PALMER, J., dissenting. Acknowledging their inability to fix a school system that has failed to meet minimum state standards for seven consecutive years, Bridgeport's mayor, superintendent of schools, and school board formally requested that the state board of education authorize the commissioner of education to reconstitute the Bridgeport school board,[1] as authorized by General Statutes § 10-223e (h). In response, the state board, acting in furtherance of its constitutional and statutory duties to ensure that this state's schoolchildren receive an adequate public education,[2] acceded to Bridgeport's request and directed the commissioner to reconstitute the Bridgeport board. For approximately seven months now, the reconstituted board has endeavored to repair Bridgeport's broken school system.

Today, the majority deals the schoolchildren of Bridgeport a major setback, striking down the state board's action without any legitimate basis for doing so. The majority holds that the Bridgeport board was not free to waive the training provision of § 10-223e (h). Yet it is axiomatic that a statutory requirement typically may be waived by the requirement's intended beneficiary or by the beneficiary's duly authorized representative, and this case presents no exception to that general rule: a local board of education is free to waive the training provision of § 10-223e (h) because that provision obviously exists to protect a local school district from an unwanted state takeover, not to force a local board of education to retain control even after the local board has determined that it cannot discharge its constitutional duty to provide an adequate public education. There is not a shred of evidence to support the majority's contrary conclusion—not in the statutory text, not in the legislative history, and not in our case law. The majority achieves its unfounded conclusion only by misapplying the law and ignoring this state's recent sea change in public policy toward failing school districts.

Not only does the majority disregard established principles of law, relying instead on superficially favorable language that it lifts from an assortment of largely irrelevant opinions, but the majority also invokes a nonexistent principle of statutory interpretation to rationalize ignoring the legislative history of § 10-223e and to justify saddling the training provision of § 10-223e (h) with an entirely fictional purpose: to provide "notice" of an impending reconstitution *to the citizens of the entire state* and to promote "transparen[cy]" and "delibera-[tion]" during the ensuing reconstitution process. This purported statutory purpose receives no support from the evidence on which the majority relies, nor does it *provide* any support to the majority's conclusion that the training provision is nonwaivable. The majority does

not even attempt to justify its assumption that permitting a local board of education to waive the mandated training would deprive the citizens of this state of adequate notice of an impending reconstitution or render the reconstitution process impermissibly opaque or overhasty. The majority also does not attempt to explain how the citizens of Connecticut's various towns and cities could have an overriding interest in the transparency and deliberateness of the reconstitution process in *Bridgeport*, an interest so strong as to outweigh that city's own interest in permitting the Bridgeport board, acting on behalf of the local electorate, to waive the training contemplated by § 10-223e (h) in order to discharge as expeditiously as possible the Bridgeport board's duty to protect the schoolchildren's constitutional right to an adequate public education.

In analyzing the training provision of § 10-223e (h), the majority refuses to consider the legislative history of the comprehensive statutory scheme of which the training provision is but a small part, a statutory scheme that grants the state sweeping power to rescue failing schools and school districts. To read the majority opinion, one would scarcely know the extent to which this grant of power represents a dramatic shift away from what was once a blanket preference for local control of education. Where our most profoundly troubled school systems are concerned, this state has abandoned any preference for local control. Oddly enough, however, it is in fact the majority opinion that disregards the value of local control, offering an analysis of § 10-223e (h) that yields an absurdly paternalistic result, namely, that the training provision could not have been waived even upon a 9 to 0 vote of the local board and upon unanimous community and political agreement that the Bridgeport school system required immediate state intervention. This irrational statutory construction defies common sense, not to mention settled principles of law. Compounding the problem is the majority's holding that the training provision serves the purpose of providing for a "transparent and deliberate process." This holding yields the additional irrational result that, even if the members of a local board of education had voluntarily undergone all of the training that the state board possibly could have required of them, the state board could not reconstitute the local board without requiring the board members to undergo the training all over again.

It seems that what really drives the majority opinion is a general sense of unease with Connecticut's dramatic shift away from a policy of local control of failing school systems and a lack of affection for the state's newfound statutory power to reconstitute a local school board unable to stem the tide of chronic failure. Expressly agreeing with Justice Harper's critical view of the reconstitution authority, the majority proclaims that "local control over education fosters a beneficial and symbi-

otic relationship between the parents, students and local school administrators, a relationship that should not be lightly disregarded." Footnote 24 of the majority opinion. Yet this case simply is not about whether permitting the state board to reconstitute failing school districts is good public policy.[3] That is a question already answered by the legislature, and answered resoundingly.[4]

In sum, it is clear that a local board of education is competent to waive the protection of § 10-223e (h) both because it is the locality's duly elected representative and because it is an agent of the state charged with fulfilling the state's constitutional obligation to provide schoolchildren with a suitable education. That constitutional obligation adverts to what this case really is about: the dismal state of affairs confronting Connecticut's poorest schoolchildren. Absent from the majority opinion is anything more than a passing reference to this calamity.[5] Yet the plight of Bridgeport schoolchildren is what prompted the state board to honor the Bridgeport board's request for state intervention and is what the legislature generally sought to remedy when it enacted a statutory scheme making that intervention possible. Because the state board's intervention in Bridgeport was statutorily authorized, and because the plaintiffs' constitutional claims are meritless, I disagree with the majority's conclusion that the state board's reconstitution of the Bridgeport board was unlawful. I therefore dissent.

I

Before explaining my disagreement with the majority's waiver analysis, I find it necessary to discuss in some detail this case's historical and statutory backdrop.[6] The majority pays scant attention to this important context, which amply reflects the state's dominant role with respect to failing school districts. This context makes it crystal clear that § 10-223e serves one overriding purpose: to endow the state with sweeping power to rescue failing schools and school districts. In light of the statute's interventionist purpose, it is obvious that the training contemplated by § 10-223e (h) serves simply to put a modest[7] brake on the process of reconstituting a local board of education in order to protect the locality's still existing but minimal interest in retaining control over public education. In short, the training provision is a *shield*, a measure meant to protect a locality against what it might perceive as an unwarranted state takeover.[8] The training provision is not a *sword*, a measure meant to force a local board of education to retain control over the education of the district's schoolchildren even after the local board—and, in the present case, the mayor and the superintendent—has determined that it cannot discharge its duty to provide an adequate public education. Because the shield can serve no function when a locality *requests*

reconstitution instead of opposing it, and because mandatory statutory provisions typically may be waived,[9] it is clear that a local board of education is free to waive the training provision.

I begin, then, by describing the sad state of affairs confronting Connecticut's poorest schoolchildren. It was this state of affairs that the legislature sought to rectify when it enacted a statutory scheme enabling the state to intervene in the educational affairs of municipalities like Bridgeport, whose schools chronically have failed to deliver on this state's constitutional obligation to provide an adequate public education. Of all fifty states, Connecticut has the largest " 'achievement gap,' " that is, the gravest disparity between the educational performance of "students who are from low-income families compared with those from more affluent circumstances."[10] Connecticut Commission on Educational Achievement, "Every Child Should Have a Chance to Be Exceptional. Without Exception. A Plan to Help Close Connecticut's Achievement Gap" (2011) p. 7. A commission established by former governor M. Jodi Rell to study Connecticut's achievement gap recently reported that fourth and eighth grade low income students are on average about three grade levels behind fourth and eighth grade non-low income students in reading and mathematics; id.; 42 percent of third through eighth grade low income students score at "goal level" in reading, compared with 80 percent of their non-low income peers; id., p. 8; 18 percent of tenth grade low income students score at "goal level" in reading, compared with 57 percent of their non-low income peers; id.; only 60 percent of Connecticut's low income students graduated from high school in 2009, compared with 86 percent of their non-low income peers; id.; and, even among Connecticut students who manage to graduate from high school and to go on to college, more than one half of these students entering Connecticut's public two year and four year colleges require immediate remediation in mathematics or English. Id.

The plight of Connecticut's poorest schoolchildren is unusually dire in Bridgeport. As the members of the reconstituted Bridgeport board note in their brief to this court, a vivid snapshot of Bridgeport's education crisis is its dropout rate. For the statewide high school graduating class of 2008, the cumulative dropout rate was 6.6 percent, meaning that one out of fifteen members of the class of 2008 withdrew along the four year path to graduation. Connecticut Department of Education, Data Bulletin: High School Dropout Rates in Connecticut (November 2009) p. 4. In the Bridgeport school district, by contrast, the cumulative dropout rate for the class of 2008 was a staggering 23.3 percent, that is, nearly one out of every four students. Id., p. 10. This dropout rate is deplorable, even in comparison with Connecticut's other underperforming school districts.

For the class of 2008, the dropout rate for students in the Bridgeport school district was more than double that in Hartford (11.9 percent); id., p. 11; and substantially higher than that in New Haven (15.7 percent). Id. Similarly deplorable is the annual high school graduation rate in the Bridgeport school district, that is, the percentage of high school seniors who actually graduate in a given year. On the basis of data collected by the state department of education in 2008, Connecticut Coalition for Achievement Now found that Bridgeport's graduation rate was lower than that of every other school district in the state. Connecticut Coalition for Achievement Now, Connecticut Graduation Rates (September 2011) pp. 17–22.

No less tragic than Bridgeport's high school dropout rate is its abysmal student performance. In the 2010–2011 school year, according to data collected by the state department of education, fewer than one in four third graders in the Bridgeport school district read at "goal" level or above, compared with a clear majority of third graders statewide; approximately 43 percent of eighth graders in the Bridgeport school district read at "goal" level or above, compared with approximately 75 percent statewide; approximately 31 percent of eighth graders in the Bridgeport school district attained "goal" level in mathematics, compared with approximately 67 percent statewide; and *just one in ten* tenth graders in the Bridgeport school district read at "goal" level or above, compared with nearly one half of tenth graders statewide. Similarly poor performance in previous years has consistently placed the Bridgeport school district in the lowest achieving 5 percent of school districts, on average, in Connecticut. See Strategic School Profile (2008–2009) of the Bridgeport School District (produced by state department of education); Strategic School Profile (2007–2008) of the Bridgeport School District (produced by state department of education).

