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SULLIVAN, C. J., with whom ZARELLA, J., joins, dissenting. I agree with the majority that the trial court's remand to the plaintiff, the commission on human rights and opportunities (commission), was a final judgment for purposes of our appellate jurisdiction. I disagree, however, with the majority's analysis of that issue. I also disagree that the commission has jurisdiction over claims arising under General Statutes § 10-15c[1] alleging discrimination in a public school setting. In light of my conclusion that the commission has no jurisdiction over the case, I would not reach the question of whether this appeal is moot as to Chillon Ballard. Nevertheless, for reasons stated more fully later in this dissenting opinion, I believe that it is necessary for me to address the majority's flawed analysis of that issue. Because I disagree with the majority's conclusion that the commission has jurisdiction over claims arising under § 10-15c, I respectfully dissent.

I

I first address the majority's analysis of the final judgment issue. I am not entirely convinced by the majority's interpretation of *Lisee* v. *Commission on Human Rights & Opportunities,* 258 Conn. 529, 782 A.2d 670 (2001), and *Morel* v. *Commissioner of Public Health*, 262 Conn. 222, 811 A.2d 1256 (2002), as holding that remands after rulings on the merits of an administrative appeal pursuant to General Statutes § 4-183 (j)[2] are subject on a case-by-case basis to the final judgment test set forth in *Schieffelin & Co.* v. *Dept. of Liquor Control*, 202 Conn. 405, 521 A.2d 566 (1987). I recognize that, in *Lisee*, this court stated, in what the majority now characterizes as dicta, that "the legislature intended to codify [*Schieffelin & Co.*] as it applies to remands after rulings on the merits of an administrative appeal." *Lisee* v. *Commission on Human Rights & Opportunities*, supra, 541–42. I believe, however, that, in the context of the entire opinion, that language in *Lisee* reasonably can be read to mean that § 4-183 (j) implemented our general holding in *Schieffelin & Co.* that some administrative rulings involving remand orders are final judgments, namely, those arising under § 4-183 (j), and some are not, namely those arising under § 4-183 (h).[3] See *Schieffelin & Co.* v. *Dept. of Liquor Control*, supra, 410. I am not convinced that we intended to suggest that remand orders under § 4-183 (j) are subject to the *Schieffelin & Co.* final judgment test despite the plain language of that subsection that "[f]or purposes of this section, a remand is a final judgment." General Statutes § 4-183 (j). I also believe that there are inconsistencies between *Morel* and *Schieffelin & Co.* that would suggest that, in light of the broad language of § 4-183 (j), this

court in *Morel* applied the *Schieffelin & Co.* final judgment test far more leniently than had the court in *Schieffelin & Co.*[4] Nevertheless, because I agree with the majority that, regardless of this court's interpretation of § 4-183 (j) in *Lisee* and *Morel*, all remand orders after the trial court has found prejudice and sustained the appeal are final judgments, I see no need to engage in a lengthy analysis of those cases.

I object, however, to the majority's use of the legislative history of § 4-183 (j). Although, as we recognized in *Lisee*, the last sentence of § 4-183 (j) is ambiguous as to whether it refers to any and all rulings under other subsections of § 4-183 that can fairly be characterized as remands, it unambiguously provides that all remands arising under § 4-183 (j) are final judgments.[5] Accordingly, I believe that we are barred by No. 03-154, § 1, of the 2003 Public Acts[6] from consulting the legislative history of the statute.[7]

II

I next turn to the majority's analysis of the question of mootness as to Ballard. The defendants argue that, if this court determines that the commission has jurisdiction over the claim, the commission's appeal is moot as to Ballard because General Statutes § 46a-86 (c)[8] does not provide for the recovery of damages for emotional distress. Because I would conclude that the commission does not have jurisdiction over claims arising under § 10-15c, I would not reach this issue. I address the majority's analysis of the mootness claim, however, because I believe that that analysis is flawed and leads to an erroneous conclusion that will have adverse consequences far beyond this case.

The majority begins its analysis of this claim not with the language of § 46a-86 (c), but with the language of General Statutes § 46a-58 (a).[9] It notes that § 46a-58 (a) has "broad and inclusive language, and strongly suggests a reference to the broad and inclusive panoply of rights, privileges and immunities, derived from a broad and inclusive set of sources . . . ."[10] The majority infers from this fact that the phrase "the damage suffered by the complainant," as used in § 46a-86 (c), "need not necessarily be confined to easily quantifiable monetary losses."[11] The language that is now codified at § 46a-86 (c), however, was first enacted in 1967. See Public Acts 1967, No. 756, § 1.[12] Section 46a-58, then codified at General Statutes § 53-34, was not incorporated into the statute until 1975. See Public Acts 1975, No. 75-462. Accordingly, I do not believe that the language of § 46a-58 sheds any light on the scope of the remedy provided by § 46a-86 (c).[13]

Moreover, even if it is assumed that the discrimination statutes originally included within the scope of what is now § 46a-86 (c) created a broad right, the majority cites no authority in support of its assumption

that the legislature's creation of a broad right that may be exercised in a variety of contexts implies a legislative intent to provide for a wide variety of damages. It seems to me at least plausible, as a general matter, that the legislature might seek to balance the creation of a broad right by providing only a limited range of damages.[14]

The majority then concludes that the fact that § 46a-86 (c) lists only certain out-of-pocket expenses can be explained by the fact that several of the specific discrimination statutes referenced therein ''might lend themselves, more readily than the general discrimination prohibited by § 46a-58 (a), to assessment of damages that would be calculable in terms of monetary loss.'' I do not understand, however, how the fact that the specific types of damages listed in § 46a-86 (c) may be incurred under the specific statutes listed therein gives rise to an inference that the legislature intended to provide for a broader range of damages. A violation of any of the specific discrimination statutes referred to in § 46a-86 (c) could give rise to a broad range of damages, including emotional distress. If the legislature had desired to provide for the recovery of such damages, it easily could have done so expressly.

