherwise would convert the constitutional mandate that the state provide minimally adequate elementary and secondary schools into a mandate that the state ensure that all school age children have sufficiently good parenting, financial resources, housing, nutrition, health care, clothes and other social goods to enable them to take advantage of the educational opportunity that the state is offering.

We are compelled to conclude, therefore, that when Justice Palmer determined that the plaintiffs’ allegations were sufficient to withstand the defendants’ motion to strike, he did not intend to suggest that the *Campaign I* criteria were merely one part of a broader constitutional inquiry that should include an analysis of whether the state’s educational offerings are sufficient to overcome disadvantaging conditions outside of the state’s control that affect educational outcomes. Rather, he was recognizing that the allegations were sufficiently broad and general that the evidence that the plaintiffs presented to support them at trial might support a conclusion that the narrow and specific *Campaign I* criteria had not been met.³³ See id., 346 n.20 (*Palmer, J.*, concurring in the judgment) (“[t]he plaintiffs have asserted extensive factual allegations . . . and their claims are cast in broad terms”). Indeed, because Justice Palmer had articulated the controlling constitutional standard for the first time in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, it would have been unfair to the plaintiffs to refuse to afford them an opportunity to refine their claims to meet the standard. Cf. *Cefaratti v. Aranow*, 321 Conn. 593, 625, 141 A.3d 752 (2016) (“[b]ecause we have adopted the detrimental reliance standard for the first time in this opinion . . . we believe that fairness requires us to remand the case to the trial court so that the plaintiff may have an opportunity to present evidence” that would satisfy new standard). Accordingly, we conclude that the trial court initially applied the proper standard when it concluded that the state’s educational offerings satisfy the minimal constitutional standard set forth in Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice*

in Education Funding, Inc.

Finally, to the extent that the plaintiffs contend that, even if the *Campaign II* standard does not apply, the trial court failed to apply the *Campaign I* criteria properly because it did not consider whether the state's educational offerings *reasonably* address the minimal educational needs of the state's children, we disagree. As we have explained, it is implicit in the *Campaign I* standard that the educational opportunities offered by the state must be sufficient to enable a student who takes advantage of them to attain a level of knowledge of reading, writing, mathematics, science, and social studies that will, in turn, enable the student to perform the basic functions of an adult in our society.³⁴ See footnote 25 of this opinion. There simply is no sense in which a teacher providing instruction pursuant to a particular curriculum under particular classroom conditions could be considered a minimally adequate educational opportunity if the teacher, the curriculum or the conditions were not sufficient to enable a student who attends to the instruction to obtain a minimally adequate education. In turn, there is no sense in which an education can be considered minimally adequate if a person who has acquired that level of education is unable to perform the basic functions of an adult. Accordingly, the trial court's finding that the state's educational offerings satisfy the *Campaign I* criteria for a minimally adequate educational opportunity necessarily encompassed a finding that those educational offerings reasonably address the minimal educational needs of the state's children.³⁵

The dissent disagrees, and would conclude that the trial court improperly applied the *Campaign I* criteria. In support of this conclusion, the dissent claims that (1) although the *Campaign I* criteria are *necessary* components of a minimally adequate educational opportunity, the trial court improperly assumed that, if satisfied, the criteria are *sufficient* to establish a minimally adequate educational opportunity; (2) the trial court failed to consider whether the state is making an effort "to ensure that [the minimal educational offerings required by *Campaign I*] are designed to address the basic educational needs of at risk learners in underprivileged communities"; (3) the trial court improperly stripped out "rationality review" from its *Campaign I* analysis; (4) the trial court improperly assessed the *Campaign I* criteria on a statewide basis, instead of at the school district or school level; and (5) the trial court failed to consider whether the poor educational outcomes in the neediest school districts are "the result of specific deficient educational inputs, or [have been] caused by factors not attributable to, or capable of remediation by, state action or omission" (Internal quotation marks omitted.)

These claims, however, simply cannot be reconciled

with Justice Palmer's concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 320. With respect to the dissent's claim that satisfaction of the *Campaign I* criteria is necessary, but not sufficient, to establish a constitutionally adequate educational opportunity, Justice Palmer could not have been clearer in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, that the constitutional standard to be applied by the courts should not be broad and vague, but must be narrow and specific. See id., 342 n.17 (*Palmer, J.*, concurring in the judgment) ("I disagree with the plurality that it is appropriate to craft the constitutional standard 'in broad terms.' In my view, the broader the standard, the more vague it is likely to be. In addition, the broader the standard, the more difficult it will be for the parties and the court to understand and apply it. I also disagree with the plurality's suggestion that a broad standard is beneficial because it may be 'refined and developed further' at trial. Although some constitutional standards must be defined in broad terms because of the applicability to a vast number of fact patterns, this is not such a case; for purposes of a case like the present one, in which it is critically important to give as much guidance to the court and the parties as possible, the more clearly defined the standard, the better."). The dissent's claim in the present case is entirely inconsistent with these principles; a standard that fails to specify all of the criteria that must be met in order to establish that the state's educational offerings meet the constitutional minimum is neither narrow nor specific. Accordingly, we conclude that the trial court properly determined that, if the *Campaign I* criteria are satisfied, the state's educational offerings are not constitutionally inadequate.

With respect to the dissent's claim that the trial court failed to consider whether the state's educational offerings are "designed to address the basic educational needs of at risk learners in underprivileged communities," the dissent has failed to explain why the courts must make this determination when it agrees that they are barred from requiring the state either "to overcome every serious social and personal disadvantage that students bring with them to school"; *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 344–45 (*Palmer, J.*, concurring in the judgment); or to guarantee good educational outcomes. See id., 345 n.19 (*Palmer, J.*, concurring in the judgment) ("[p]erformance or achievement of the student population, taken generally, cannot . . . be the principle [on] which [a constitutionally required minimally adequate education] is based," rather, "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" [internal quotation marks omit-

ted]). As Justice Palmer repeatedly emphasized in *Connecticut Coalition for Justice in Education Funding, Inc.*, courts have little institutional competence to make the determination as to which disadvantaging conditions are the most serious or how and to what extent those conditions should be alleviated by the state. See footnote 26 of this opinion. Moreover, it is difficult to imagine a broader or vaguer standard than whether the state's educational offerings are "designed to address the basic educational needs of at risk learners in underprivileged communities." We conclude, therefore, that this standard is not encompassed by the narrow and specific *Campaign I* criteria.

In any event, even if this were the proper standard, the trial court *expressly found* that there are numerous state and federal programs that are designed to provide needy students with "breakfast, lunch, and many times food to take home," even during the summer months when school is not in session, to provide parental education, to address the needs of homeless students, to prevent sexually transmitted diseases, to address the needs of students who are parents as well as pregnant students, and to provide mental health programs. The court concluded that the existence of these programs shows that "the state is devoting to needy schools a great deal more in resources than is required by the modest standard [set forth in *Campaign I*]." As we conclude in part III of this opinion, we see nothing in the record that would compel a different conclusion, and the dissent provides no guidance on the nature or quantity of the additional resources that the state would be required to devote to needy students in order to meet the dissent's new standard.