These heartbreaking statistics provide a context for the key stipulated facts in this case: that the state board designated the Bridgeport school district as a low achieving school district under § 10-223e (c) (1) for at least seven consecutive years; that the Bridgeport school district has failed to make acceptable progress toward benchmarks established by the state board, pursuant to § 10-223e (a) and (c); and that the Bridgeport school district has failed to make adequate yearly progress, as defined by the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425, codified as amended at 20 U.S.C. § 6301 et seq. (2006 & Sup. III 2009), for at least two consecutive years while being designated as a low achieving school district. Contrary to the majority's assertion, these troubling statistics are hardly "irrelevant."[11] Footnote 14 of the majority opinion. To the contrary, they demonstrate the urgency of the Bridgeport board's constitutional duty to provide the schoolchildren with an adequate public education

and therefore help explain why barring local boards of education from waiving the training provision would frustrate the purpose of § 10-223e.

The relevant statistics also serve to illuminate the legislative intent, painting a vivid picture of the crisis that the legislature sought to remedy when it created the statutory scheme of which § 10-223e (h) is but a small component.[12] The bulk of that statutory scheme came into being in June, 2007, when the legislature passed An Act Implementing the Provisions of the Budget Concerning Education (2007 act), Public Acts, Spec. Sess., June, 2007, No. 07-3 (Spec. Sess. P.A. 07-3). Supported by a virtually unanimous General Assembly; 50 H.R. Proc., Pt. 28, 2007 Spec. Sess., p. 9070 (vote of 138 to 0 in favor of passage in House of Representatives); 50 S. Proc., Pt. 19, 2007 Spec. Sess., p. 6219 (vote of 32 to 1 in favor of passage in Senate); the 2007 act made sweeping changes to Connecticut's education law.

Of greatest significance to the present case, the 2007 act amended § 10-223e to give the state unprecedented power to intervene in failing schools and school districts. See Spec. Sess. P.A. 07-3, § 32. As amended by the 2007 act, § 10-223e provided that low achieving schools and school districts would be subject to "intensified supervision and direction" by the state board. Spec. Sess. P.A. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (c) (1). To improve student performance in these schools and school districts, the 2007 act empowered the state board, inter alia, (1) to require a local or regional board of education to use state and federal funds for critical needs, as directed by the state board, (2) to provide incentives to attract highly qualified teachers and principals, (3) to direct the transfer and assignment of teachers and principals, (4) to require that teachers, principals, and office staff receive additional training, (5) to require local boards to implement model curricula, including recommended textbooks, materials and supplies approved by the state department of education, (6) to identify schools for reconstitution as state or local charter schools, (7) to identify schools for management by an entity other than the local or regional board of education for the district in which the school is located, (8) to direct a local or regional board to develop and implement a plan addressing deficits in achievement, (9) to assign a technical assistance team to a school or district to guide local initiatives and to report progress to the commissioner, and (10) to direct schools to establish "learning academies" requiring continuous monitoring of student performance by teacher groups. Spec. Sess. P.A. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (c) (2). With respect to school districts and elementary schools that, for two successive years, had failed to make "adequate yearly progress," and accordingly had been designated as low achieving, the 2007 act empowered the commissioner, after an evaluation, to order the

school or school district to provide full day kindergarten classes, summer school, an extended school day, weekend classes, tutorial assistance to students, or professional development for administrators, principals, teachers, and others, provided that either 30 percent or more of the students in any subgroup, as defined by the federal No Child Left Behind Act of 2001, had not achieved the level of proficiency on any subpart of the third grade statewide mastery test, or the commissioner determined "that it would be in the best educational interests of the school or the school district to have any of [the aforementioned] programs." Spec. Sess. P.A. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (e).

The 2007 act further provided that, if a school district had failed to make adequate yearly progress, as defined by the federal No Child Left Behind Act of 2001, for two consecutive years while being designated as a low achieving school district and also failed to make acceptable progress toward benchmarks established by the state board, the state board, after consulting with the governor and the chief elected official of the failing school district, could request that the General Assembly enact legislation authorizing the state board or another entity to take control of the school district, *thereby entirely supplanting the local administration*. Spec. Sess. P.A. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (d). This remedy is even more comprehensive and thoroughgoing than the remedy of reconstitution.

Speaking on the Senate floor, Senator Thomas P. Gaffey, cochairman of the education committee, described the 2007 act as "a historic investment in education in the school districts throughout Connecticut"; 50 S. Proc., Pt. 19, 2007 Spec. Sess., p. 6185; that "establishes far more accountability measures than ever before"; id., p. 6186; and "will give [the state department of education and the commissioner] broad and sweeping powers" to intervene in failing school districts. Id., p. 6187; see also id., pp. 6197, 6199, remarks of Senator Thomas J. Herlihy (speaking strongly in favor of 2007 act and calling it "[a] huge increase in spending for education" and "accountability with teeth").

In 2008, the legislature passed An Act Concerning Minor Changes to the Education Statutes, Public Acts 2008, No. 08-153 (P.A. 08-153), which augmented the state board's already robust power to intervene in failing school districts.[13] In particular, P.A. 08-153 added a new subparagraph (M) to § 10-223e (c) (2), which gave the state board the authority to "require local and regional boards of education [in designated low achieving school districts] to (i) undergo training to improve their operational efficiency and effectiveness as leaders of their districts' improvement plans, and (ii) submit an annual action plan to the Commissioner of Education

outlining how, when and in what manner their effectiveness shall be monitored . . . .'' P.A. 08-153, § 4, codified at General Statutes (Rev. to 2009) § 10-223e (c) (2) (M).

The operational training delineated in General Statutes (Rev. to 2009) § 10-223e (c) (2) (M) would two years later become an ingredient in another interventionist tool, namely, the state's authority to reconstitute a local or regional school board pursuant to § 10-223e (h), the focal point of this case. The legislature enacted § 10-223e (h) in the course of implementing a substantial piece of education reform legislation, namely, An Act Concerning Education Reform in Connecticut, Public Acts 2010, No. 10-111 (P.A. 10-111), which aimed in part to improve Connecticut's chances of obtaining funds under the federal Race to the Top program.[14] Race to the Top is a competitive grant program designed to reward states for implementing significant reforms in four areas of education policy: ''enhancing standards and assessments, improving the collection and use of data, increasing teacher effectiveness and achieving equity in teacher distribution, and turning around struggling schools.'' United States Department of Education, Race to the Top Program: Guidance and Frequently Asked Questions (May 27, 2010), p. 3. In rejecting Connecticut's first round Race to the Top application, four out of five federal reviewers had found deficiencies in the state's capacity to turn around struggling schools, noting features of state law that made it difficult for the state to intervene in the lowest achieving ''[l]ocal [e]ducation [a]gencies,'' that is, the lowest achieving local boards of education.[15] See, e.g., Race to the Top, Technical Review Form—Tier 1, Connecticut Application #1680CT-3, comments from reviewer 3 (''Before the state can intervene in the lowest achieving [local education agencies] it must consult with the [g]overnor, [and the] chief elected officials of the district and may request the General Assembly to authorize that control of the [local education agency] be reassigned to the [state]. This statutory requirement makes intervention very difficult.''), available at http://www.ctmirror.org/sites/default/files/documents/connecticut-2.pdf (last visited February 27, 2012).[16] To rectify this shortcoming, the legislature added one more facet to the state board's substantial power to intervene in low achieving school districts: the authority to reconstitute a local board of education.[17]

Viewed in its entirety, the statutory scheme provides a range of increasingly interventionist tools: (1) the state board may oversee and direct the principal activities of an existing local board of education; see General Statutes § 10-223e (c); (2) the state board may reconstitute a local board of education for a limited period while leaving the local administration substantially in place; see General Statutes § 10-223e (h); or (3) the General Assembly may divest control from the local

administration entirely and reassign it to the state board or another entity for an unspecified period. See General Statutes § 10-223e (d).

Given the statutory scheme and the legislative history, the clear purpose of § 10-223e is to enhance the state's power to intervene in failing school districts. Viewed in the light of that overarching purpose, the training provision of § 10-223e (h) obviously serves to put a modest brake on the process of reconstituting a local board in recognition of the locality's still existing but dramatically reduced interest in retaining control.[18] As I discuss more fully in parts II and III of this opinion, a locality is perfectly free to waive this limited protection, acting through its elected representative, the local board of education.

II

Before I address the various arguments that the majority offers in support of its interpretation of § 10-223e (h), I must observe that the majority's interpretation of that statute violates a cardinal rule of statutory construction, namely, that a court must not construe a statute to reach a bizarre or irrational result; if there are two asserted interpretations of a statute, the court must adopt the reasonable one over the unreasonable one.[19] E.g., *State* v. *Courchesne*, 296 Conn. 622, 710, 998 A.2d 1 (2010). Under the majority's interpretation of § 10-223e (h), no local board of education could ever waive the training provision, not even a unanimous board acting with the full support of the populace and the municipality's other elected officials.[20] This result is untenable because there is no rational justification for mandating that such a board undergo training before being reconstituted. A second irrational result follows from the majority's conclusion that the training provision cannot be waived because it provides for a "transparent and deliberate process." This aspect of the majority's holding entails that, even if the members of a local board of education had voluntarily undergone all of the training that the state board possibly could have required of them, the state board nevertheless could not reconstitute the local board without requiring the board members to undergo the training all over again. Any other result would deprive the local board of education and all other interested persons of notice of the state board's intention to reconstitute the local board, thereby defeating the supposed statutory purpose of "delibera[tion]" and "transparen[cy] . . . ."