The majority then turns to the legislative genealogy and history of § 46a-86 (c). It points to general statements made by Representative William J. Lavery that the statute was intended to provide a right to seek civil damages and to protect the human dignity of citizens of the state as ''suggestive of a legislative intent that the commission's authority to determine the damages arising from the commissioner's finding of a discriminatory practice be broadly, rather than narrowly, construed.'' I do not agree that these general comments support the specific conclusion reached by the majority that the compensatory damages provided by § 46a-86 (c) include damages for emotional distress. I also do not agree, for reasons that I have stated previously in this dissenting opinion, that the genealogy of the statute, which shows that the legislature has periodically increased the number of discrimination statutes for which the remedy provided by § 46a-86 (c) is available, sheds any light on the scope of the remedy itself.

The majority next determines that ''[i]t would be consistent with [the general remedial purpose of the antidiscrimination statutes] to read the language of § 46a-86 (c) to mean that the commission has the authority to award personal compensatory damages.'' As I have indicated, however, the fact that the legislature has created a broad statutory right does not necessarily imply that it intended to provide for a broad range of damages. This court previously has recognized that in construing a statute, our task is not to determine whether the legislature rationally *could have* enacted a statutory provision, but to determine whether the legislature actually intended to do so. See ***Connecticut Light &***

Power Co. v. *Dept. of Public Utility Control*, 266 Conn. 108, 119, 830 A.2d 1121 (2003). I see no independent evidence that the legislature had the intention ascribed to it by the majority.

Finally, the majority relies on this court's decision in *Bridgeport Hospital* v. *Commission on Human Rights & Opportunities*, 232 Conn. 91, 653 A.2d 782 (1995), in support of its conclusion that § 46a-86 (c) contemplates an award of damages for emotional distress. In that case, we determined that damages for emotional distress and attorney's fees are not available under § 46a-86 (a), which provides the remedy for discriminatory employment practices that violate General Statutes § 46a-60. Id., 93, 101. We reasoned that if compensatory damages were available under § 46a-86 (a), then § 46a-86 (c) would be superfluous. Id., 101. We also determined that the legislative history of § 46a-86 (a) indicated that the term ''affirmative action'' as used therein contemplated a narrower remedy than the remedy of compensatory damages provided in § 46a-86 (c). Id., 102–103. The majority concludes that this shows that damages for emotional distress are compensable under § 46a-86 (c). I disagree. I would conclude that *Bridgeport Hospital* merely held that the term ''affirmative action'' as used in § 46a-86 (a) was not intended to include the compensatory damages contemplated by § 46a-86 (c) and that damages for emotional distress, *if compensable at all*, would be compensable in connection with the discriminatory conduct listed in that subsection.[15] If § 46a-86 (c) had expressly excluded damages for emotional distress, I do not believe that we would have concluded in *Bridgeport Hospital* that damages for emotional distress were contemplated in the term ''affirmative action'' as used in § 46a-86 (a). Accordingly, any suggestion in that case that § 46a-86 (c) contemplated damages for emotional distress was dicta, at best.

On the basis of the foregoing analysis, the majority concludes that § 46a-86 (c) authorizes the commission to award Ballard damages for emotional distress. The majority then turns, as an afterthought,[16] to the defendants' arguments that are based on the plain language of the statute and rejects those arguments. I would agree with the defendants that the plain language of the statute clearly precludes recovery of damages for emotional distress.

Section 46a-86 (c) provides that ''the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and *other costs actually incurred by him* as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs.'' (Emphasis added.) In my view, it could not be clearer, under the

doctrine of ejusdem generis,[17] that the legislature intended to limit recoverable damages to "costs actually incurred"; General Statutes § 46a-86 (c); by a complainant.[18] The "but not . . . limited to" language of § 46a-86 (c) merely indicates that the statute's list of out-of-pocket costs is not exclusive;[19] it does not indicate that other *kinds* of damages may be recovered.

The majority rejects this obvious conclusion, however, because "it would unduly narrow the types of remedies available for a violation of § 46a-58, which . . . contemplates a wide range of misconduct." This argument is valid, however, only if it is assumed that a statute that contemplates a wide range of misconduct *necessarily* contemplates a broad range of remedies for that misconduct. As I have noted, it is the *majority*, not the *legislature*, that has reached that conclusion.[20] In other words, the majority assumes the answer to the question before us and then rejects the contrary answer as inconsistent with its assumption, *even though the plain language of the statute compels the contrary answer*. This is legislating, not interpreting legislation.

I would conclude that, even if the majority is correct that this case falls within the ambit of § 46a-86 (c), the plain language of the statute clearly limits recoverable damages to "costs actually incurred." I therefore see no need to address the other arguments made by the defendants in support of that interpretation.[21] I am compelled to state, however, that, in analyzing and ultimately rejecting those arguments, the majority in several instances applies the same question begging technique that I have already described.

III

I next address the defendants' claim that the trial court improperly concluded that § 46a-58 gives the commission jurisdiction over claims arising under § 10-15c. I agree with the defendants that the commission does not have jurisdiction over such claims.