The dissent also claims that the trial court stripped "rationality review" from its analysis pursuant to *Campaign I*. For the reasons that we have already explained, we disagree. We further disagree with the dissent's claim that "there is no indication that the court considered any of [the specific factual findings that the plaintiffs rely on]" We decline to presume that the trial court made 1060 specific factual findings, filling 157 single-spaced pages, only to then conclude that the findings were completely irrelevant to its legal analysis.³⁶

We also disagree with the dissent's contention that the trial court improperly applied the *Campaign I* criteria on a statewide basis instead of determining on a school by school or school district by school district basis whether the state's educational offerings are constitutionally adequate. As we have already explained at length, the trial court made copious factual findings regarding conditions in specific schools and school districts and expressly found that the state is meeting its constitutional obligations in the poorest and neediest schools.³⁷

Finally, the dissent contends that, in applying the constitutional standard, the trial court was required “first [to determine] whether students have in fact been unable to obtain a minimally adequate education” and then to consider whether any poor educational outcomes that the court discovered were “the result of specific deficient educational inputs, or [have been] caused by factors not attributable to, or capable of remediation by, state action or omission”³⁸ This is yet another variation on the theme that the trial court was required to consider educational outcomes as part of its *Campaign I* analysis, a theme that is completely discordant with the overall tenor of Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, in which he emphasized that the trial court’s focus must be on *inputs*. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 345 n.19 (Palmer, J., concurring in the judgment). If the court determines that educational *inputs* are minimally adequate to enable a student who takes advantage of them to perform the basic functions of an adult, it necessarily follows that poor outcomes must be caused by disadvantaging factors for which the court has no authority to order a remedy under the guise of enforcing the educational guarantee embodied in article eighth, § 1. That is the very rationale for limiting the trial court’s consideration to inputs. Indeed, even the plurality opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, on which the dissent relies instead of Justice Palmer’s controlling opinion, expressly recognized that article eighth, § 1, “is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs”; *id.*, 320 (plurality opinion); and declined to take any stand on the question of the extent to which the trial court could consider outputs, if at all. See *id.*, 318 n.60 (plurality opinion). Accordingly, we emphatically reject the dissent’s suggestion that the “evaluation of educational outputs will, in many instances, be a fundamental and necessary starting point in evaluating claims brought under article eighth, § 1,” and that “outcomes provide the clearest evidence of whether Connecticut’s students are in fact receiving a minimally adequate education.”

In short, the dissent has adopted a new constitutional standard that is far broader and vaguer than the *Campaign I* criteria that Justice Palmer adopted in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, which is controlling. This new constitutional standard is entirely inconsistent with Justice Palmer’s conclusions that the criteria for determining whether the state’s schools are minimally adequate must be narrow and specific, that the courts must defer to the educational policy choices of the political branches, that the state is not constitutionally required to overcome all disadvantages that students

bring with them to school and that courts have little institutional competence to address the intractable and complex questions that arise in the area of educational policy. We believe that, to the contrary, because the role of the court is to apply the precedent on which the parties and the trial court reasonably relied, the narrow and specific *Campaign I* criteria that Justice Palmer outlined in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, provide the correct constitutional standard, and we conclude that the trial court properly applied that standard.

III

PLAINTIFFS' CLAIM THAT THE TRIAL COURT
IMPROPERLY CONCLUDED THAT THE
EVIDENCE DID NOT SUPPORT
THEIR CLAIM THAT THE
CAMPAIGN I CRITERIA
WERE NOT SATISFIED

The plaintiffs next claim that the trial court improperly concluded that the state has not violated article eighth, § 1, by failing to provide educational resources that comply with the *Campaign I* criteria adopted by Justice Palmer in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 342. Specifically, the plaintiffs contend that the trial court's conclusion that the *Campaign I* criteria have been satisfied cannot be reconciled with the trial court's findings that the school districts with the neediest students have fewer experienced teachers than other districts, shortages of specialist teachers, interventionists and counselors, inadequate classroom facilities, and insufficient quantities of educational technologies and instructional resources. In addition, they claim, the court's conclusion was contradicted by its findings that large numbers of students in poverty and students in high needs districts are not achieving, or even approaching, appropriate educational outcomes as measured by standardized test scores, that classrooms in high needs districts "often" have significantly more students per class than other schools, that high needs districts are unable to provide sufficient "socioemotional and related support services," such as guidance counselors, psychologists, social workers and special education teachers, to their students, and that preschool opportunities are unavailable for large numbers of low income students. The plaintiffs claim that, if the trial court had properly taken these findings into account, it would have been compelled to conclude as a matter of law that the defendants did not satisfy the *Campaign I* criteria. We disagree.

The plaintiffs' claim involves a question of law subject to plenary review. See *Right v. Breen*, 277 Conn. 364, 371, 890 A.2d 1287 (2006) (whether trial court was compelled to act in particular fashion as matter of law is subject to plenary review); see also *Parker v. Meeks*,

96 Conn. 319, 325, 114 A. 123 (1921) (legal conclusion to be drawn from undisputed facts is question of law). Although the judgment of the trial court ordinarily “is entitled to great weight and every reasonable presumption should be indulged in favor of its correctness”; (internal quotation marks omitted) *Label Systems Corp. v. Aghamohammadi*, 270 Conn. 291, 320, 852 A.2d 703 (2004); because the plaintiffs’ claim implicates their fundamental right to an education under article eighth, § 1, the trial court’s conclusions are subject to the “independent and scrupulous examination of the entire record that we employ in our review of constitutional fact-finding, such as the voluntariness of a confession . . . or the seizure of a defendant.” (Citations omitted.) *State v. Ross*, 230 Conn. 183, 259, 646 A.2d 1318 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995).

In support of the plaintiffs’ claim that the trial court’s factual findings cannot be reconciled with its conclusion that the state is providing the neediest schools with constitutionally adequate teachers, classroom facilities, educational technologies and instructional resources, the plaintiffs rely on these court findings: Bridgeport has filled 11.5 teaching positions with permanent substitutes instead of certified teachers; during the 2015–16 school year, New London High School filled four teaching positions by hiring substitute teachers who could teach for only a maximum of forty days, some of whom were not familiar with the subjects that they were assigned to teach; some classrooms in Bridgeport and New Britain are overcrowded, with up to twenty-nine students; East Hartford has allotted zero dollars in its budget for school library books; and Danbury High School has provided zero dollars in its budget for textbooks.³⁹

We are not persuaded. Although it may be cause for concern that a school district or a school has filled a small number of teaching positions with substitute teachers for a specified period, that fact does not compel the conclusion that the overall level of teaching in the district or school is inadequate. Similarly, although a class size of twenty-nine students might not be ideal for needier students, we are unable to say that classes of that size render a school inadequate as a matter of law. Indeed, the trial court expressly found that the scientific research on the impact of class size on educational outcomes is inconclusive. Finally, the fact that, during particular years, particular schools have no money budgeted for library books or textbooks does not compel the conclusion that those schools lack minimally adequate books.⁴⁰