Having noted that the majority's interpretation of § 10-223e (h) has several irrational consequences, I turn to the majority's reasons for offering that interpretation. Three principal strains of argument emerge from the majority's discussion. First, the majority asserts that the legislative history of § 10-223e (h) indicates that the legislature did not intend that the training provision could be waived; in doing so, the majority all but ignores

the legislative history and genealogy of the interventionist statutory scheme of which § 10-223e (h) is only one part, and pays little regard to whether the legislators whom it quotes actually voted in favor of § 10-223e (h). Second, the majority contends that, because the training provision embodies a public obligation that inures to the benefit of the citizens of Connecticut as a whole, and because a public obligation created by statute cannot be waived by any individual or group of individuals, the training provision embodies a public obligation that no one, and a fortiori no local board of education, is competent to waive. Third, the majority asserts that, if a local board of education could waive the training provision, a local board could expand the scope of the state board's power, which would be impermissible.

The majority's three main arguments contain severe flaws. Most glaringly, none of the sources on which the majority relies actually supports its view of waiver, and many of these sources in fact support the opposite view. Nowhere is this last flaw more vivid than in the majority's selective reliance on legislative history. The majority refuses to consider the legislative history of the 2007 act; Spec. Sess. P.A. 07-3; the very act that created the comprehensive statutory scheme of which § 10-223e (h) is but one of several substantive provisions. Ignoring this crucial source of evidence, the majority looks only to the legislative history of P.A. 10-111, § 21, which gave rise to § 10-223e (h). The legislative history of P.A. 10-111, § 21, obviously tells us very little about the legislative intent behind the overall statutory scheme, most of which was enacted three years earlier. Had the majority consulted the legislative history of the 2007 act, it would have been forced to confront the fact that a virtually unanimous General Assembly approved the unprecedented interventionist measures that stand alongside the reconstitution process outlined in § 10-223e (h), measures that suggest anything *but* a legislative preference for local control of education in failing school districts.[21] By the time § 10-223e (h) became law in 2010, Connecticut's low achieving school districts already had been subject to "intensified supervision and direction" by the state board for three years. Spec. Sess. P.A. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (c) (1). Such supervision and direction consisted of an assortment of interventionist programs, only some of which are canvassed in part I of this opinion. The majority nevertheless asserts that these unprecedented interventionist measures were intended "to promote local control . . . ." Contrary to the majority's assertion, it is perfectly clear that these statutory provisions do not increase local control; rather, they dramatically enhance state power over failing school districts. It also is perfectly clear that the key historical fact in this case is Connecticut's recent sea change in education policy, not what the majority describes as "the legislature's

decision to initially restrict to the General Assembly the power to reconstitute local boards." The historic set of legislative developments that preceded the enactment of § 10-223e (h) demonstrate that the advent of the reconstitution authority was the final step in a steady march toward enhanced state power to rescue failing school districts, a step that the legislature had been intent on taking after Connecticut failed to obtain a grant under the Race to the Top program, in part as a result of the state's then limited capacity to turn around struggling schools.

The majority avoids interpreting § 10-223e (h) in the light of what it acknowledges to be "a sea change in educational policy in this state" only by announcing a heretofore unknown principle of statutory construction: when construing a statutory amendment, the court must look primarily to the legislative history of the amendment and must pay little or no attention to the purpose and legislative history of the underlying statute. To state this principle is to refute it. This principle also runs counter to the established practice of this and other courts of construing a statutory amendment by reference to the legislative history of previous versions of the statute. See, e.g., *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 172–73 n.23, 12 A.3d 948 (2011) ("the legislative history of [General Statutes] § 14-227a demonstrates that many of the amendments to § 14-227a over the years have been intended to make our driving under the influence law consistent with the law of other states and federally recommended guidelines"); see also *Bell* v. *United States*, 366 U.S. 393, 411, 81 S. Ct. 1230, 6 L. Ed. 2d 365 (1961) ("[n]othing in the legislative history of the original statute or of its many re-enactments offers support for any other construction").

The majority's use of legislative history is flawed in yet another respect as well. In support of its conclusion that "there was a concern that reconstitution . . . would trample on the rights of the people who had duly and democratically elected their representatives to the local board," the majority relies to a significant extent on the statements of legislators who actually voted *against* P.A. 10-111. The statements of legislators who voted against P.A. 10-111 establish little if anything about the legislative intent behind § 10-223e (h). They certainly do not establish that the training provision signifies a deep-seated preference for local control of failing school districts. Even less do they establish that the training provision is nonwaivable. If the remarks of legislators who voted against the law establish anything at all, they likely establish that the legislature knew about and *discounted* the concerns of those legislators.[22] The majority's attempt to divine the legislature's intent by relying on the statements of legislators who voted against P.A. 10-111 is a good example of the sort of use of legislative history that arouses "concerns

over the manipulation by legislators or interest groups seeking to influence judicial interpretation after having failed to have their view adopted in the text of the legislation"; *State* v. *Courchesne*, 262 Conn. 537, 636, 816 A.2d 562 (2003) (*Zarella*, *J.*, dissenting); and gives rise to "the appearance of . . . result-oriented decision-making." (Internal quotation marks omitted.) Id., 632 (*Zarella*, *J.*, dissenting); see also id. (*Zarella*, *J.*, dissenting) (Criticizing majority's use of legislative history as result driven and explaining that "[t]he trick [employed by the majority] is to look over the heads of the crowd and pick out your friends. The variety and specificity of result that [the majority's approach] can achieve is unparalleled." [Internal quotation marks omitted.]).

Even if the selection of legislative sources on which the majority relies truly were representative of the legislature's intent, these sources would not support the majority's conclusion that the training provision is nonwaivable. The majority's conclusion simply is a non sequitur, a non sequitur concealed behind a sequence of purported inferences. From an assemblage of legislative quotations, the majority first infers "three general principles of legislative intent": (1) reconstitution is an "extreme remedy, to be used only sparingly after it becomes apparent that other remedial measures have failed to produce results"; (2) "the testimony and remarks [concerning § 10-223e (h)] track the plain [mandatory] language of the statute"; and (3) reconstitution is a "usurpation of local democratic will." From these three general principles, the majority then infers that the legislature intended the training provision to serve three "purposes": (1) to afford notice to a local board of education and its electors of a potential takeover; (2) to provide the local board with an opportunity to prevent its reconstitution; and (3) to allow the state board to reconstitute the local board only if "it first requires the local board to undergo and complete training"—in other words, the training provision is mandatory. "View[ing]" these three purposes "together," the majority infers that the overarching purpose of the training provision is to afford notice of a potential takeover to the local board, its electors, and the citizens of this state as a whole, and to foster transparency and deliberation during the process of reconstitution. Having saddled the training provision with this overarching purpose, the majority then concludes that the provision is nonwaivable.

As I explain hereinafter, none of the purposes or principles that the majority ascribes to the training provision supports the conclusion that the provision is nonwaivable, and only some of these purposes or principles find any support in the legislative sources that the majority cites. I address these principles and purposes in turn.

First, the majority repeatedly emphasizes that the legislature understood § 10-223e (h) to be mandatory. This is irrelevant. As a conceptual matter, only a mandatory provision can be waived; thus, only in the context of a mandatory provision does the issue of waiver even arise. The fact that "the testimony and remarks track the plain [mandatory] language of the statute" does not lend one iota of support to the majority's conclusion that the provision is nonwaivable. On the contrary, because the issue of waiver arises only in the context of a mandatory provision, if the mandatory language of § 10-223e (h) is evidence of anything, it is evidence that the provision *might be waivable*.[23] I therefore am baffled by the majority's lengthy discussion of why the training provision of § 10-223e (h) is mandatory.[24] There is little to discuss. Not only does the provision employ presumptively mandatory language; see General Statutes § 10-223e (h) ("[t]he [b]oard *shall not* grant such authority to the commissioner *unless*" [emphasis added]); but the defendants *concede* that the provision is mandatory. The clear effect of this long discussion is to give the false impression that, because the training provision is mandatory, it therefore is likely nonwaivable.

Second, the majority observes that the training provision serves the protective purpose of affording a local board of education an opportunity to prevent its reconstitution. I agree, but if the training provision serves to protect a local board from an *unwanted* takeover, then *of course* the local board can waive that protection. Indeed, every single legislative remark that the majority quotes evinces a desire to protect local boards of education from unwanted reconstitution. These remarks therefore support the very conclusion that majority eschews, namely, that the local board of education is free to waive the training provision because that provision serves only to protect the locality's greatly reduced interest in retaining control of its chronically failing public schools. Furthermore, contrary to what the majority implies, the legislature's failure to consider whether a local board of education could seek out reconstitution or waive the training provision lends no support at all to the majority's conclusion that the training provision is not waivable. Rather, the absence of any evidence of legislative intent to *preclude* waiver strongly suggests that the training provision is indeed waivable. As this court previously has recognized, mandatory statutory provisions "typically" are subject to waiver. See, e.g., *Santiago* v. *State*, 261 Conn. 533, 543, 804 A.2d 801 (2002). Our permissive approach to waiver accords with that of the United States Supreme Court, which has noted that "in the context of a broad array of constitutional and statutory provisions . . . [r]ather than deeming waiver presumptively unavailable absent some sort of express enabling clause, we instead have adhered to the opposite presumption. . . . [A]bsent

some affirmative indication of Congress' intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties." (Citations omitted.) *United States* v. *Mezzanatto*, 513 U.S. 196, 200–201, 115 S. Ct. 797, 130 L. Ed. 2d 697 (1995); see *Shutte* v. *Thompson*, 82 U.S. (15 Wall.) 151, 159, 21 L. Ed. 123 (1873) ("[a] party may waive any provision, either of a contract or of a statute, intended for his benefit").