In *Commission on Human Rights & Opportunities* v. *Truelove & Maclean, Inc.*, 238 Conn. 337, 344, 680 A.2d 1261 (1996), the commission argued that "§ 46a-58 (a) encompasses claims of discriminatory employment practices [in violation of § 46a-60] and that violations of § 46a-58 (a) entitle a claimant to damages for emotional distress pursuant to § 46a-86 (c)." We disagreed. Id. Applying the "well-settled principle of [statutory] construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling"; (internal quotation marks omitted) id., 346; we concluded that "the specific, narrowly tailored cause of action embodied in § 46a-60 supersedes the general cause of action embodied in § 46a-58 (a)." Id. We also concluded that, despite the broad language of § 46a-58 (a), the existence of distinct remedies for violations of

§§ 46a-60 and 46a-58 reflected "a clear intention by the legislature to restrict the scope of both subsections to only certain types of discrimination."[22] (Internal quotation marks omitted.) Id., 347. Thus, in my view, *Truelove & Maclean, Inc.*, clearly stands for the proposition that, if a specific discrimination statute with specific remedies exists, and if that statute is not among those listed in § 46a-86 (c), the remedies provided by § 46a-86 (c) are not available by virtue of that statute's reference to § 46a-58. Accordingly, although I agree with the majority that the language of § 46a-58 is broad and inclusive, I would conclude that it does not apply to claims arising under more specific *discrimination* laws.[23] Indeed, that is the only plausible reading of *Truelove & Maclean, Inc.*

The majority concludes that any reliance on *Truelove & Maclean, Inc.*, is misplaced because, in that case, the jurisdiction of the commission over claims arising under § 46a-60 was not in issue. The only question was what remedies were available to the complainant. This court's holding that the remedies of § 46a-86 (c) are not available if a distinct statute provides a remedy for the specific type of discrimination claimed necessarily implies, however, that § 46a-58 does not apply if such a statute exists. In *Truelove & Maclean, Inc.*, the fact that § 46a-58 did not apply did not have jurisdictional implications because the commission still had jurisdiction over the complainant's claims under § 46a-60. In this case, however, § 46a-58 is the only claimed source of jurisdiction. Chapter 814c of the General Statutes, entitled "Human Rights and Opportunities," contains no specific provision prohibiting discrimination against a student in a public school setting.[24] Because § 46a-58 does not give the commission jurisdiction over claims arising under § 10-15c, there is *no* basis for its jurisdiction over such claims.[25]

This conclusion is supported by the commission's own decisions. In *Atlas* v. *Hamden High School*, Commission on Human Rights & Opportunities, Opinion No. 7930381 (August 20, 1980), the complainant raised a claim before the commission that the public school that she attended had discriminated against her on the basis of her age in violation of a statute prohibiting discrimination in places of public accommodation. The respondents argued that claims of discrimination in the public schools must be brought under § 10-15c. The commission hearing examiner agreed. He also stated that "[n]othing suggests that the legislature intended to vest any enforcement authority for § 10-15c in the commission on human rights and opportunities or to incorporate or to utilize the mechanism of chapter 563 [now chapter 814c] in such enforcement. The commission having no jurisdiction in or responsibilities over discrimination in access to public school activities and programs, the complaint must therefore be and hereby is, dismissed."

In *Alston* v. *Board of Education*, Commission on Human Rights & Opportunities, Opinion No. 9830205 (May 3, 2000), the complainant again raised before the commission a claim under § 10-15c. The presiding human rights referee concluded that granting the commission "unlimited authority to pursue any statute enumerated in the . . . General Statutes under the auspices of § 46a-58 (a) . . . would eviscerate the definition of a 'discriminatory practice' in [General Statutes] § 46a-51 (8)."[26] The referee, citing the commission's ruling on the defendants' motion to dismiss in the present case, also noted that the legislature had consolidated a number of discrimination laws under title 46a of the General Statutes in 1980, but had not included § 10-15c in the consolidation.[27] She concluded that this evinced a legislative intent that claims pertaining to discrimination in the public schools would be handled by the department of education.[28] Accordingly, the referee determined that the commission did not have jurisdiction over claims arising under § 10-15c.

It is well settled that we may make an "inference of legislative concurrence with the agency's interpretation . . . from legislative silence concerning that interpretation . . . ." (Internal quotation marks omitted.) *Gil* v. *Courthouse One*, 239 Conn. 676, 705, 687 A.2d 146 (1997) (*Berdon, J.*, concurring and dissenting). Where an agency's long-standing interpretation of a statute is reasonable, it should control. *Discuillo* v. *Stone & Webster*, 242 Conn. 570, 594, 698 A.2d 873 (1997). Accordingly, I believe that the commission's decisions provide powerful support for the defendants' position. The majority, however, concludes that the principle of legislative acquiescence does not apply. It reasons in part that, although the legislature has been silent since the commission's *Atlas* decision in 1980, it also has been silent since the trial court's decision in the present case more than two years ago and, therefore, its silence is ambiguous. The pendency of this appeal is one plausible explanation for the legislature's silence following the trial court's decision in the present case. There is no such explanation for the more than twenty years of silence that followed the *Atlas* decision.

Moreover, I am persuaded by the commission's reasoning in these cases. As the commission suggested in *Alston*, if there was any question as to whether the legislature had intended to make the remedy provided by § 46a-86 (c) available for all forms of discrimination in any and all contexts, including racial discrimination in the public schools, when it enacted Public Acts 1975, No. 75-462, and added the reference to § 53-34, now codified as § 46a-58, to the last sentence of General Statutes § 53-36, now codified as § 46a-86 (c); see footnote 27 of the majority opinion; any such question was answered in the negative in 1980. In that year, the legislature consolidated several discrimination statutes into