With respect to the other factual findings relied on by the plaintiffs, such as the findings that there are low test scores in schools with large numbers of poor and needy students and the findings that the state has pro-

vided inadequate socioemotional and related support services, specialist teachers, interventionists and preschool opportunities to its poorer students, we conclude that, in contrast to the court's findings regarding the adequacy of teachers, class size, library books and textbooks, these findings do not relate to the narrow *Campaign I* criteria.⁴¹ See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 345 n.19 (*Palmer, J.*, concurring in the judgment) (“because student achievement may be affected by so many factors outside the state’s control, including, perhaps most particularly, the disadvantaging characteristics of poverty . . . educational inputs must provide the primary basis for that determination” [internal quotation marks omitted]); id., 345 (“[schools] cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students” [internal quotation marks omitted]). Rather, the plaintiffs have essentially reiterated the claim that we addressed and rejected in part II B of this opinion, specifically, that the *Campaign I* criteria are too narrow. Therefore, we must also conclude that these facts do not compel the conclusion that the defendants have violated article eighth, § 1, by failing to provide the plaintiffs with a minimally adequate educational opportunity. Accordingly, we must reject this claim.

IV

PLAINTIFFS’ CLAIM THAT THE TRIAL COURT INCORRECTLY CONCLUDED THAT THEIR EQUAL PROTECTION RIGHTS UNDER THE STATE CONSTITUTION HAVE NOT BEEN VIOLATED

Finally, we address the plaintiffs’ claim that, contrary to the trial court’s determination, the evidence that they presented at trial compels the conclusion that the defendants have violated their rights under the state constitution’s equal protection provisions, article first, §§ 1 and 20, by failing to provide a substantially equal educational opportunity to all of the state’s schoolchildren.⁴² We disagree.

As we previously have indicated herein, the trial court found that, since 2012, the state had funneled “over \$400 million in new money” into the state’s thirty lowest performing schools. In addition, the state had provided \$13 million in financial support to fourteen “failing schools” in 2015, plus \$4 million per year for school improvement grants to approximately thirty high needs schools under the state’s Alliance District program.⁴³ Finally, the court noted that there are numerous state and federal programs that are designed to provide meals to needy students, even during the summer, to invite parents into schools to share in learning, to attend to the needs of homeless students, to prevent sexually

transmitted diseases, to attend to the needs of young parents and pregnant students, and to provide mental health support. The court found that “[a]ll of this extra spending benefits poor districts but not wealthier districts. It is on top of basic education aid that has a history of strongly favoring poor districts over wealthier ones.”

The court concluded that this “tilt” in spending was “fatal to the plaintiffs’ equal protection claim In [*Horton v. Meskill*, 195 Conn. 24, 38, 486 A.2d 1099 (1985) (*Horton II*)] our Supreme Court held that an equal protection claim based on spending disparities can only succeed if, among other things, any claimant can show that the disparities ‘jeopardize the plaintiffs’ fundamental right to education.’ Unlike the disparities in [*Horton II*], the state’s current education spending disparity favors the impoverished districts with which the plaintiffs are most concerned. They can hardly claim [that] getting more money compared to other towns is the cause of their woes.” (Footnote omitted.)

The plaintiffs now claim that, in reaching this determination, the trial court failed to properly apply the three part standard that this court adopted in *Horton II*, supra, 195 Conn. 38. Under that standard, to establish that the state has failed to provide substantially equal educational opportunities to its students in violation of the state constitution’s equal protection provisions, the plaintiffs must first “make a prima facie showing that disparities in educational expenditures are more than de minimis in that the disparities continue to jeopardize the plaintiffs’ fundamental right to education. If they make that showing, the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. If the state’s justification is acceptable, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional. In other words . . . a school financing plan must, as a whole, further the policy of providing significant equalizing state support to local education. . . . However, no such plan will be constitutional if the remaining level of disparity continues to emasculate the goal of substantial equality.” (Citation omitted; internal quotation marks omitted.) *Id.* The plaintiffs contend that the undisputed evidence presented at trial compels the conclusion that they have satisfied the first part of *Horton II* and that the defendants have failed to meet their burden under the second and third parts.

Before addressing this claim, we address the defendants’ claim that the trial court properly declined to apply the three part *Horton II* standard because the plaintiffs failed to establish that they are not receiving a minimally adequate educational opportunity under the *Campaign I* standard. See *id.*, 38 (plaintiffs “must make a prima facie showing that disparities in educa-

tional expenditures are more than de minimis *in that the disparities continue to jeopardize the plaintiffs' fundamental right to education*" [emphasis added]) We are not persuaded. The court in *Horton II* expressly recognized that discrimination among school districts based on wealth is "relative rather than absolute"; (internal quotation marks omitted) *id.*, 35; and ultimately concluded that the plaintiffs in that case had met their burden of establishing a prima facie case of de minimis disparities without conducting any analysis as to whether the education that they were receiving was minimally adequate. *Id.*, 39. That approach is consistent with this court's statement in *Horton I*, *supra*, 172 Conn. 645–46, that "[t]his [c]ourt has never suggested that because some adequate level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable. The [e]qual [p]rotection [c]lause is not addressed to the minimal sufficiency but rather to the unjustifiable inequalities of state action." (Internal quotation marks omitted.) We must conclude, therefore, that the "fundamental right" to education that the court was referring to in *Horton II* was the right to "a substantially equal educational opportunity." (Emphasis added; internal quotation marks omitted.) *Horton II*, *supra*, 36. Accordingly, we emphatically reject the defendants' claim that there can be no equal protection violation if the plaintiffs are receiving a minimally adequate educational opportunity, and we address the merits of the plaintiffs' claim that, under *Horton II*, the evidence compelled a finding that disparities between the funding of the neediest and the least needy school districts are more than de minimis and are not justified by legitimate public policies.⁴⁴

In support of their claim that disparities in per pupil expenditures between schools with large numbers of poor and needy students and other schools are more than de minimis, the plaintiffs rely on undisputed evidence showing that, in 2013, "the ratio between the highest spending town [i.e., Cornwall, with net current education expenditures per pupil of \$25,718] and the lowest spending town [i.e., Ellington, with expenditures of \$11,180, was] 2.30—squarely in the middle range [that] the . . . court [in *Horton II*] determined was [not] de minimis." See *Horton II*, *supra*, 195 Conn. 39 n.15 (from 1973 through 1984, ratio of educational spending in highest spending town to spending in lowest spending town ranged from low of 2.14 in 1980–81 school year to high of 2.45 in 1977–78 school year). In addition, the plaintiffs contend, the undisputed evidence showed that the ratio of education spending in the ninety-fifth percentile town ranked by "equalized net grand list per capita," Cornwall, to education spending in the fifth percentile town, West Haven, was \$25,718 to \$12,157, or 2.12, much worse than the same ratio for any year considered by the court in *Horton II*. See *id.*

(highest ratio from 1973 through 1984 was 1.87 and lowest was 1.68). Because the court in *Horton II* concluded that the plaintiffs had established more than de minimis disparities in educational spending sufficient to satisfy the first part of the constitutional standard, the plaintiffs contend, they also necessarily satisfied the first part.