Third, the majority contends that the legislature regarded reconstitution as an "extreme remedy, to be used only sparingly after it becomes apparent that other remedial measures have failed to produce results."[25] Although I agree that reconstitution is an "extreme remedy," it is beyond dispute that no circumstances could be more extreme than those of the present case, in which student performance in the locality is chronically abysmal; see part I of this opinion; oversight measures have failed to yield appreciable improvement,[26] and the mayor, the superintendent, and the Bridgeport board itself all have made impassioned pleas for state intervention. Testifying before the state board, former Bridgeport board member Thomas Mulligan, who had served just six months of his first term when he voted for reconstitution, explained that the Bridgeport board could not possibly fulfill its obligations to Bridgeport schoolchildren because of the "toxic" atmosphere at board meetings and because the board could not agree on anything, even a budget. Mulligan testified that he would not have voted for the reconstitution measure if he had believed there was any other way to promote the educational interests of Bridgeport schoolchildren. He added that, although a few of his colleagues might be disappointed about losing their jobs, "more important than elective office is to do the job that you have been elected to do. . . . [I]t is more important that the students get the education that they are entitled to . . . . The kids in the city of Bridgeport need a functional board more than any other municipality [in the state]. They deserve it." Barbara Bellinger, former president of the Bridgeport board, expressed a similar sentiment. She testified that reconstitution was necessary because the Bridgeport board simply was incapable of "delivering the education that the children deserve and the state says they should have. . . . We might disagree as to the reasons for our current problems, but the status quo is not working or acceptable. We need the state to step in and be our partners." John Ramos, the Bridgeport superintendent of schools, described the reconstitution measure as the "last and best hope for our district and its students."

Fourth, the majority contends that the legislature viewed reconstitution as a "usurpation of local democratic will." Whether true or not, this contention is irrelevant. Reconstitution may represent a usurpation of the local democratic will only when it occurs over

the *objection* of an elected local board of education. Reconstitution represents no such usurpation when it occurs at the *urging* of the local board, as it did in the present case. Indeed, in the present case, reconstitution received strong support not only from the Bridgeport board but also from the superintendent and from the mayor, the city's highest elected official.

Fifth, the majority asserts that the training provision serves the overarching purpose of benefiting the citizens of the *entire state* by ensuring that reconstitution can occur only upon adequate public notice and in a manner that is deliberate and transparent. Although the majority does not say so, this assertion derives no support from the statutory scheme or the legislative history and, in fact, runs counter to our rules of statutory construction. It also runs counter to common sense; the majority does not explain how the residents of Torrington and Greenwich and New London could have any interest at all, much less an overriding one, in the transparency and deliberateness of the reconstitution process in *Bridgeport*. Nor does the majority bother to explain exactly how such an interest could possibly trump Bridgeport's *own* interest in permitting its board of education, acting on behalf of the local electorate, to waive the training contemplated by § 10-223e (h) in order to discharge as expeditiously as possible the Bridgeport board's duty to protect the schoolchildren's constitutional right to an adequate public education.

Perhaps even more fundamentally, the majority seems oblivious to the fact that § 10-223e (h) enables the state board to reconstitute a local board of education *in a manner that affords the locality no notice whatsoever*. It would be perfectly lawful under § 10-223e (h) for the state board to take several of the remedial actions specified in § 10-223e (c) (2), including requiring the local board of education to undergo training, and then, months later, *without warning*, authorize the commissioner to reconstitute the local board. Because this sequence of events is perfectly lawful under § 10-223e (h), it makes no sense to suppose that the legislature meant for the training contemplated by § 10-223e (h) to serve the purpose of providing a locality notice of an impending takeover.[27] Unsurprisingly, the majority has produced no evidence that the legislature intended any such thing. Not a single remark that the majority has quoted evinces the belief that the purpose of the training provision is to afford notice of an impending takeover or to foster transparency and deliberation during the process of reconstitution. Indeed, given that the legislature made notice an express component of *another* part of § 10-223e; see General Statutes § 10-223e (d) (requiring state board to give "notice" to local board of education in low achieving school district of that district's "progress toward meeting the benchmarks established by the State Board"); we must pre-

sume that, if the legislature had intended for the state board to provide *further* notice before reconstitution, the legislature would have said so explicitly. See, e.g., *Genesky* v. *East Lyme*, 275 Conn. 246, 258, 881 A.2d 114 (2005) ("if the legislature wants to [engage in a certain action], it knows how to do so"); *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 135, 848 A.2d 451 (2004) (same).

Even if the purpose of the training provision truly were to afford notice of a potential takeover and to promote transparency and deliberation during the reconstitution process, the majority's reasoning still would not yield the conclusion that the training provision is not waivable, for the majority does not even *attempt* to explain how permitting a local board of education to waive the training provision would deprive the locality of adequate notice or render the reconstitution process impermissibly opaque or overhasty. To the extent that the training provision serves incidentally to afford notice or to promote transparency and deliberation, it does so most obviously in the case of a *recalcitrant* board, that is, one unwilling to give up control, not in the case of a board like the one in Bridgeport, which waived the training provision by passing a lawful resolution at a properly noticed public meeting. See part III of this opinion. Evidently, the majority believes that the resulting reconstitution occurred with less notice and deliberation than might have been desirable as a matter of good public policy. Regardless of whether the majority's belief is correct—and the majority offers no evidence to suggest that it is—this court may not rewrite a statute in order to promote the policy that it happens to prefer. E.g., *AvalonBay Communities, Inc.* v. *Zoning Commission*, 280 Conn. 405, 422, 908 A.2d 1033 (2006) ("[the court] cannot rewrite a statute to accomplish a particular result" [internal quotation marks omitted]).[28]

In seeking to establish that a local board of education cannot waive the training provision of § 10-223e (h), the majority appears to place the greatest weight on its "public obligation" argument. This argument rests on two premises. The first is that the training provision "embodies a public obligation that . . . inures to the benefit of the citizens of Connecticut as a whole." The second is that a public obligation created by statute "cannot be waived by any individual or group of individuals." From these two premises, the majority infers that the training provision of § 10-223e (h) embodies a public obligation that no one, including local boards of education, is competent to waive.

The problem with this argument is that neither premise is plausible. In support of the first premise, that the training provision "embodies a public obligation that . . . inures to the benefit of the citizens of Connecticut as a whole," the majority asserts that the purpose of

the training provision is to ensure that reconstitution occur only upon adequate public notice and in a manner that is deliberate and transparent. As I have explained, this purported purpose is something that the majority simply creates out of whole cloth.

In support of its second premise, that a public obligation created by statute cannot be waived by any individual or group of individuals, the majority provides a rather lengthy argument, which I discuss more fully hereafter. In brief, no part of this argument withstands scrutiny. Far from analyzing any of our prior holdings, the majority merely plucks superficially favorable language from various judicial opinions, paying little regard to whether the language in question is dictum or holding, and paying even less regard to whether the underlying opinions are on point. Not one of the five opinions that the majority cites in the text of its opinion[29] is on point; only two would be binding even if they *were* on point;[30] and of these two, only one[31] contains favorable language that can fairly be characterized as a holding. It is hardly surprising, then, that the majority says so little about the facts or reasoning underlying these cases.

The majority relies foremost on several sentences from a dissenting opinion in *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, 272 Conn. 676, 719–20, 866 A.2d 554 (2005) (*Lavery* and *Dranginis*, *Js.*, dissenting), a case in which the court permitted a death row inmate to waive his statutory right to seek habeas review of his sentence. See id., 678–79. The majority omits the fact that the bulk of the following passage, including the sentence that the majority italicizes, is a verbatim quotation from a long since deleted portion of an almost half century old edition of a legal encyclopedia, American Jurisprudence 2d: "[W]aiver is not . . . allowed to operate so as to infringe [on] the rights of others, or to transgress public policy or morals.

"*The public interest may not be waived.* [When] a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof. The public good is entitled to protection and consideration and if, in order to effectuate that object, there must be enforced protection to the individual, such individual must submit to such enforced protection for the public good. . . . Accordingly, a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy." (Citation omitted; emphasis added; internal quotation marks omitted.) *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, supra, 272 Conn. 719–20, quoting 28 Am. Jur. 2d 847, Estoppel and Waiver § 161 (1966). Even if this language were the law, instead of an excerpt from a defunct portion of an encyclopedia entry, the language

still would not support the majority's position that the training provision of § 10-223e (h) is not waivable. First, the Bridgeport board is not an individual; it is a duly elected representative body. Second, the training provision of § 10-223e (h) is not "a statutory right conferred on a private party . . . but affecting the public interest . . . ." *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, supra, 720. Rather, it is a benefit conferred on the locality as a whole. Third, the Bridgeport board's waiver of the training provision did not "contravene the statutory policy." Id. On the contrary, when that board waived the training provision with the stated intention of "enabl[ing] the Bridgeport public schools to fulfill their statutory and constitutional responsibilities," the board clearly was acting in furtherance of the statute's policy of "improv[ing] student performance and remov[ing] the . . . district from the list of . . . districts designated . . . as . . . low achieving . . . ." General Statutes § 10-223e (c) (2).