title 46a. See Public Acts 1980, No. 80-422.[29] The remedy provided by § 46a-86 (c) continued, however, to be available only for violations of § 46a-58 (formerly § 53-34), General Statutes § 46a-59 (formerly General Statutes § 53-35a), and General Statutes § 46a-64 (formerly General Statutes § 53-35). As we recognized in *Truelove & Maclean, Inc.*, the reading given by the majority to § 46a-58, that the statute includes discrimination prohibited by distinct discrimination statutes, simply cannot be reconciled with the legislature's choice to continue to restrict the application of § 46a-86 (c) to certain specific statutorily prohibited discriminatory practices. In other words, if the legislature had understood § 46a-58 to include discrimination prohibited by other state statutes in 1975, then there would have been no need for it expressly to include §§ 46a-59 and 46a-64 in § 46a-86 (c) in 1980.[30] Conversely, if *Truelove & Maclean, Inc.*, was correctly decided and the legislature's choice to list certain specific statutes in § 46a-86 (c) implied a legislative desire to exclude other statutes within the commission's jurisdiction from the scope of § 46a-58, then, a fortiori, that choice evinced an intent to exclude statutes outside of title 46a.[31] Section 10-15c is not listed in § 46a-86 (c) and was not among the discrimination statutes incorporated into title 46a in 1980. In my view, this establishes conclusively that the legislature never intended for the commission to have jurisdiction over claims arising under § 10-15c.[32] Moreover, as the majority notes, the legislature has amended § 46a-86 (c) several times since 1980; see Public Acts 1990, No. 90-246, § 11; Public Acts 1991, No. 91-58, § 30; and, despite the commission's decision in *Atlas* v. *Hamden High School*, supra, No. 7930381, has not seen fit to list § 10-15c in the statute. "Legislative concurrence is particularly strong where the legislature makes unrelated amendments in the same statute." (Internal quotation marks omitted.) *Discuillo* v. *Stone & Webster*, supra, 242 Conn. 594.

I am also persuaded by the defendants' argument that vesting concurrent jurisdiction over claims of racial discrimination arising in the public schools in the state board of education and in the commission will render General Statutes §§ 10-15c and 10-4b superfluous. The majority rejects this argument because "the availability of remedies may differ depending on whether the commission or the state board pursues the claim. Whereas the tenor of § 10-4b (b) is concerned with corrective or prospective measures, namely, 'requir[ing] the local or regional board of education to engage in a remedial process . . . [and] implement[ing] a plan of action through which compliance may be attained,' § 46a-86 (c) is more concerned with compensatory measures to remedy past discrimination, namely, 'the damage suffered by the complainant . . . .' " The majority fails to recognize, however, that § 46a-86 (a) authorizes the commission to "issue . . . an order requiring the

respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter.'' Thus, the commission has the authority *both* to take corrective or prospective measures *and* to award compensatory damages. Under these circumstances, I cannot perceive why any person would choose to proceed under § 10-4b rather than § 46a-86 (c). This effective removal of claims of racial discrimination in the public schools from the jurisdiction of the state board of education means that the agency with special expertise over issues involving the public schools will have no voice in the remediation of such discrimination.

Finally, I believe that our state and national history of litigation involving claims of racial discrimination in the public schools compels the conclusion that legislature did not intend to give jurisdiction over such claims to the commission. Such claims frequently involve highly complex, sensitive and controversial societal and political questions involving multiple parties, including government bodies at all levels of state government and large numbers of students. Our national history demonstrates that remedying such discrimination can require years, even decades, of political struggle and compromise. See, e.g., *Brown* v. *Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). A review of this state's history of litigation involving state constitutional claims of racial discrimination in the public schools reveals a similar pattern. In *Sheff* v. *O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996), this court concluded that the racial and ethnic isolation of Hartford's public school students was caused by state action and was unconstitutional under the state constitution. Id., 39–40, 43. We also concluded that ''[p]rudence and sensitivity to the constitutional authority of coordinate branches of government'' counseled against ordering a specific remedy. Id., 46. *Sheff* was originally filed in 1989; this court's decision was issued in 1996; and, as of the date of this opinion, the conditions that this court found to be unconstitutional still have not been fully remedied. See Office of Legislative Research Report No. 2003-R-0112 (January 27, 2003), at fldinst HYPERLINK ''http://www.cga.state.ct.us/2003/olrdata/ed/rpt/2003-R-0112.htm''

/fldinstwww.cga.state.ct.us/2003/olrdata/ed/rpt/2003-R-0112.htm (explaining January 22, 2003 settlement agreement in *Sheff* case and noting that agreement allows plaintiffs to seek further enforcement of this court's *Sheff* decision after June 30, 2007). Under the majority's ''broad and inclusive'' reading of §§ 46a-58 and 46a-86 (c) in the present case, each student in the Hartford public schools would have a claim for damages against the state for the emotional distress caused by his or her racial isolation and perhaps for the costs of obtaining an alternate education up to the time that

the discriminatory conditions are remedied, potentially exposing the state and its political subdivisions to damage awards in the millions of dollars.[33] It is inconceivable to me that the legislature intended to provide such a remedy.

I would conclude that the commission does not have jurisdiction over claims arising under § 10-15c.

Accordingly, I dissent.

[1] See footnote 4 of the majority opinion for the text of § 10-15c.

[2] See footnote 10 of the majority opinion for the text of § 4-183 (j).

[3] See footnote 9 of the majority opinion for the text of § 4-183 (h).

[4] In *Schieffelin & Co.*, this court determined that the trial court's ruling sustaining the plaintiff's claim on appeal that certain termination notices issued to the defendants met the statutory requirement and remanding the case to the agency for a ruling on the merits was not a final judgment. *Schieffelin & Co.* v. *Dept. of Liquor Control*, supra, 202 Conn. 407, 412. In *Morel*, this court determined that the trial court's ruling sustaining the plaintiff's claim on appeal that the agency had applied an improper standard and remanding the case to the agency so that it could apply the proper standard was a final judgment. *Morel* v. *Commissioner of Public Health*, supra, 262 Conn. 227, 232. If there is a difference between these trial court rulings justifying these disparate results, it is beyond my powers of discernment.