We are not persuaded. The plaintiffs in the present case are not claiming, as the plaintiffs did in *Horton I*, that the state has discriminated against property poor towns by requiring all towns to fund education primarily with local property taxes.⁴⁵ Rather, they are claiming that the state is discriminating against schools with high numbers of poor and needy students by failing to ensure that such schools have funding that is substantially equal to the funding provided to other schools.⁴⁶ Thus, to make a prima facie case under article first, §§ 1 and 20, the plaintiffs must show that disparities in educational funding between towns with large numbers of poor and needy students and schools with small numbers of such students are more than de minimis. Contrary to the plaintiffs' contention, this claim is not supported by the evidence showing that the ratio between the highest spending town and the lowest spending town is 2.30 and that the ratio of educational spending in the ninety-fifth percentile town ranked by "equalized net grand list per capita" to the educational spending in the fifth percentile town was 2.12 because the plaintiffs have not established that these particular school districts reasonably may be treated as proxies for the school districts with the least and the most numbers of poor and needy students.⁴⁷

The only evidence that the plaintiffs have cited that *does* shed light on the question of whether there are more than de minimis disparities in funding between schools serving large numbers of poor and needy students and other schools tends to undermine their claim. For example, they have cited undisputed evidence that shows that, in 2013, of the towns having student enrollments greater than 1000,⁴⁸ total education spending per pupil in the wealthiest decile as measured by "equalized net grand list per capita" was, on average, \$15,713.61, compared to an average of \$13,416.29 in the poorest decile.⁴⁹ This spending ratio is 1.17, a figure that is significantly lower than any of the figures that the court in *Horton II* cited as prima facie evidence of more than de minimis disparities. Other undisputed evidence shows that, in the same year, the state provided funding of nearly \$9500 per student to schools in the poorest decile of school districts with at least 1000 students, compared to less than \$1200 per pupil in the wealthiest decile, a ratio of approximately eight to one.⁵⁰ As the trial court observed, it is difficult to see how this evidence supports the plaintiffs' claim that the state is discriminating *against* its poorest and neediest students.

We conclude, however, that we need not determine whether the plaintiffs have established a prima facie showing of more than de minimis disparities because, even if they have, we conclude that the defendants have satisfied the second and third parts of *Horton II*, requiring them to prove that disparities in education spending are justified by a legitimate state policy and are not so great as to be unconstitutional. See *Horton II*, supra, 195 Conn. 38. With respect to the second part, the legitimate state policies that this court approved in *Horton II* were that the state’s funding program “would provide sufficient overall expenditures for public school education . . . and a proper balance between state and local contributions thereto.” Id., 39–40. This court expressly recognized that there is “a salutary role for [preserving] local choice by guaranteeing minimum funds without imposing a ceiling on what a town might elect to spend for public education.” Id., 40. We have concluded in the present case that the trial court properly found that the state is providing a minimally adequate educational opportunity in all school districts according to the *Campaign I* criteria. Thus, the state is providing “sufficient overall expenditures for public education” Id., 39. In addition, the trial court found that the state is contributing significantly more funds to the neediest school districts than to the least needy, a finding that is also supported by the evidence. Under these circumstances, we do not believe that the fact that the wealthier school districts spend more per pupil on education than the poorer school districts by supplementing educational funds provided by the state with funds derived from local property taxes renders the funding scheme unconstitutional. Indeed, the court in *Horton II* found that the policy in favor of preserving “local choice” justified far greater disparities in per student spending than the disparity in per student spending that has been established in the present case between the towns in the wealthiest decile and those in the poorest decile. Id., 40.

The plaintiffs contend, however, that this court rejected the maintenance of local control of schools as a legitimate public policy that would justify disparities in education spending in *Horton I*, supra, 172 Conn. 638, 649, when this court recounted with approval the trial court’s finding that, “although local control of public schools is a legitimate state objective, since local control of education need not be diminished if the ability of towns to finance education is equalized, the local control objective is not a rational basis for retention of the present financing system” In *Horton II*, however, we clarified this statement when we held that, if the state provides significant equalizing funds to poorer towns, the state need not place limits on what wealthier towns may spend on education, thereby retaining room for local control. See *Horton II*, supra, 195 Conn. 40. We express no opinion on whether allowing wealthier

towns to supplement education spending through local property taxes is the best education policy. We do conclude, however, that such a policy is not unconstitutional.

Under the third part of *Horton II*, the state must prove that the effect of the state's education funding system is "to narrow significantly disparities in the ability of local communities to finance local education and to increase significantly the state's share of overall educational costs for public schools." (Footnote omitted.) *Id.*, 40. Again, this part is satisfied by the trial court's finding that the state's education spending is "tilt[ed]" strongly in favor of needier school districts, a finding that was supported by the undisputed evidence showing that, in 2013, there was a strong inverse correlation between the wealth of a school district and the amount of state aid that it received. Although neither the plaintiffs nor the defendants have directed us to any evidence that is probative on the issue of whether the state's share of overall education funding has increased significantly from some benchmark date, the trial court expressly found that "the state has not violated the constitution by devoting an overall inadequate level of resources to the schools," and the plaintiffs have not directly challenged that finding on appeal. Rather, they have relied on disparities in educational funding.

Although the plaintiffs have convincingly demonstrated that in this state there is a gap in educational achievement between the poorest and neediest students and their more fortunate peers, disparities in educational achievement, standing alone, do not constitute proof that our state constitution's equal protection provisions have been violated. The plaintiffs have not shown that this gap is the result of the state's unlawful discrimination against poor and needy students in its provision of educational resources as opposed to the complex web of disadvantaging societal conditions over which the schools have no control. Indeed, the trial court found that the state is providing significantly more educational resources to schools with large numbers of poor and needy students than to other schools. We conclude, therefore, that the plaintiffs have failed to establish that the defendants have violated article eighth, § 1, and article first, §§ 1 and 20, by failing to provide a minimally adequate and substantially equal educational opportunity to all students in this state.

The judgment is reversed with respect to the trial court's determination that the defendants are violating article eighth, § 1, of the Connecticut constitution and the case is remanded to that court with direction to render judgment for the defendants on that claim; the judgment is affirmed with respect to the trial court's determination that the defendants are providing a substantially equal educational opportunity under article first, §§ 1 and 20, of the Connecticut constitution.

In this opinion EVELEIGH, VERTEFEUILLE and ALVORD, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

** January 17, 2018, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

¹ For example, the trial court found that, in Bridgeport, school “[a]dministrators, clerks, guidance counselors and technicians are being shed. Kindergarten and special education paraprofessionals are being let go. Some schools have no extras like music and athletics left to cut. The school year is to be shortened. Class sizes are increasing in many places to twenty-nine children per room—rooms where teachers might have a class with one third requiring special education, many of them speaking limited English, and almost all of them working considerably below grade level. Many of these children get their only meals at school. They don’t have two parents at home. Sometimes, they have no homes at all. They bounce from place to place and from school to school as the system struggles to find some way to teach them.