Also irrelevant for present purposes are *Beasley* v. *Texas & Pacific Railway Co.*, 191 U.S. 492, 24 S. Ct. 164, 48 L. Ed. 274 (1903), a case having nothing to do with waiver, in which the court held that specific performance of a contract prohibiting the construction of a railway depot would contravene public policy; id., 497; and *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 65 S. Ct. 895, 89 L. Ed. 1296 (1945), a case in which the court concluded that an employee who had accepted a delayed payment of the basic statutory wages due under the Federal Labor Standards Act of 1938, Pub. L. No. 75-718, c. 676, 52 Stat. 1060, could not validly waive any further right to recover liquidated damages under that act. *Brooklyn Savings Bank* v. *O'Neil*, supra, 704–706. The court in *Brooklyn Savings Bank* concluded that there could be no waiver on the ground that the legislative history of the act "show[ed] an intent on the part of Congress to protect certain groups of the population from sub-standard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce. The statute was a recognition of the fact that due to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency and as a result the free movement of goods in interstate commerce. To accomplish this purpose standards of minimum wages and maximum hours were provided." Id., 706–707. The court observed that "[n]either [party] suggest[ed] that the right to the basic statutory minimum wage could be waived by any employee subject to the [a]ct. No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the [a]ct." Id., 707. The court then concluded "that the same policy considerations which forb[ade] waiver of basic mini-

mum and overtime wages under the [a]ct also prohibit[ed] waiver of the employee's right to liquidated damages." Id. No aspect of the court's reasoning in *Brooklyn Savings Bank* applies in the present case. A local school board is not a private individual; it is a public entity. Nor does a local board of education suffer from unequal bargaining power. Most important, insofar as § 10-223e serves to protect the interests of a vulnerable "segment of the population"; id., 706; the segment that § 10-223e serves to protect is neither the local board of education nor the local board's electorate; it is instead the locality's schoolchildren, a group on whose behalf the local board of education is both statutorily and constitutionally obligated to act. In sum, none of the considerations that led the United States Supreme Court to conclude that an employee could not validly waive the right to liquidated damages under the Federal Labor Standards Act indicate that a local board of education cannot validly waive the protection afforded by § 10-223e (h).

L'Heureux v. *Hurley*, 117 Conn. 347, 168 A. 8 (1933), which I discuss later, is the only binding case from which the majority culls language that fairly can be characterized as a holding. The other binding case on which the majority relies is *Hatch* v. *Merigold*, 119 Conn. 339, 343, 176 A. 266 (1935). Quoting *Hatch*, the majority observes that this court "previously [has] *held* that '[o]ne cannot waive a public obligation created by statute . . . but he may waive a statutory requirement the purpose of which is to confer a private right or benefit.' " (Emphasis added.) Contrary to what the majority implies, *Hatch* did not hold that "[o]ne cannot waive a public obligation . . . ." *Hatch* v. *Merigold*, supra, 343. Rather, *Hatch* held, inter alia, that a particular statutorily created presumption—specifically, a presumption that the decedent in a wrongful death case had exercised reasonable care—was a statutory benefit that a party *could* waive. See id. ("By affirmatively pleading her decedent's lack of contributory negligence, the plaintiff waived her right to claim the benefit of the statute. The plaintiff in this case having done this, the trial court was not in error in failing to instruct the jury that under the statute there was still a presumption that her decedent had been in the exercise of reasonable care."). In view of what the court in *Hatch* actually held, its assertion that one cannot waive a public obligation was merely dictum, which the court supported by citing *L'Heureux* v. *Hurley*, supra, 356.

The upshot is that the majority cites only one Connecticut case that, on its face, might seem to provide any support for the majority's position. That case is *L'Heureux* v. *Hurley*, supra, 117 Conn. 347, a 1933 personal injury case in which the court held that a tenant could not waive a landlord's statutory duty to illuminate common areas of a building at night. Id., 355–56. *L'Heureux* provides no actual support for the majority's posi-

tion because a tenant is a private individual who, unlike the Bridgeport board, obviously is not entitled to act on behalf of the segment of the public that the statute in question aims to protect. Ignoring this difference, the majority divines a holding of sweeping breadth in the court's observation in *L'Heureux* that "[o]ne cannot give what one does not possess. One may waive a personal obligation of another to the one waiving. One cannot waive an obligation owed by another to the public." Id. The majority seizes on this language and reads the word "one" so broadly as to encompass not just private individuals but also duly elected representative bodies. There is no basis for this broad reading, either in the reasoning of *L'Heureux* or in that of any other case the majority cites.[32]

In a final attempt to prove that the training provision is not waivable, the majority offers the following argument based in general principles of administrative law: "Because the training provision [in § 10-223e (h)] defines the scope of the grant of [the reconstitution] power from the legislature to the state board, the local board of education, as a separate agent of the state, cannot alter the scope of this grant of power. See *Kinney* v. *State*, [213 Conn. 54, 60 n.10, 566 A.2d 670 (1989)] ('administrative agencies . . . must act strictly within their statutory authority and cannot unilaterally modify, abridge or otherwise change . . . provisions because the act's enabling legislation does not expressly grant that power' . . .). It therefore follows that the local board cannot expand this grant of power by waiving the training obligation." I am perplexed by the majority's assertion that, "[b]ecause the training provision defines the scope of the grant of power from the legislature to the state board, the local board of education, as a separate agent of the state, cannot alter the scope of this grant of power." If I understand what this assertion means, and I am not sure I do, I certainly am aware of no legal authority that supports it, especially not *Kinney*, the only case that the majority cites. *Kinney* states that "administrative agencies . . . cannot unilaterally modify, abridge or otherwise change" their statutory authority. (Citation omitted.) *Kinney* v. *State*, supra, 60 n.10. Because the fundamental question in this case is whether a local board's authority encompasses the authority to waive the training provision, the majority simply begs the question when it asserts that, if the local board could waive the training provision, it thereby could unilaterally modify, abridge or change its authority.

III

Having explained why each of the majority's arguments is meritless, I now explain why I would resolve this fundamentally straightforward case by concluding that a local board of education is competent to waive whatever protection § 10-223e (h) might afford a local-

ity against a state takeover. I begin with a few basic principles. It well established that waiver is the "intentional relinquishment or abandonment of a known right or privilege." *Johnson* v. *Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 2d 1461 (1938); accord *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 57, 970 A.2d 656, cert. denied sub nom. *Bridgeport Roman Catholic Diocesan Corp.* v. *New York Times Co.*, U.S. , 130 S. Ct. 500, 175 L. Ed. 2d 384 (2009). "As a general rule, both statutory and constitutional rights and privileges may be waived." *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 57. Indeed, as I noted earlier, this court has recognized that mandatory statutory provisions "typically" are subject to waiver. *Santiago* v. *State*, supra, 261 Conn. 543; see also *United States* v. *Mezzanatto*, supra, 513 U.S. 200–201 ("[r]ather than deeming waiver presumptively unavailable absent some sort of express enabling clause, we instead have adhered to the opposite presumption"); *Shutte* v. *Thompson*, supra, 82 U.S. (15 Wall.) 159 ("[a] party may waive any provision, either of a contract or of a statute, intended for his benefit").

Because of the general presumption in favor of waiver, and because it is fundamental that a representative body possesses the authority to make binding decisions on behalf of its constituents, it is self-evident that a local board of education possesses the authority to waive the locality's interest in retaining control of public education. Besides being self-evident, this result follows from general principles. Because the role of a local board of education is not to make law but to implement it; see General Statutes § 10-220 (a); a local board is functionally an arm of the executive branch. As an arm of the executive branch, a local board serves as an agent of the electorate. Cf. *Loving* v. *United States*, 517 U.S. 748, 777, 116 S. Ct. 1737, 135 L. Ed. 2d 36 (1996) (Scalia, J., concurring) ("[w]hat Congress does is to assign responsibilities to the [e]xecutive; and when the [e]xecutive undertakes those assigned responsibilities it acts, not as the 'delegate' of Congress, but as the agent of the [p]eople"). It is axiomatic that a duly authorized agent may waive rights on behalf of its principal. The only possible question is whether a local board, as agent of the local electorate, is duly authorized to waive the electorate's interest in retaining control of public education. This question must be answered in the affirmative, not only because a representative body self-evidently possesses the authority to make binding decisions on behalf of its constituents, but also because a local board serves as an agent of the electorate *and* as an agent of the state, insofar as the local board performs the state's statutory and constitutional duty to furnish an education for the public. *Cheshire* v. *McKenney*, 182 Conn. 253, 257–58, 438 A.2d 88 (1980); see *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 314–15, 990 A.2d

206 (2010) (state has constitutional obligation to ensure that students receive suitable educational opportunities); *Sheff* v. *O'Neill*, 238 Conn. 1, 46, 678 A.2d 1267 (1996) (same); *Horton* v. *Meskill*, 172 Conn. 615, 649, 376 A.2d 359 (1977) (same); see also General Statutes § 10-4a ("the educational interests of the state shall include, but not be limited to, the concern of the state that [1] each child shall have . . . equal opportunity to receive a suitable program of educational experiences"); General Statutes § 10-220 (a) ("[e]ach local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state as defined in section 10-4a and provide such other educational activities as in its judgment will best serve the interests of the school district"). As an agent of the state responsible for discharging the state's duty to furnish an education for the public that meets state constitutional and statutory requirements, a local board of education clearly has a duty to promote the interests of the schoolchildren. When local control no longer serves the interests of the schoolchildren, a local board's duty to promote these interests evidently entails a duty to waive the locality's interest in retaining control of public education.