[5] We recognized in *Lisee* that the word "remand" as used in the last sentence of § 4-183 (j) was ambiguous as it applied to orders issued under other subsections of § 4-183 that fairly could be characterized as remands but which were not issued after the court had found prejudice and sustained the appeal. We concluded that the word "remand" did not refer to such orders, but referred only to the remands described in § 4-183 (j). *Lisee* v. *Commission on Human Rights & Opportunities*, supra, 258 Conn. 539 ("the remand referred to in the last sentence is the remand referred to in the preceding sentence, namely, a remand upon *sustaining the appeal*" [emphasis in original]).

The majority states that my statement that the last sentence of § 4-183 (j) is plain and unambiguous as it applies to remands under that subsection is "plainly wrong," because if the phrase "this section" were read literally, it would apply to all remands under § 4-183, not just to remands under subsection (j). It is the majority's logic, however, that is plainly wrong. First, as I have noted, the ambiguity in § 4-183 (j) is in the word "remand," not the word "section." Second, the fact that the statute is ambiguous in some applications does not mean that it is ambiguous in all applications. For example, the fact that a statute that requires the leashing of dogs is ambiguous as it applies to dingos does not mean that it is ambiguous as it applies to cocker spaniels. Thus, the question is not whether the *literal meaning* of the last sentence of § 4-183 (j) is plain and unambiguous in some absolute sense; the question is whether the sentence plainly and unambiguously applies to remand orders arising under subsection (j). I believe that it does and nothing in *Lisee* or *Morel* suggests otherwise. At most, those cases suggest that the *Schieffelin & Co.* test applies to remands arising under § 4-183 (j) *despite* the plain meaning of the statute. In my view, that is why those cases should be overruled.

[6] See footnote 20 of the majority opinion for the text of Public Acts 2003, No. 03-154.

[7] Even if I did not believe that we are barred from consulting the statute's legislative history, I would not agree with the majority's analysis of that history. With respect to the majority's reliance on the Law Revision Commission Report, in my view, the portion of the report cited by the majority merely recites the language of the statute that a remand for further proceedings after sustaining the appeal is a final judgment. See 1987 Thirteenth Annual Report of the Connecticut Law Revision Commission to the General Assembly, March, 1988, p. 40. It provides no additional insight into the meaning of that provision. The majority also states that the report's reference to *Watson* v. *Howard*, 138 Conn. 464, 86 A.2d 67 (1952), "belies any intention to codify the *Schieffelin & Co.* test, because *Watson* was a case in which the trial court's remand was held to be a final judgment, despite the fact that it most likely would not have satisfied the *Schieffelin & Co.* test." *Schieffelin & Co.*, however, expressly cited the trial court's ruling in *Watson* as the paradigm of an administrative ruling that constitutes a final judgment. *Schieffelin & Co.*

v. *Dept. of Liquor Control*, supra, 202 Conn. 410. Accordingly, it appears to me that, not only does the report offer no support for the conclusion that § 4-183 (j) was not intended to codify *Schieffelin & Co.*, it arguably undermines that conclusion.

[8] See footnote 16 of the majority opinion for the text of § 46a-86 (c).

[9] General Statutes § 46a-58 (a) provides: ''It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability.''

[10] I am somewhat perplexed by this statement. In my view, the statute does not *suggest* a ''broad and inclusive panoply of rights, privileges and immunities, derived from a broad and inclusive set of sources . . . .'' Rather, it expressly identifies specific misconduct, i.e., the ''deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States''; General Statutes § 46a-58 (a); that gives rise to the specific remedies identified in §§ 46a-58 (d) and 46a-86 (c). I conclude in part III of this dissenting opinion that, although the language of § 46a-58 is broad, it is not inclusive of all discriminatory conduct. Specifically, the statute does not, in my view, incorporate other state laws prohibiting specific types of discrimination. For purposes of this portion of the analysis, however, I accept the majority's characterization of the statute as ''broad and inclusive . . . .''

[11] Applying the same reasoning, the majority presumably would *assume* from the fact that the right conferred by § 46a-58 is broad that it gives rise to an unconditional private right of action. We have concluded otherwise, however. See *Sullivan* v. *Board of Police Commissioners*, 196 Conn. 208, 215–16, 491 A.2d 1096 (1985). In *Sullivan*, we held that General Statutes §§ 46a-58 through 46a-81 ''must be read in conjunction with the [statutory] provisions for the filing of complaints concerning alleged discriminatory practices with the [commission]''; id., 215; and the commission then determines the scope of the remedy. Id., 216. Likewise, § 46a-58 must be read in conjunction with § 46a-86 (c) to determine the scope of damages.

[12] Public Acts 1967, No. 756, § 1, codified in part at § 46a-86 (c), referred only to General Statutes § 53-35, now codified at General Statutes § 46a-64, which prohibits discriminatory public accommodations practices, and General Statutes § 53-35a, now codified at General Statutes § 46a-59, which prohibits discrimination in associations of professional or other licensed persons.

[13] The majority finds this statement ''curious'' in light of my conclusion that ''§ 46a-58 must be read in conjunction with § 46a-86 (c) to determine the scope of damages.'' See footnote 11 of this dissenting opinion. The language now codified as § 46a-86 existed *before* it provided a remedy for a violation of the statute now codified as § 46a-58, however. Therefore, the scope of the remedy provided by § 46a-86 (c) logically may be considered without reference to § 46a-58—unless the majority believes that Public Acts 1975, No. 75-462, amended the scope of the remedy now codified as § 46a-86 (c) by implication. It would be absurd, however, to disregard the language of § 46a-86 (c) when considering the scope of the remedy for a violation of § 46a-58.