“For almost all students, there will be no high school buses in Bridgeport. Children will get tokens for the public transit system and some youngsters will have to figure out how to switch multiple transit buses just to make it to school in the morning. . . . It’s the same in other poor towns. Too little money is chasing too many needs.”

² Article eighth, § 1, of the constitution of Connecticut provides: “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.” Hereinafter, we refer to this provision as article eighth, § 1.

³ The individual plaintiffs who are participating in this appeal are Sherry Major and her daughter Nichole Major, who reside in Willimantic, Brenda Miller-Black and her daughters, Alison Black and Carolyn Black, who reside in Norwich, Walter and Janet Rivera and their daughter, Melody Rivera, who reside in New Britain, Lisette Velasquez, her son Ashariel Velasquez and her daughter Lyonece Velasquez, who reside in New Britain, Mary Gallucci and her sons, Pascal Phillips-Gallucci and Ellis Phillips-Gallucci, who reside in Willimantic, and Andrew Sklover and his daughters, Ryan Sklover and Marley Sklover, who reside in Stamford.

⁴ The defendants, who were named in their official capacities, are Governor M. Jodi Rell or her successor; State Board of Education members Betty J. Sternberg, Allan B. Taylor, Beverly R. Bobroske, Donald J. Coolican, Lynne S. Farrell, Janet M. Finneran, Theresa Hopkins-Staten, Patricia B. Luke and Timothy J. McDonald, or their successors; State Treasurer Denise L. Nappier or her successor; and State Comptroller Nancy S. Wyman or her successor.

⁵ Article first, § 1, of the constitution of Connecticut provides: “All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.” Hereinafter, we refer to this provision as article first, § 1.

Article first, § 20, of the constitution of Connecticut, as amended by articles five and twenty-one of the amendments, provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.” Hereinafter, we refer to this provision as article first, § 20, of the Connecticut constitution, as amended by articles five and twenty-one of the amendments, as article first, § 20, and to article first, §§ 1 and 20, collectively, as the equal protection provisions.

⁶ The defendants filed an application for certification to appeal to this court from the judgment of the trial court pursuant to General Statutes § 52-265a, which the Chief Justice granted. The Chief Justice also granted the plaintiffs’ request under § 52-265a that this court review issues decided adversely to them.

⁷ The court in *Campaign I* indicated that, in New York, the state legislature “has made prescriptions . . . with reference to the minimum number of days of school attendance, required courses, textbooks, qualifications of teachers and of certain nonteaching personnel, pupil transportation, and other matters. If what is made available by this system (which is what is to be maintained and supported) may properly be said to constitute an education, the constitutional mandate is satisfied.” (Internal quotation marks omitted.) *Campaign I*, supra, 86 N.Y.2d 316. The plaintiffs in the present case have not relied on any similar statutory prescriptions in Connecticut.

We assume for purposes of this opinion, however, that evidence that the state is operating its schools for only a very few days per year or is failing to provide minimally adequate student transportation could be considered as part of the court's adequacy determination.

⁸ In this regard, it is important to distinguish educational outputs, i.e., the actual level of student achievement, from the qualitative component of article eighth, § 1, i.e., the level of achievement that a student *may* attain *if* the student takes advantage of the educational opportunity that the state is offering.

⁹ In his dissenting opinion, Justice Zarella, joined by Justice McLachlan, contended that the stricken claims presented a nonjusticiable political question, and, therefore, the court lacked subject matter jurisdiction. *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 399–400 (Zarella, J., dissenting). In her dissenting opinion, Justice Vertefeuille concluded that the stricken claims were justiciable, but that the trial court properly struck the claims because article eighth, § 1, was “intended to ensure the perpetuation of Connecticut’s statewide system of free public schools, and was not intended to guarantee a ‘suitable’ education as interpreted by the majority.” *Id.*, 384 (Vertefeuille, J., dissenting).

¹⁰ Hereinafter, we refer to the plaintiffs’ third amended complaint as the complaint.

¹¹ The trial court’s memorandum of decision did not contain an express ruling on the fourth count of the complaint, and the plaintiffs are not pursuing any claims on appeal to this court pursuant to 42 U.S.C. § 1983 (2012), which pertains to the deprivation of federal constitutional rights under color of state law.

¹² Hereinafter, all references to the trial court are to Judge Moukawsher, unless otherwise indicated.

¹³ The criteria articulated by the New York Court of Appeals in *Campaign I*, supra, 86 N.Y.2d 317, were that the state must provide (1) “minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn,” (2) “minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks,” (3) “minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies,” and (4) “sufficient personnel adequately trained to teach those subject areas.” See part II of this opinion. Hereinafter, we refer to these as the *Campaign I* criteria.

¹⁴ The trial court apparently merged the third and fourth *Campaign I* criteria. See footnote 13 of this opinion.

¹⁵ We recognize that, if the plaintiffs had established that a particular school district did not meet the *Campaign I* criteria, the trial court could have found a violation of article eighth, § 1, with respect to that school district, and the plaintiffs were not required to prove that the educational system, considered as a whole, was constitutionally inadequate in order to obtain relief. As we discuss more fully later in this opinion, however, the plaintiffs have pointed to no factual findings or evidence that, under the *Campaign I* criteria, would compel the conclusion that the state’s educational offerings in any particular school district are not constitutionally adequate. See part III of this opinion.

¹⁶ This court granted the defendants’ request to stay further proceedings pending this appeal.

¹⁷ After this appeal was filed, this court granted permission to the following amici curiae to file briefs: Advocates for Educational Choice; twelve individuals with severe disabilities who have filed in fictitious names; Education Law Center; Connecticut Commission on Human Rights and Opportunities; National Disability Rights Network, Association of University Centers on Disabilities, Autistic Self Advocacy Network, Disability Rights Education and Defense Fund, Judge David L. Bazelon Center for Mental Health Law, National Association of Councils on Developmental Disabilities, National Down Syndrome Congress, and the Connecticut Office of Protection and Advocacy for Persons with Disabilities; and The Arc of the United States and The Arc of Connecticut.

¹⁸ The other members of the Coalition are various education advocacy organizations, community groups, municipalities, local boards of education and teachers’ unions.

¹⁹ Voting members of the Coalition had the right to participate in the election or removal of members of the steering committee, proposed amendments to the Coalition’s certification of incorporation or bylaws that would deprive the members of their right to vote in an election or would result in

the removal of any member of the Coalition, and any proposed amendment to the Coalition's certificate of incorporation or bylaws pertaining to dues, assessments, fines or penalties to be levied or imposed upon members. In addition, each voting member had one vote on each matter submitted to a vote at a general membership meeting, except for the election or removal of members of the steering committee.