If a local board of education can have a *duty* to waive the locality's interest in control, then it obviously must have the *authority* to waive the locality's interest in control. To conclude otherwise, as the majority effectively does, is to countenance the possibility of a conflict between the local board's role as agent of the local electorate and its role as agent of the state. If such a conflict were possible, it would be necessary to resolve the conflict in favor of the local board's role as agent of the state, because, in its role as agent of the state, the local board acts under a duty of constitutional magnitude. See *Connecticut Assn. of Boards of Education, Inc.* v. *Shedd*, 197 Conn. 554, 563, 499 A.2d 797 (1985) ("[a]lthough the local boards [of education] may at times have divided loyalties, [i]t is an established principle that local charter powers must yield to the superior power of the state when the two enter a field of statewide concern" [internal quotation marks omitted]). In reality, however, no such conflict is possible. As I stated at the outset, we honor the principle of local control by permitting a local board of education to waive the training contemplated by § 10-223e (h) in order to discharge as expeditiously as possible the local board's duty to promote the interests of the schoolchildren.[33]

Having established that a local board of education may waive the protection afforded by § 10-223e (h), I find it undeniable that the Bridgeport board waived such protection. "Waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so." (Internal quotation marks omitted.) *Rosado* v.

Bridgeport Roman Catholic Diocesan Corp., supra, 292 Conn. 58. Furthermore, "although the question of whether a privilege has been waived ordinarily presents a question of fact reviewed under a clearly erroneous standard, the standard of review is plenary when the trial court has made its determination on the basis of pleadings and other documents, rather than on live testimony." Id., 57. Here, we must inquire into the issue of waiver de novo. Such a de novo inquiry is entirely proper, not only because there is no trial court determination for us to review, but also because the stipulated facts in this case enable us to resolve the issue of waiver as a matter of law "on the basis of pleadings [or] other documents . . . ." Id.

The present case readily may be resolved on the basis of the Bridgeport board's July 5, 2011 resolution "concerning a request to the state board of education." It is undisputed that, on July 5, 2011, by a vote of six to three, the Bridgeport board passed a resolution stating: "WHEREAS, the Bridgeport [b]oard has received training in the skills needed to function effectively as a [b]oard of [e]ducation, but such training has not enabled the [b]oard to carry out its statutory responsibilities, and the Bridgeport [b]oard does not believe that further training would be productive or would enable the [b]oard to carry out those responsibilities . . . .

"[T]he Bridgeport [b]oard hereby requests that the [s]tate [b]oard, acting pursuant to the . . . General Statutes, including, but not limited to . . . § 10-223e (h), authorize the [c]ommissioner . . . to reconstitute the Bridgeport [b]oard . . . in accordance with statutory authority, and that the [s]tate [b]oard take such other statutorily authorized actions as may enable the Bridgeport public schools to fulfill their statutory and constitutional responsibilities." On its face, this resolution plainly constitutes the "intentional relinquishment . . . of a known right" to the training contemplated by § 10-223e (h); *Johnson* v. *Zerbst*, supra, 304 U.S. 464; accord *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 292 Conn. 57; a relinquishment that the Bridgeport board undertook in the avowed belief that further training would not enable it to carry out its responsibility to provide a suitable education to Bridgeport schoolchildren. Because the Bridgeport board waived the training provision, the state board acted lawfully when it reconstituted the Bridgeport board pursuant to § 10-223e (h).[34]

Furthermore, contrary to the plaintiffs' arguments, the Bridgeport board plainly had the legal power or authority to adopt a resolution requesting that the state board reconstitute it. As I explained earlier, a local board of education is competent to waive the protection afforded by § 10-223e (h), both in its capacity as a duly elected representative of the locality and in its capacity as an agent of the state charged with carrying out the

state's obligation to provide a suitable education. Moreover, when the Bridgeport board passed a resolution requesting that the state board intervene pursuant to § 10-223e (h), the board clearly acted within the scope of its authority under the Bridgeport charter. See Bridgeport Charter, c. 15, § 2 ("[t]he board of education shall have all the powers vested in, and shall perform all the duties imposed [on], boards of education under the laws of this state and the United States").[35]

The plaintiffs offer several meritless arguments in support of their contention that the Bridgeport board lacked the authority to enact a resolution requesting the state board to reconstitute it. The plaintiffs in the *Farrar-James* case contend that the Bridgeport board did not have the authority to remove its own members by resolution. This is true but irrelevant because the Bridgeport board simply did not remove its own members, either by resolution or by any other means. Rather, it was the *state board* that removed the Bridgeport board members. The Bridgeport board merely invited the state board to act. When the state board authorized reconstitution, it acted autonomously, not at the command of the Bridgeport board. The state board obviously could have rejected or ignored the Bridgeport board's request for reconstitution. Thus, the Bridgeport board did not remove its own members any more than a person arrests his neighbor when he alerts the police to the neighbor's criminal activity.[36] Nor did the Bridgeport board dissolve itself, as the plaintiffs in the *Pereira* case contend. The Bridgeport board merely made its own dissolution more likely. Finally, it is entirely irrelevant—contrary to the assertion of the plaintiffs in the *Farrar-James* case—that the Bridgeport board lacked the authority to delegate its vacancy appointing power to the state board. The process of reconstituting a local board of education pursuant to § 10-223e (h) does not result in the sort of vacancy contemplated by statute; see General Statutes § 10-219;[37] because the reconstitution process results in both the appointment of new members and the removal of existing ones. Even if the reconstitution process did result in the sort of vacancy contemplated by § 10-219, thereby giving rise to a conflict between §§ 10-219 and 10-223e (h), the latter would control because it is more specific. See, e.g., *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 301–302, 21 A.3d 759 (2011) (invoking "the well established principle of statutory interpretation that requires courts to apply the more specific statute relating to a particular subject matter in favor of the more general statute that otherwise might apply in the absence of the specific statute").

IV

Finally, the plaintiffs raise several constitutional challenges to § 10-223e (h) that it is necessary for me to address in light of my conclusion, namely, that a local

board of education is competent to waive the protections embodied in that statute and that the Bridgeport board validly waived those protections. The plaintiffs contend that § 10-223e (h) is unconstitutional because it violates the home rule provision of article tenth, § 1,[38] the free suffrage provision of article sixth, § 4,[39] and article first, §§ 1,[40] 4,[41] and 20,[42] of the Connecticut constitution. In considering these claims, this court must "indulge in every presumption in favor of the statute's constitutionality . . . ." (Internal quotation marks omitted.) *State* v. *McKenzie-Adams*, 281 Conn. 486, 500, 915 A.2d 822, cert. denied, 552 U.S. 888, 128 S. Ct. 248, 169 L. Ed. 2d 148 (2007). The plaintiffs bear the heavy burden of demonstrating that the statute is unconstitutional beyond a reasonable doubt. See, e.g., *Kinney* v. *State*, 285 Conn. 700, 710, 941 A.2d 907 (2008) ("legislative enactments carry with them a strong presumption of constitutionality, and . . . a party challenging the constitutionality of a validly enacted statute bears the heavy burden of proving the statute unconstitutional beyond a reasonable doubt" [internal quotation marks omitted]). For the reasons that follow, the plaintiffs cannot meet their burden. Indeed, the plaintiffs' constitutional claims warrant little discussion because with respect to none of these claims can the plaintiffs even satisfy the relevant threshold requirement.

A

The plaintiffs contend that § 10-223e (h) violates the home rule provision of article tenth, § 1, of the state constitution because § 10-223e (h) interferes with municipal charter provisions governing the organization and election of local boards of education and because it undermines municipal control over local budgetary concerns. This claim is wholly meritless because it is beyond dispute that education is a matter of statewide concern. Our case law establishes unequivocally that a statute of general application, such as § 10-223e (h), runs afoul of article tenth, § 1, only when it purports to regulate a matter of *purely local concern* and, even then, only if it conflicts with a local charter provision governing the same general subject matter. See, e.g., *Board of Education* v. *Naugatuck*, 268 Conn. 295, 307, 843 A.2d 603 (2004) (in determining whether statute violates home rule provision, "we must determine whether [it] pertains to a matter of statewide concern such that it preempts any conflicting provisions of the charter"); *Carofano* v. *Bridgeport*, 196 Conn. 623, 631, 495 A.2d 1011 (1985) (statute of general applicability conflicts with home rule provision of state constitution only when "its purpose or its operation involves subjects of purely local concern"); *Caulfield* v. *Noble*, 178 Conn. 81, 87, 420 A.2d 1160 (1979) ("a general law, in order to prevail over a conflicting charter provision of a city having a home rule charter, must pertain to those things of general concern to the people of the state").

"By its terms, article tenth restricts only the enactment of special and not of general legislation. . . . [W]hen the legislature deals with matters that are primarily of statewide concern, it may deal with them free of any restriction contained in the home-rule amendment. The legislature can thus make effective a law touching on a matter of statewide concern in one city and not in another, provided that the classification is proper. The home-rule amendment does not limit the right of the legislature to deal with matters of statewide concern, even if, in so dealing, some cities and not others are affected." (Citation omitted; internal quotation marks omitted.) *Shelton* v. *Commissioner of Environmental Protection*, 193 Conn. 506, 521–22, 479 A.2d 208 (1984), quoting *West Allis* v. *Milwaukee*, 39 Wis. 2d 356, 365–66, 159 N.W.2d 36 (1968), cert. denied, 393 U.S. 1064, 89 S. Ct. 717, 21 L. Ed. 2d 707 (1969).

Even if § 10-223e (h) conflicted with a provision of the Bridgeport charter governing the same general subject matter, the plaintiffs could not prevail on their claim under article tenth, § 1, because "[*t*]*here can be no dispute . . . that the education of our schoolchildren is an issue of statewide concern*." (Emphasis added.) *Board of Education* v. *Naugatuck*, supra, 268 Conn. 309; see also *Cheshire* v. *McKenney*, supra, 182 Conn. 257–58 ("[T]he furnishing of an education for the public is a state function and duty. . . . This duty is placed [on] the state by article eighth, § 1, of the state constitution and is delegated to local school boards by state statute. . . . There is no question but that local boards of education act as agencies of the state when they are fulfilling the statutory duties imposed [on] them pursuant to the constitutional mandate of article eighth, § 1." [Citations omitted.]).