[14] In the workers' compensation context, for example, we have recognized that the legislature has balanced the broad beneficial purpose of the statute with a limitation on remedies. See *Mello* v. *Big Y Foods, Inc.*, 265 Conn. 21, 25–26, 826 A.2d 1117 (2003).

The majority criticizes my reasoning on the ground that, ''[a]lthough what the legislature '*might* seek to' do could always be 'plausible,' '' I present no persuasive reason to believe that the legislature intended to limit remedies. (Emphasis in original.) I strongly disagree. First, I present this conditionally phrased alternative interpretation at the outset of my analysis simply to demonstrate that the creation of a right that may be exercised in a wide variety of contexts does not *necessarily* imply the creation of a broad remedy; unlike the majority, I do not suggest that my alternative reading would be presumptively correct in the absence of any independent evidence. Second, as I discuss later in this dissenting opinion, the plain language of § 46a-86 (c) does in fact provide a compelling reason to adopt this alternative interpretation. It is the majority that has provided no persuasive reason to support its assumption that the broad language of § 46a-58 overrides the plainly restrictive language of § 46a-86 (c).

[15] The majority criticizes what it calls my ''revisionist understanding'' of

this case on the ground that "we stated repeatedly [in *Bridgeport Hospital*] that compensatory damages and attorney's fees were precluded from § 46a-86 (a) 'because of the express restriction on the availability of such awards to cases brought under the specific statutes enumerated in subsections (c) and (d)' . . . *Bridgeport Hospital* v. *Commission on Human Rights & Opportunities*, supra, [232 Conn. 100] . . . ." I agree that we concluded in that case that compensatory damages are available only under § 46a-86 (c), not under § 46a-86 (a), and that compensatory damages are available only for specific forms of discrimination. Although we may have *assumed* in that case that such compensatory damages include damages for emotional distress, however, we did not make such a finding and such a finding was not a necessary predicate to our conclusion. Section 46a-86 (c) provides an *additional* remedy for certain specific forms of discrimination. It would be absurd to conclude that, because damages for emotional distress are not included in that remedy, they are included in the narrower remedy provided by § 46a-86 (a). Accordingly, my conclusion that § 46a-86 (c) does not provide damages for emotional distress is not inconsistent with the fundamental reasoning or the result of *Bridgeport Hospital*.

[16] The majority emphatically objects to my use of the word "afterthought" in this context. It is clear, however, that the majority considers the defendants' arguments based on the plain and ordinary meaning of the language of § 46a-86 (c) only *after* reaching its conclusion as to the meaning of the statute on the basis of the language of § 46a-58 and the legislative history and genealogy of § 46a-86 (c).

[17] The doctrine of ejusdem generis is a rule of construction that "applies when '(1) the [clause] contains an enumeration by specific words; (2) the members of the enumeration suggest a specific class; (3) the class is not exhausted by the enumeration; (4) a general reference [supplements] the enumeration . . . and (5) there is [no] clearly manifested intent that the general term be given a broader meaning than the doctrine requires.' . . . 'It rests on particular insights about everyday language usage. When people list a number of particulars and add a general reference like "and so forth" they mean to include by use of the general reference not everything else but only others of like kind.' " (Citation omitted.) *24 Leggett Street Ltd. Partnership* v. *Beacon Industries, Inc.*, 239 Conn. 284, 297, 685 A.2d 305 (1996).

[18] The majority argues that this doctrine "is merely an axiom of statutory construction, not an inviolate rule of law," and, as such, " 'cannot displace the result of careful and thoughtful interpretation.' *United Illuminating Co.* v. *New Haven*, 240 Conn. 422, 460, 692 A.2d 742 (1997) . . . ." (Citation omitted.) I do not suggest that the doctrine is an inviolate rule of law. I contend only that the language of a statute is the proper place to begin our interpretation and that the doctrine of ejusdem generis provides a reliable guide to the ordinary meaning of that language. Once we have discerned the ordinary meaning, we then consider whether there are important reasons that the ordinary meaning should not be given effect. The majority reverses this process by first identifying policy reasons that support its interpretation of the statute and then determining whether the language is consistent with its interpretation.

[19] Thus, the majority's statement that my interpretation would render this language superfluous is incorrect.

[20] This technique is familiar. See *State* v. *Courchesne*, 262 Conn. 537, 609, 816 A.2d 562 (2003) (*Zarella, J.*, dissenting).

[21] I also see no need to address the defendants' claim that Ballard has waived any right to obtain relief by failing to file an appeal or participate in the commission's appeal.

[22] Thus, I do not, as the majority states, "[ignore] the express reference in § 46a-58 (a) that makes it a discriminatory practice to cause any person to be subjected to the deprivation of any rights secured by, among other things, the 'laws of this state . . . .' " I merely employ the interpretation of § 46a-58 that we adopted in *Truelove & Maclean, Inc.* We implicitly recognized in that case that the "any . . . laws of this state" language in § 46a-58 cannot be interpreted literally because doing so would interfere with the operation of more specific discrimination statutes. See *Commission on Human Rights & Opportunities* v. *Truelove & Maclean, Inc.*, supra, 238 Conn. 346. It is the majority who ignores—and implicitly overrules—the teaching of *Truelove & Maclean, Inc.,* by concluding that § 46a-58 encompasses forms of discrimination that fall within the scope of distinct discrimination statutes.