²⁰ Practice Book § 9-3 provides in relevant part: "All persons having an interest in the subject of the action, and in obtaining the judgment demanded, may be joined as plaintiffs, except as otherwise expressly provided"

The defendants rely on the statement of the United States Court of Appeals for the Second Circuit in *Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, supra, 675 F.3d 160, that "if jurisdiction is lacking at the commencement of [an action], it cannot be aided by the intervention of a [plaintiff] with a sufficient claim." (Internal quotation marks omitted.) As we have explained, however, jurisdiction over the original *complaint* was not lacking in the present case; rather, jurisdiction was lacking over the *Coalition's claims*. Thus, after the Coalition's claims were dismissed, the Coalition would not have been attempting to intervene in a nonexistent action if it had filed a motion to join the action. Cf. *id.* ("since intervention contemplates an existing [action] in a court of competent jurisdiction and because intervention is ancillary to the main cause of action, intervention will not be permitted to breathe life into a nonexistent [action]" [internal quotation marks omitted]).

²¹ In addition, some courts have held that the existence of potential conflicts of interest implicates the second prong of the *Worrell* test; see *Retired Chicago Police Assn. v. Chicago*, supra, 7 F.3d 607, citing *Humane Society of the United States v. Hodel*, 840 F.2d 45, 56 (D.C. Cir. 1988); while some have held that it implicates the third prong. See *Retired Chicago Police Assn. v. Chicago*, supra, 603, citing *Associated General Contractors of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1408 (9th Cir. 1991), cert. denied, 503 U.S. 985, 112 S. Ct. 1670, 118 L. Ed. 2d 390 (1992). In our view, the defendants' claim fits more comfortably under the second prong of the *Worrell* test. The third prong, requiring proof that "neither the claim asserted nor the relief requested requires the participation of individual members in the [action]"; (internal quotation marks omitted) *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, supra, 199 Conn. 616; does not address the situation in which a conflict of interest would require an individual member of the association to challenge the position taken by the association in court in order to protect his or her interests, but the situation in which "the individual participation of each injured party [is] indispensable to proper resolution of the cause" (Internal quotation marks omitted.) *Hunt v. Washington State Apple Advertising Commission*, supra, 432 U.S. 342-43; see also *Connecticut State Medical Society v. Board of Examiners in Podiatry*, 203 Conn. 295, 305, 524 A.2d 636 (1987) (when association sought declaratory relief but does not seek money damages, association meets third prong of *Worrell* test because court is not required to consider particular circumstances of each individual member); *Paucatuck Eastern Pequot Indians v. Indian Affairs Council*, 18 Conn. App. 4, 10, 555 A.2d 1003 (1989) (same).

²² As we have explained herein, the United States Supreme Court appears to have suggested that even if a member of an association would likely challenge the position taken by the association in court that would not necessarily defeat associational standing if other members agree with the association's position. See *Brock*, supra, 477 U.S. 290 (members of association harmed by judgment won by association might not be precluded from bringing subsequent claim); but see *Maryland Highways Contractors Assn., Inc. v. Maryland*, supra, 933 F.2d 1252 (association cannot establish associational standing when "conflicts of interest among members of the association require that the members must join the [action] individually in order to protect their own interests"). We need not decide in the present case whether associational standing can be established when members of an association would be required to intervene in the action or bring a subsequent action to protect their interests because, even if that were the case, the defendants have provided no evidence that any member of the Coalition intends to challenge the positions taken by the Coalition in court.

²³ The Coalition's 2005 bylaws provide that the purposes of the Coalition are, inter alia, to "(a) engage in activities that promote the adequate funding of education in the [s]tate of Connecticut [and] (b) engage in activities that relieve the burdens of Connecticut municipalities in funding education"

²⁴ The plaintiffs contend that the trial court improperly determined that, under the “narrowest grounds” of agreement approach set forth in *State v. Ross*, supra, 272 Conn. 604 n.13, Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, provides the controlling constitutional standard because there was no agreement among the three plurality justices and Justice Palmer as to either the plurality’s broad constitutional standard or Justice Palmer’s narrower standard based on the *Campaign I* criteria. Because there was no majority support for either standard, the plaintiffs contend, neither is controlling. The plaintiffs fail to recognize, however, that the three justices in the plurality and Justice Palmer all agreed that article eighth, § 1, requires the state to provide *at least* the educational facilities, instrumentalities, curricula and personnel described in *Campaign I*. In addition, the three dissenting justices and Justice Palmer all agreed that the plurality’s broader standard was *too* broad and would improperly entangle the courts in the legislative function of forming educational policy. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 398 (Vertefeuille, J., dissenting), 399–400 (Zarella, J., dissenting). Thus, Justice Palmer’s concurring opinion reflects the controlling majority agreement on both of those points.

²⁵ Justice Palmer did not expressly discuss in his concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 320, the *purpose* for which the state’s educational offerings must be minimally adequate. It is implicit in the *Campaign I* criteria, however, that the educational opportunities offered by the state must be sufficient to enable a student who takes advantage of them to attain a level of knowledge of reading, writing, mathematics, science and social studies that will enable the student to perform the basic functions of an employable adult in our society, such as reading newspapers, tax forms and other basic texts, writing a basic letter, preparing a household budget, buying groceries, operating cars and household appliances, serving on a jury and voting. See *Campaign I*, supra, 86 N.Y.2d 316 (sound basic education “should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury”); see also *Abbeville County School District v. State*, supra, 335 S.C. 68 (under state constitution, minimally adequate education will provide students with opportunity to “acquire: [1] the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; [2] a fundamental knowledge of economic, social, and political systems, and of history and governmental process; and [3] academic and vocational skills”). We emphasize, however, that it is not the actual ability to carry out these functions that is constitutionally guaranteed, but only the opportunity to achieve that ability.

²⁶ See various portions of Justice Palmer’s concurring opinion in *Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 328–29, 332, 336, 337, 338, 341–42, 344 n.18.

²⁷ We address the merits of this equal protection claim in part IV of this opinion.

²⁸ Specifically, the trial court considered measures of teacher quality, including the percentage of teachers who are certified, passage rates on certification examinations, years of experience, the ranking of the colleges that teachers attended, school spending on professional development and the adequacy of internal rating systems for teacher quality; see *Campaign II*, supra, 187 Misc. 2d 24–33; the school system’s competitiveness in the market for quality teachers; id., 34; the adequacy of delivery systems for school curricula, including “noncore” subjects, such as the arts and physical education, that are required to “provide a means of expression and achievement which foster self-confidence and positive attitudes about school”; id., 37; the poor condition of school facilities and classrooms, including “overcrowding, poor wiring, pock-marked plaster and peeling paint [and] inadequate (or nonexistent) climate control”; id., 39; classroom overcrowding and class size; id., 49; the quantity and quality of textbooks; id., 56–57; the number of library books per student; id., 57; the adequacy of classroom supplies and equipment, such as beakers, Bunsen burners, beam balances, microscopes, chalk, paper, art supplies, desks and chairs; id., 57–58; the adequacy of instructional technology, such as computers, printers, modems and software; id., 58; graduation rates; id., 60; scores on standardized tests; id., 64; and whether there was a causal link between the state’s public school funding system and the educational opportunity that the plaintiffs were receiving. Id., 68.