Furthermore, to the extent that any local charter provision conceivably might conflict with the state's constitutional and statutory authority to furnish a suitable education to the schoolchildren of this state—in this case by reconstituting the local board of education in a chronically failing school district—there can be no question but that such a charter provision would have to yield to the state's authority to carry out its mandate. *Connecticut Assn. of Boards of Education, Inc.* v. *Shedd*, supra, 197 Conn. 563 ("[a]lthough the local boards may at times have divided loyalties, [i]t is an established principle that local charter powers must yield to the superior power of the state when the two enter a field of statewide concern" [internal quotation marks omitted]); see also *City Council* v. *Hall*, 180 Conn. 243, 248, 429 A.2d 481 (1980) ("the only powers a municipal corporation has are those which are expressly granted to it by the state"); *Waterford* v. *State Board of Education*, 148 Conn. 238, 245, 169 A.2d 891 (1961) ("local boards of education are creatures of the state," exercising only such powers that state has con-

ferred on them).

B

The plaintiffs also contend that § 10-223e (h) violates the free suffrage provision of article sixth, § 4, of the Connecticut constitution because it authorizes the removal from office of duly elected school board officials prior to the expiration of their terms, and because it prevents other candidates from running for office during the reconstitution period. In support of this claim, the plaintiffs argue, inter alia, that § 10-223e (h) "restricts the right of suffrage by disenfranchising the citizens who voted for the [removed] official" and "infringes [on] the free suffrage rights of those from . . . Bridgeport . . . who are eager to perform the duties of school board members . . . ."

This claim founders on the plaintiffs' false assumption that the right to free suffrage, as established under article sixth, § 4, encompasses a right to elect and serve on local boards of education. The plaintiffs can cite no authority to support this assumption because it is well settled that there simply is no right to elect and serve on local boards of education. See, e.g., *Moore* v. *Detroit School Reform Board*, 293 F.3d 352, 365 (6th Cir. 2002) ("The comparison that the plaintiffs seek to make between their ability to elect school board members before the [Michigan School Reform Act (act)] was enacted and their inability to do so under the [act] thus involves circular reasoning. Specifically, they appear to complain about lacking the right to do something [elect school board members] that they never had a fundamental right to do."). As the United States Supreme Court stated in *Sailors* v. *Board of Education*, 387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967): "Political subdivisions of [s]tates—counties, cities, or whatever [including local boards of education]—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the [s]tate to assist in the carrying out of state governmental functions. . . . [T]hese governmental units are created as convenient agencies for exercising such of the governmental powers of the [s]tate as may be entrusted to them, and the number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the [s]tate. We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, *or by some other appointive means rather than by an election*." (Citation omitted; emphasis added; internal quotation marks omitted.) Id., 107–108. The plaintiffs simply ignore this precedent, which establishes unequivocally that there is no right to elect or serve on local boards of education.

The plaintiffs also ignore precedent establishing that

the state has virtually unfettered authority to set the terms by which local boards of education may exist and carry out their delegated duties. See id., 109 ("[T]he state legislatures have constitutional authority to experiment with new techniques . . . when it comes to municipal and county arrangements within the framework of a [s]tate. Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs." [Citations omitted; internal quotation marks omitted.]); *City Council* v. *Hall*, supra, 180 Conn. 250 n.6 ("[t]he number, nature and duration of the powers conferred [on municipal] corporations and the territory over which they shall be exercised rests in the absolute discretion of the [s]tate" [internal quotation marks omitted]).

The legislature, acting pursuant to the state's authority to set the terms by which local boards of education may exist and carry out their delegated duties, has enacted General Statutes § 9-185,[43] which expressly conditions the election of local boards of education *on the state's right to reconstitute such boards under the circumstances specified in § 10-223e (h)*. The plaintiffs do not even mention § 9-185 in their briefs, let alone explain how their claim could possibly be reconciled with its provisions or with the provisions of § 10-223e (d) (2), which expressly provides that the state board may grant the commissioner the authority to reconstitute a regional or local board of education in accordance with § 10-223e (h) "*notwithstanding the provisions of chapter 146* [*relating to election law*], *any special act*, *charter or ordinance* . . . ." (Emphasis added.) I can only interpret the plaintiffs' failure to address §§ 9-185 and 10-223e (d) (2) as a tacit acknowledgement that their claim under article sixth, § 4, simply cannot be reconciled with the foregoing provisions.

C

Finally, the plaintiffs contend that § 10-223e (h) violates the equal protection provisions of article first, §§ 1 and 20, of the Connecticut constitution because it impinges on their "fundamental right to seek election" to the Bridgeport board. As I explained earlier, the plaintiffs possess no such right, fundamental or otherwise.[44] Accordingly, the plaintiffs' equal protection claim must submit to the well established principle that "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (Internal quotation marks omitted.) *Harris* v. *Commissioner of Correction*, 271 Conn. 808, 834, 860 A.2d 715 (2004). This court has stated that "[r]ational basis review is satisfied [as] long as there is a plausible policy reason for the classification . . . . [I]t is irrele-

vant whether the conceivable basis for the challenged distinction actually motivated the legislature. . . . To succeed, the party challenging the legislation must negative every conceivable basis which might support it . . . .'' (Internal quotation marks omitted.) *Contractor's Supply of Waterbury, LLC* v. *Commissioner of Environmental Protection*, 283 Conn. 86, 93, 925 A.2d 1071 (2007).

To their credit, the plaintiffs do not argue that § 10-223e (h) fails rational basis review. Indeed, no such argument legitimately could be maintained, both because of the pressing problem that § 10-223e seeks to address—that of chronically underperforming school districts—and because reconstituting an intractably dysfunctional local board of education is a manifestly rational way of carrying out the statute's purpose. The plaintiffs' equal protection challenge therefore fails.

V

It has long been said that hard cases make bad law. This case shows that easy cases can make bad law as well. It is evident that the state board did not violate § 10-223e (h) in authorizing the commissioner to reconstitute the Bridgeport board, the Bridgeport board had the authority to adopt a resolution requesting that the state board reconstitute it, and § 10-223e does not violate the home rule provision of article tenth, § 1, of the state constitution, the free suffrage provision of article sixth, § 4, or the equal protection provisions of article first, §§ 1, 4, and 20. Accordingly, I dissent.

[1] I hereinafter refer to the board of education of the city of Bridgeport as the ''Bridgeport board,'' the commissioner of education as the ''commissioner,'' and the state board of education as the ''state board.''

[2] Under article eighth, § 1, of the constitution of Connecticut, the schoolchildren of this state are entitled to a free public elementary and secondary education. This right requires the state ''to provide a substantially equal educational opportunity to its youth in its free elementary and secondary schools.'' *Horton* v. *Meskill*, 172 Conn. 615, 649, 376 A.2d 359 (1977). The right is a substantive one that ''guarantees Connecticut's public school students educational standards and resources suitable to participate in democratic institutions, and to prepare them to attain productive employment and otherwise to contribute to the state's economy, or to progress on to higher education.'' *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 244–45, 990 A.2d 206 (2010). Moreover, it is the public policy of this state that ''each child shall have . . . equal opportunity to receive a suitable program of educational experiences . . . .'' General Statutes § 10-4a (1). Under General Statutes § 10-220 (a), each local and regional board of education is required to implement this policy.

[3] Nor is this case about the set of inflammatory and unsubstantiated allegations to which Justice Harper, in his concurrence, accords unwarranted attention, allegations to the effect that ''certain members of the Bridgeport board colluded with the mayor, superintendent, private parties and certain members of the state board to engineer a takeover of the Bridgeport board for purely political purposes.'' These unsubstantiated allegations show up, among other places, in the complaint filed by Maria Pereira and other plaintiffs, which begins: ''When, in the course of human events, it becomes necessary for one group of duly elected public officials [presumably, members of the original Bridgeport board who brought the present actions] to bring to light the corrupt bands which have connected them with another, and to expose the shadowy usurpations of the people's rights by a cabal of petty tyrants [presumably, the state board] and corporate private interests with no regard for the rule of law or the votes of the people, a decent respect to the opinions of mankind requires that they should declare

the causes which impel them to an action such as this . . . .” I agree with Justice Harper when he notes that “these allegations are unproven; they are not part of the stipulated facts. As a general matter, this court assumes that public officials are acting in good faith. . . . Accordingly, in the absence of clear evidence to the contrary, [it can be assumed] that [the members of the] Bridgeport board . . . have exercised their authority in good faith, solely for the purpose of advancing the educational interests of the children.” (Citation omitted.) Because these inflammatory allegations are utterly unsubstantiated, it is inappropriate to accord them any attention at all, let alone to rely on them as “giv[ing] context to the plaintiffs’ claims and explain[ing] the deep passions that motivated their opposition to reconstitution.” Dwelling on these inflammatory allegations is profoundly unfair to the defendants and can serve only to undermine this court’s image as an arbiter of impartial justice. The public has a right to know with certainty that this court’s decisions are not tainted by unproven allegations or other irrelevant considerations.