[23] This conclusion is bolstered by *Bridgeport Hospital* v. *Commission on*

Human Rights & Opportunities, supra, 232 Conn. 91. In that case, the commission cited § 46a-86 (a) as authority to award damages for emotional distress and attorney's fees following a finding of a discriminatory employment practice. Id., 100. We concluded that compensatory damages were available only under § 46a-86 (c). Thus, both the commission and this court assumed that the commission could not rely directly on § 46a-86 (c) for authority to award damages on a claim arising under § 46a-60.

[24] General Statutes § 46a-75 (a) provides: "All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, shall be open to all qualified persons, without regard to race, color, religious creed, sex, marital status, age, national origin, ancestry, mental retardation, mental disability, learning disability or physical disability, including, but not limited to, blindness." In the present case, the presiding human rights referee granted the defendants' motion to dismiss Ballard's claim under § 46a-75 on the ground that the statute applies only to "state agencies and their educational programs related to employment-related training," and that public schools were not within the scope of the statute. That ruling is not challenged in this appeal.

[25] The majority attempts to distinguish *Truelove & Maclean, Inc.,* on the ground that the statute at issue in that case, § 46a-60, was " 'narrowly tailored,' " while § 10-15c is not. We stated in that case that, in contrast to § 46a-58, "which generally forbids 'any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the constitution or laws of this state or the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability, § 46a-60 specifically prohibits discriminatory *employment* practices. Accordingly, the specific, narrowly tailored cause of action embodied in § 46a-60 supersedes the general cause of action embodied in § 46a-58 (a)." (Emphasis in original; internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Truelove & Maclean, Inc.*, supra, 238 Conn. 346. Similarly, § 10-15c, which is narrowly tailored to prohibit discriminatory practices *in the public schools*, supersedes § 46a-58 (a). I simply do not see the relevance of the fact that, unlike § 46a-60, § 10-15c does not contain "two subsections containing eleven and four subdivisions, respectively." Regardless of whether § 10-15c is as *elaborately* tailored as § 46a-60, it is clearly more *narrowly* tailored than § 46a-58. Accordingly, the reasoning of *Truelove & Maclean, Inc.,* applies.

In any event, our comparison of the relative specificity of §§ 46a-60 and 46a-58 in *Truelove & Maclean, Inc.,* was only the first step of our analysis in that case. We went on to note that § 46a-86 (c) did not provide a remedy for a violation of § 46a-60 by virtue of its incorporation of § 46a-58 because a violation of § 46a-60 had its own specific remedy. Likewise, a violation of § 10-15c has a specific remedy, namely, that provided by General Statutes § 10-4b. The majority argues, however, that § 46a-86 (c) *must* apply to § 10-15c because, from 1969 through 1979, the state board lacked any "genuine . . . power" to enforce § 10-15c under § 10-4b. In other words, the majority believes that the *narrowness* of the remedy provided by the original version of § 10-4b "suggest[s] that it is unlikely that the legislature intended it to be the exclusive remedial administrative agency for a claim of racial discrimination in the public schools." As the majority acknowledges, however, under the reasoning of *Truelove & Maclean, Inc.*, the fact that the remedy provided by the original version of § 10-4b was " 'narrowly tailored' " suggests that the broader remedy of § 46a-86 (c), made applicable to § 46a-58 by the legislature in 1975, does *not* apply.

Finally, I note that § 10-15c applies to discrimination on the basis of sexual orientation, which § 46a-58 does not, and that § 46a-58 applies to discrimination on the basis of alienage, blindness or physical disability, which § 10-15c does not. Under the majority's view, a student presumably would be able to bring a claim under § 46a-86 (c) for discrimination in the public schools on the basis of alienage, but would not be able to bring a claim for discrimination on the basis of sexual orientation. I find it unlikely that the legislature intended either: (1) to prohibit types of discrimination in the public schools that are not listed in § 10-15c; or (2) to provide different remedies for the different types of discrimination that are listed in that statute. I assume that the legislature had good reasons for including discrimination on the basis of alienage, blindness and physical disability in § 46a-58 but not in § 10-15c.

[26] General Statutes § 46a-51 (8) provides: " 'Discriminatory practice' means a violation of section 4a-60, 4a-60a, 46a-58, 46a-59, 46a-60, 46a-64, 46a-64c,

46a-66, 46a-68, sections 46a-70 to 46a-78, inclusive, subsection (a) of section 46a-80, or sections 46a-81b to 46a-81o, inclusive . . . .''

[27] I discuss this 1980 legislation in greater depth later in this dissenting opinion.

[28] The referee also noted that both the Superior Court and the United States District Court have held that § 10-15c ''is to be enforced specifically by the state board of education pursuant to § 10-4b.'' *McPhail* v. *Milford*, Superior Court, judicial district of Ansonia-Milford, Docket No. 054506S (February 25, 1999), citing *Price* v. *Wilton Public School District*, United States District Court, Docket No. 97 CV 02218 (D. Conn., September 23, 1998). In those cases, however, the court considered whether § 10-15c, as enforced through § 10-4b provided a private cause of action, not whether the commission had jurisdiction over claims arising under that statute.

[29] Following the enactment of Public Acts 1980, No. 80-422, § 53-34 was transferred to § 46a-58; § 53-35, prohibiting discriminatory public accommodations practices, was transferred to § 46a-64; § 53-35a, prohibiting discrimination in associations of professional or other licensed persons, was transferred to § 46a-59; General Statutes § 31-126, prohibiting discriminatory employment practices, was transferred to § 46a-60; General Statutes § 36-437, prohibiting discriminatory credit practices, was transferred to General Statutes § 46a-66; General Statutes § 4-61d, prohibiting discriminatory practices by state agencies, was transferred to General Statutes § 46a-71; General Statutes § 4-61e, prohibiting discrimination in job placement by state agencies, was transferred to General Statutes § 46a-72; General Statutes § 4-61f, prohibiting discrimination in state licensing and charter procedures, was transferred to General Statutes § 46a-73; General Statutes § 4-61h, prohibiting discrimination in educational and vocational programs, was transferred to § 46a-75; and General Statutes § 4-61i, prohibiting discrimination in allocation of state benefits, was transferred to General Statutes § 46a-76.