²⁹ “Title VI [of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (2012)]

provides [in relevant part]: ‘No person in the United States Shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.’” *Campaign I*, supra, 86 N.Y.2d 321.

³⁰ See *Campaign II*, supra, 187 Misc. 2d 27 (“in New York [s]tate, localities other than New York City experience nowhere near the shortages [of certified teachers] seen in the [c]ity”; id., 28 (first time failure rate for teachers taking basic liberal arts and science test “was 31.1 [percent in New York City], compared with 4.7 [percent] for teachers elsewhere in the [s]tate”); id., 29 (evidence showed that “the average New York City public school teacher attended a less competitive college than the average public school teacher in the rest of the [s]tate”); id., 34 (“New York City’s public schools’ lack of competitiveness in the relevant labor market can be seen by comparing the qualifications of New York City’s public school teachers with those who work in public schools in the counties near New York City”); id., 53 (“New York City’s class sizes have been consistently higher than the [s]tate average”); id., 58 (“[i]n 1997, districts in the [s]tate outside of New York City had twice as many computers per 100 students as did the [c]ity”).

³¹ Of course, the state did not claim in *Campaign II* that it was “excused” from providing a sound, basic education to students with “socioeconomic deficits.” *Campaign II*, supra, 187 Misc. 2d 63. It claimed only that its constitutional obligation was satisfied if it provided those students with an *opportunity* for a sound basic education. Id.

³² Although disparities in achievement that are the result of disadvantaging conditions are generally uninformative on the question of whether the state is providing a minimally adequate educational opportunity, there are situations in which disparities in outcome might be informative. For example, if two school districts with similar demographic characteristics have wide disparities in educational outputs, that fact might inform a court’s constitutional analysis because it reasonably might be inferred that the gap is the result of disparities in educational inputs, which are the proper subject of the court’s constitutional analysis.

³³ In his concurring and dissenting opinion in this case, Justice Palmer contends that it is clear, from his conclusion in *Connecticut Coalition for Justice in Education Funding, Inc.*, that the plaintiffs’ claims were legally cognizable, that he contemplated that *Campaign I* “requires not only that the state provide the essential components of a minimally adequate education, including facilities, instrumentalities, curricula, and personnel, but also that some reasonable effort be made to ensure that those modalities are designed to address the basic educational needs of at risk learners in underprivileged communities.” As we explain more fully later in this opinion, it is clear to us that this is an expansion of the *Campaign I* criteria. We note, however, that Justice Palmer makes no claim that the trial court should have considered all of the factors that the court considered in *Campaign II*.

We note that the opinion by Justice Palmer in this case concurs with the majority in part and dissents in part. For purposes of simplicity, we refer to it as the dissenting opinion.

³⁴ Thus, the dissent’s contention that we have failed to recognize that “the rationality test is part and parcel of *Campaign I*” is incorrect. To the contrary, that is the very basis for our conclusion that the trial court properly considered the reasonableness of the state’s educational offerings.

³⁵ The dissent contends that this reasoning is “circular,” and that we have improperly presumed that the trial court properly applied the *Campaign I* criteria. It is well established, however, that, “[a]bsent a record that demonstrates that the trial court’s reasoning was in error, we presume that the trial court correctly analyzed the law and the facts in rendering its judgment.” *DiBella v. Widlitz*, 207 Conn. 194, 203–204, 541 A.2d 91 (1988). Contrary to the dissent’s contention, it has not “demonstrated” that the trial court misapplied *Campaign I*. Rather, as we discuss more fully later in this opinion, because nothing in the record demonstrates that the trial court misunderstood the *Campaign I* standard or failed to consider the evidence presented by the plaintiffs, the dissent has improperly presumed that the trial court did not properly apply that standard.

³⁶ We conclude in part III of this opinion that the trial court’s factual findings do not compel the conclusion that the state’s educational offerings are constitutionally inadequate.

³⁷ We do not disagree that the trial court found that many poor and needy schools are “utterly failing.” Taken in context, however, it is clear that the trial court was not suggesting that the state is failing to meet its constitutional

obligation. Specifically, immediately before making this observation, the court noted that the state's new academic standards governing what high school students must learn in order to graduate "can't do much good where they're needed most because they don't stop students from graduating when they fall miles below the standard." Thus, this finding related to educational *outcomes*, which are not the proper subject of a *Campaign I* analysis. The dissent also contends that the trial court improperly focused on the state's expenditures rather than the adequacy of its educational offerings. As we have explained, however, the court expressly found that the state is making these expenditures in order to provide specific resources for needy students.

³⁸ We note that the dissent relies on a quote from the plurality opinion in *Connecticut Coalition for Justice in Education Funding, Inc.*, not from Justice Palmer's concurring opinion, in which he expressly *rejected* the plurality's suggestion that the trial court could consider educational outcomes as part of its constitutional analysis. See *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 345 n.19 (Palmer, J., concurring in the judgment).

³⁹ The trial court did not specify the periods for which the East Hartford and Danbury budgets for, respectively, library books and textbooks were zero.

The plaintiffs also contend that the state is not providing minimally adequate access to modern technology in some schools. Even if we were to assume, however, that the adequacy of computer access must be considered under the *Campaign I* criteria; cf. *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 342 n.16 (Palmer, J., concurring in the judgment) ("I express no view . . . as to whether [technologies such as computers] . . . may be necessary to a minimally adequate education"); the trial court expressly found that, although "[t]here are certainly some hardships with computers and significant disparities in computer access," the state is providing the constitutionally required minimum. The plaintiffs have not explained why this conclusion was erroneous as a matter of law, or what specific level of computer access would be required to be minimally adequate.

⁴⁰ The dissenting opinion contends that there "is no indication that the trial court even considered whether school security, transportation, and other essentials are minimally adequate before concluding that the plaintiffs had failed to establish a violation under *Campaign I*." The plaintiffs make no claim on appeal, however, and point to no evidence that would support a finding that school security or transportation is so lacking in any particular school district that the district does not satisfy the constitutional standard. The only evidence in the record on this issue is the trial court's finding that some high school students in Bridgeport are required to take municipal buses to school at the government's expense. We conclude that, as a matter of law, this does not render the Bridgeport schools constitutionally inadequate.

⁴¹ We recognize, of course, that the lack of such support services makes it extremely difficult for many students in the state's neediest school districts to take advantage of the state's educational offerings. Schools, however, are not the exclusive source of these services. Rather, the Department of Social Services, the Department of Children and Families, the Department of Mental Health and Addiction Services and other state agencies all play a role in providing such services to those in need. It simply is not the role of the courts to determine the extent to which such services must be provided by the schools rather than these other state agencies, as this would be a clear violation of the separation of powers.

⁴² We apply the same standard of review to this claim that we applied to the plaintiffs' claim pursuant to article eighth, § 1. See part III of this opinion.

⁴³ The thirty Alliance District program school districts are Ansonia, Bloomfield, Bridgeport, Bristol, Danbury, Derby, East Hartford, East Haven, East Windsor, Hamden, Hartford, Killingly, Manchester, Meriden, Middletown, Naugatuck, New Britain, New Haven, New London, Norwalk, Norwich, Putnam, Stamford, Vernon, Waterbury, West Haven, Winchester, Windham, Windsor and Windsor Locks.

⁴⁴ Although the trial court did not apply the three part *Horton II* standard when it concluded that the plaintiffs had failed to establish an equal protection violation under the state constitution, because the issue involves a question of law, we may apply that standard in the first instance, as the court did in *Horton II*. See *Horton II*, supra, 195 Conn. 38, 41 (adopting three part standard for first time and concluding that plaintiffs had not satisfied it); see also *Lapointe v. Commissioner of Correction*, 316 Conn. 225, 310, 112 A.3d 1 (2015) ("[a]mong the questions of law belonging to the jurisdiction of this court . . . are . . . questions of legal conclusion when

law and fact are so intermingled that the main fact is not a pure question of fact but a question of the legal conclusion to be drawn from subordinate facts” [internal quotation marks omitted]).

⁴⁵ The specific claim that the plaintiffs raised in the *Horton* case was that “the present system of financing public education in Connecticut, principally embodied in [General Statutes §§] 10-240 and 10-241 . . . insofar as the system purports to delegate to the town of Canton the duty of raising taxes to operate free public elementary and secondary schools and insofar as it purports to delegate to Canton the duty of operating and maintaining free public elementary and secondary schools violates the constitution of Connecticut, article first, §§ 1 and 20, and article eighth, § 1” *Horton I*, supra, 172 Conn. 621. Because the state contributed only 20 to 25 percent of the total cost of education statewide, and because the amount of state aid provided to the towns was not based on their respective ability to finance education; id., 628–29; all towns were heavily dependent on local property taxes to fund education. Id., 630. Thus, the focus of the judicial inquiry in that case was the comparative ability of towns with high property tax bases and towns with low property tax bases to fund education. Id., 629–32. It was in this context that the court in *Horton II* relied on continuing significant disparities in educational spending among the various towns, including a high-to-low spending ratio ranging from 2.14 to 2.45 over the relevant time period, to support the parties’ concession that the plaintiffs had established the first prong of the constitutional standard, that there were “continued significant disparities in the funds that local communities spend on basic public education.” *Horton II*, supra, 195 Conn. 39.

We recognize that the statistical evidence that the court cited in *Horton II* did not expressly correlate these spending disparities among the towns to disparities in the wealth of the towns as reflected in their property tax bases. See id., 39 n.15. Because the disparities between education spending by wealthy towns as compared to poorer towns was the sole issue in *Horton I*, however, it is reasonable to conclude that that correlation continued to exist. Otherwise, the comparisons that the court cited in *Horton II* would have been meaningless. If there was no such correlation, that fact would only highlight the dangers that lurk when courts rely on complex statistical analyses without fully understanding their implications. It would not justify relying on an equally meaningless comparison in the present case.

⁴⁶ To the extent that the plaintiffs contend that the disparities in spending between schools with large numbers of poor and needy students and other schools is more than de minimis because the state’s neediest students require significantly more funds than other students to achieve a substantially equal level of educational *achievement*, we are not persuaded. In support of this claim, the plaintiffs rely on the 2011 report of their expert witnesses, Bruce Baker and Robert Bifulco. Baker and Bifulco concluded that “the highest need districts require 50 [percent] to 100 [percent] more funding than the lowest need districts to provide equal educational opportunities.” Baker and Bifulco incorrectly assumed, however, that the plurality opinion in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, supra, 295 Conn. 240, provides the governing constitutional standard. Specifically, they assumed that the Connecticut constitution “guarantees Connecticut’s public school students educational standards and resources suitable to [prepare them to] participate in democratic institutions, and . . . to attain productive employment and otherwise to contribute to the state’s economy, or to progress on to higher education.” Id., 244–45 (plurality opinion). As we have explained, however, Justice Palmer’s concurring opinion in *Connecticut Coalition for Justice in Education Funding, Inc.* is controlling, not the plurality opinion. See footnote 24 of this opinion. As we have also explained, Justice Palmer expressly rejected this portion of the plurality’s constitutional standard; see id., 345 n.19 (*Palmer J.*, concurring in the judgment); in favor of a standard that focused on educational *inputs*, specifically, the *Campaign I* criteria. See id., 342 (*Palmer, J.*, concurring in the judgment); see also footnote 24 of this opinion. We conclude, therefore, that the fact that the state is not providing funds to schools with large numbers of poor and needy students in an amount that would allow those students to achieve the same educational level as other students does not constitute prima facie evidence of unconstitutional disparities in funding.

⁴⁷ We note, for example, that the evidence shows that, in 2013, the town that was ranked last out of 169 towns in per student expenditures, namely, Ellington, was ranked 114th in wealth as measured by “equalized net grand list per capita.” Similarly, a number of towns that ranked very low in wealth ranked relatively high in student expenditures. For example, Hartford,

Bridgeport, and New Haven, which ranked, respectively, 165th, 164th and 163rd out of 169 towns in wealth, ranked 19th, 114th and 31st, respectively, in per student spending. Although we draw no definitive conclusions from this evidence, it certainly does not seem to *support* the inference that per student expenditures are directly correlated to the number of poor and needy students in a town.

⁴⁸ The defendants' expert witness, Michael Wolkoff, explained in his expert report that he limited his analysis to school districts with enrollments greater than 1000 because "[s]maller school districts have the potential to influence the results as they are most likely to have their per pupil expenditure totals elevated due to diseconomies of scale." He also indicated, however, that his "analyses for districts with enrollments greater than 1000 are very similar to those that [he] found using all districts"

⁴⁹ Other evidence shows a similar discrepancy between per pupil spending in the neediest and the least needy decile of school districts as measured by the number of students receiving a free lunch.

⁵⁰ Other evidence shows a similar discrepancy in the aid provided to the school districts with the largest percentage of needy students and school districts with the smallest percentage of such students, as measured by the percentage of students receiving a free lunch.

The trial court noted that in 2016, in the face of "a bone crushing fiscal crisis," the state cut education funds to fourteen of the neediest school districts by approximately \$5.3 million at the same time that it increased funds to twenty-two comparatively wealthy school districts by approximately \$5.2 million. Such anecdotal evidence, however, does not compel the conclusion that, contrary to the trial court's finding, there are systematic and ongoing disparities in the education funds that the state provides to needy districts as compared to wealthier districts, especially in light of the trial court's finding that, since 2012, the state had funneled "over \$400 million in new money" into the state's thirty lowest performing schools. Indeed, we take judicial notice that, in 2017, the legislature adopted a budget that cut primary state grants to public schools by \$30 million overall, but shielded the thirty Alliance Districts from any cuts. See J. Thomas, "Education Aid: Here's What is in the Bipartisan [Connecticut] Budget Plan," *The Connecticut Mirror*, October 25, 2017, available at <https://ctmirror.org/2017/10/25/education-aid-heres-what-is-in-the-bipartisan-ct-budget-plan>, last visited January 17, 2018.