[30] I note that Public Acts 1980, No. 80-422, § 8, codified at General Statutes (Rev. to 1981) § 46a-59, prohibits discrimination in associations of licensed persons on the basis of ''race, national origin, creed, sex or color.'' All of these types of discrimination were also listed in Public Act 80-422, § 7, codified at General Statutes (Rev. to 1981) § 46a-58. See General Statutes (Rev. to 1981) § 46a-58 (prohibiting discrimination on basis of ''religion, national origin, alienage, color, race, sex, blindness or physical disability''). Thus, it cannot be argued that the legislature's inclusion of specific discrimination statutes in § 46a-86 (c) was intended to provide a remedy for specific classes of persons who otherwise would not have the remedy. Rather, the legislature's focus was on providing that remedy for discriminatory practices occurring in specific contexts. Conversely, the *exclusion* from § 46a-86 (c) of certain distinct discrimination statutes evinces an intent *not* to provide the remedy for discriminatory practices arising in certain contexts. This view is consistent with our analysis in *Truelove & Maclean, Inc.*, in which we focused on the existence of a specific statute prohibiting discriminatory employment practices—not on the exclusion from § 46a-58 of the class of pregnant women—in concluding that § 46a-86 (c) did not provide a remedy for a violation of § 46a-60.

[31] The trial court concluded that *Truelove & Maclean, Inc.*, did not govern this case because, unlike the statute at issue in that case, namely, § 46a-60, claims arising under § 10-15c would not be within the commission's jurisdiction in the absence of § 46a-58 and, therefore, the commission was not faced with conflicting remedial statutes under its jurisdiction. In my view, however, the reasoning of *Truelove & Maclean, Inc.,* applies all the more *strongly* because § 10-15c falls within a completely separate title of the statutes.

[32] The majority argues that ''no legitimate inference of legislative intent—either to include or exclude § 10-15c—can be drawn from the 1980 legislation, and that all of the specific statutory references transferred from § 53-36 into § 46a-86 (c), by virtue of the technical revision, were transferred simply so that the statutes governing the commission could be located together.'' Thus, the majority believes that the legislature's choice *not* to list certain specific discrimination statutes—such as those prohibiting discriminatory practices by state agencies; see General Statutes §§ 46a-69 through 46a-76 and §§ 46a-81g through 46a-81n; in § 46a-86 (c) provides *no* guidance to this court as to whether the remedy provided by that statute is available through § 46a-58 when the specific discrimination statute has been violated. I can only reiterate that this analysis renders completely meaningless the legislature's choice to include certain discrimination statutes in § 46a-86 (c) and to exclude others.

The majority also argues that, if § 46a-86 (c) applies only to the discrimination statutes that are listed therein, the reference to § 46a-58 would be superfluous. I do not suggest that § 46a-86 (c) does not apply to § 46a-58, however. I contend that § 46a-58 does not apply to forms of discrimination that are prohibited by distinct statutes. Section 46a-58 would be superfluous only if there is a distinct discrimination statute for every conceivable form of discrimination covered by that statute.

[33] The majority is "highly dubious" that its opinion in this case would lead to such a result and disclaims any suggestion that the commission would have jurisdiction over "claims of *systemic* racial isolation in the public schools . . . ." (Emphasis added.) I cannot perceive any basis for the majority's doubt. If, as the majority has concluded, violations of § 10-15c—which does not distinguish between "a discrete course of . . . discriminatory conduct by an identified school official" and "systemic" discrimination—fall within § 46a-58, I simply do not understand what authority this court could invoke to avoid enforcing the remedy provided by § 46a-86 (c). In *Sheff*, we left the fashioning of the remedy for the state *constitutional* violation to the legislature and the executive branch in deference to the constitutional authority of those branches. The legislature, in the exercise of its constitutional authority, already has fashioned a specific statutory remedy for the violation of § 46a-58, however. Does the majority believe that the enforcement of that remedy in a case involving systemic discrimination would violate the state or federal constitution? If not, then what principle would justify its refusal to enforce the remedy?

Moreover, the distinction that the majority attempts to draw between "a discrete course of . . . discriminatory conduct by an identified school official" and "systemic" discrimination is illusory. Discrimination claims, by their very nature, involve classes of persons. If a single teacher discriminates against 400 members of a protected class over the course of ten years, is that a compensable "discrete course of . . . discriminatory conduct" or is it noncompensable "systemic" discrimination? What is the result if an entire school district discriminates over the course of ten years against a single member of a protected class who is within its jurisdiction? Will the success of a claim for damages brought under § 10-15c, through § 46a-58, depend on the number of persons who can bring a similar claim? The majority may believe that the commission and our courts will be able to provide principled answers to these questions. I have serious doubts. More importantly, I do not believe that the legislature intended to give them the authority to do so.

Finally, the majority relies on the "total absence of any legislative, executive or judicial indication that the commission would have any role, pursuant to §§ 46a-58 or 46-86 (c), or otherwise, in that remedial scheme" in support of its position. Once again, the majority assumes what it should prove—that the silence of the legislature, the executive branch and the judiciary shows that they believed that the commission had no jurisdiction over claims of *systemic* discrimination. That silence may just as easily be interpreted as establishing that the legislature, the executive branch and the judiciary believed that the commission had no jurisdiction over *any* claims of racial discrimination arising in the public schools, systemic or otherwise.