[4] Although I wholeheartedly agree with Justice Harper that parental involvement is to be encouraged as an extremely important component of a child’s educational experience, I do not agree with his suggestion that reconstituting a local board of education against the will of a majority of parents in a chronically failing school district necessarily discourages parental involvement, and there is no evidence in the record even remotely indicating that it does. Much less is there any evidence in the record indicating that a majority of parents *in this case* opposed reconstitution of the Bridgeport board. Even if there were, such evidence would be completely irrelevant to the issue in this case, which is whether the state board’s action was *lawful*, not whether it was wise. Moreover, I do not hold the view that Justice Harper ascribes to me, namely, that “evidence [of parental preferences] necessarily would have been irrelevant to the state board in deciding whether reconstitution would have been the best course of action.” In any event, my view on the wisdom of reconstituting a local board does not actually matter at all, and neither does the view of any of my colleagues. The only view that matters is that of the *legislature*, as expressed in a governing statutory scheme that provides that the state board, in its sound discretion, may reconstitute chronically failing school districts.

[5] The majority observes that it “cannot ignore the fact that the foundational issue . . . is how to provide students with the best possible education”; text accompanying footnote 24 of the majority opinion; but then proceeds to ignore this issue entirely. Nowhere does the majority explain how a failing school district’s students possibly would benefit from a local board of education retaining control over the district even after the mayor, the superintendent, and the local board itself all have made impassioned pleas for state intervention.

[6] With respect to my discussion of this case’s historical and statutory backdrop, the majority writes, “To the extent the dissent relies on these data to suggest that the issue before this court is the broader policy issue of whether and when the state board should reconstitute local or regional boards of education, the dissent improperly expands the scope of this reservation.” Footnote 14 of the majority opinion. I do not know why the majority insists on transmuting my statutory analysis into something it is not and criticizing a “suggest[ion]” I do not make, instead of engaging the argument that I *do* make.

[7] The majority in fact acknowledges that, whatever the training provision’s purpose, its *effect* is to erect little more than a speed bump on the road to reconstitution: “We note that the state board’s obligation to require training would unlikely be considered an onerous one. Although . . . there are no procedures or guidelines with respect to § 10-223e (h), whatever training is required under § 10-223e (h) is unlikely to be any significant impediment to reconstitution.” Footnote 32 of the majority opinion.

[8] The majority simply mischaracterizes my view when it asserts that, “without any analysis or authority to support [my] position,” I claim that the training provision “protects the [Bridgeport] board.” On the contrary, I state repeatedly in this dissent that the training provision serves to protect the locality’s interest in retaining control over public education. It does not serve to protect the local board of education as such. I do not know why the majority refuses to engage my analysis on its own terms.

[9] See, e.g., *Santiago* v. *State*, 261 Conn. 533, 543, 804 A.2d 801 (2002) (mandatory statutory provisions are “typically” subject to waiver); see also *United States* v. *Mezzanatto*, 513 U.S. 196, 200–201, 115 S. Ct. 797, 130 L. Ed. 2d 697 (1995) (“[I]n the context of a broad array of constitutional

and statutory provisions . . . [r]ather than deeming waiver presumptively unavailable absent some sort of express enabling clause, we instead have adhered to the opposite presumption. . . . [A]bsent some affirmative indication of Congress' intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties." [Citations omitted.]); *Shutte* v. *Thompson*, 82 U.S. (15 Wall.) 151, 159, 21 L. Ed. 123 (1873) ("[a] party may waive any provision, either of a contract or of a statute, intended for his benefit").

[10] In the interest of simplicity, I hereinafter refer to students from low income families as low income students and refer to students from more affluent circumstances as non-low income students.

[11] The majority also implies that, because the parties did not include these statistics in their stipulated facts, my reliance on them is improper. See footnote 14 of the majority opinion. On the contrary, it is perfectly appropriate to take judicial notice of unchallenged statistical data pertaining to the state of public education in Bridgeport and elsewhere; see, e.g., *Sheff* v. *O'Neill*, 238 Conn. 1, 38 n.42, 678 A.2d 1267 (1996) (taking judicial notice of statistics compiled by board of education of city of Hartford); and the majority would have been free to rely on such data itself if it had chosen to resolve this case on the basis of what really is at stake: the precarious constitutional right of Bridgeport schoolchildren to an adequate public education.

[12] See, e.g., 50 S. Proc., Pt. 19, 2007 Spec. Sess., p. 6203, remarks of Senator Edward Meyer on the proposed legislation that became Public Acts, Spec. Sess., June, 2007, No. 07-3 ("In my three years . . . [in] this body, I don't think I've ever been as distressed by any one statistic as I have by the academic gap that exists in the public schools of Connecticut, a gap which, according to scholars and economists who have studied it, is actually greater than [that of] any other state in the United States. It's a gap between the underachieving students, the underachieving schools and the rest of the schools in the state. And Senator [Thomas P.] Gaffey [co-chairman of the education committee] is presenting to us today a blueprint to overcome that gap. And there's no doubt if this blueprint is enforced by us and by the [s]tate [d]epartment of [e]ducation, that we will make a significant dent in the gap.").

[13] See 51 H.R. Proc., Pt. 10, 2008 Sess., p. 3215, remarks of Representative Andrew M. Fleischmann, cochairman of the education committee (P.A. 08-153 "expands actions the [s]tate [b]oard of [e]ducation can take to improve student performance"); id., pp. 3218–19, remarks of Representative Kevin M. DelGobbo ("I appreciate the [d]istinguished [c]hair of the [e]ducation [c]ommittee [Representative Fleischmann] in presenting this amendment to clarify a concern that was expressed by myself and some others [about] the accountability measures that we adopted last year [in the 2007 act], which were so critical . . . . [T]here was concern that the underlying bill might have in some way constrained the [c]ommissioner . . . from being able to implement those accountability measures. So I appreciate very much Representative Fleischmann's [a]mendment here at this moment to make it clear that in fact all of those provisions of authority that we gave to the [c]ommissioner to go into [a] school district and make certain changes if necessary, that in fact . . . this bill would not in any way impinge [on] that . . . .").

[14] See 53 S. Proc., Pt. 7, 2010 Sess., p. 2078, remarks of Senator Gaffey ("[w]hat this amendment focuses on is changes to our education statutes to respond to . . . the criteria in the application for federal funding for education, the so-called 'Race to the Top' program"); 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4554, remarks of Representative Andrew M. Fleischmann, cochairman of the education committee ("the amendment that stands before us is essentially Connecticut's Race to the Top of education reform legislation for the year").

[15] Regs., Conn. State Agencies § 10-295-5 (b) (16) (" 'Local Education Agency' or 'LEA' refers to a public board of education or other public authority legally constituted within Connecticut for either administrative control or direction of or to perform a service function for public elementary schools or secondary schools in a town, city, school district or other political subdivision of the state or for such combination of towns, cities or school districts as are recognized in Connecticut as an administrative agency for its public elementary schools or secondary schools").

[16] See also Race to the Top, Technical Review Form—Tier 1, Connecticut Application #1680CT-1, comments from reviewer 1 ("[T]he state has legal authority to intervene in persistently low-achieving schools, but to intervene

in the [local education agencies] they need to get the [g]overnor and [l]egislature to approve the intervention, which is very difficult to do"); id., Connecticut Application #1680CT-2, comments from reviewer 2 ("the approval of [the] legislature is needed for district takeover, and this may be difficult to obtain"); id., Connecticut Application #1689CT10, comments from reviewer 5 ("It is not clear that the state could take over an entire [local education agency] without legislative approval . . . . The state is authorized to 'retrain' local boards but not to remove them for alleged failures.").

[17] The majority asserts that "the legislative history on which the dissent relies suggests that one of the principal reasons why the legislature amended § 10-223e by adding subsection (h) [the reconstitution authority] . . . was to secure federal funding"; footnote 27 of the majority opinion; as if thereby to imply that the legislature did not add the reconstitution authority for the primary purpose of enhancing the state's power to rescue failing schools or school districts. This is a false dichotomy. Obviously, when the legislature enacted § 10-223e (h), the legislature's primary purpose was to secure federal funding *by* enhancing the state's power to rescue failing schools and school districts.

[18] That the training provision of § 10-223e (h) serves simply to protect local control draws ample support from the legislative history. For example, during the education committee hearing on the proposed addition of subsection (h) to § 10-223e, Representative Andrew M. Fleischmann, cochairman of the education committee, noted: "There's a tension between trying to get things done and respecting the will of the people in democracy. And one of the concerns . . . would be taking a body that had been elected by the folks in a given town and dispersing them . . . and, instead, giving the power, essentially, to [the commissioner] and the [s]tate board." Conn. Joint Standing Committee Hearings, Education, Pt. 4, 2010 Sess., p. 1049. Former commissioner of education Mark McQuillan responded that "it is very, very important that . . . the democratic-elected officials remain in the positions if they are prepared and demonstrate the capacity to do the leadership." Id. McQuillan subsequently explained that "in rare instances—and I'm saying 'in rare instances,' not the general pattern—we have found that it would be necessary to have [the] authority" to reconstitute a local board. Id., p. 1051. During debate on the House floor, Representative Marilyn Giuliano noted that reconstituting a local board of education was a "significant usurpation of powers" and asked Representative Fleischmann about the "exact criteria that would give the commissioner such full-blown powers to dissolve a duly-elected, by the people, [b]oard of [e]ducation." 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4581. Seeking to assuage Representative Giuliano's concern about usurping local control, Representative Fleischmann replied that "the commissioner would first have to find that he had a school board that was overseeing a school district that was a low-achieving district consistently for several years, and that the board was actually an impediment to moving forward with reforms. . . . [I]f that's happening, and I'm not sure if it's happening in Connecticut . . . [t]he members of the board can be retrained by the [s]tate [d]epartment of [e]ducation. And if after that training that board continues to be an impediment to execution of reforms, then and only then would the commissioner consider reconstituting that board . . . ." Id., pp. 4581–82. These remarks all evince a modest but real concern to protect localities from unwanted state intervention.

[19] This is true even when the plain and unambiguous text of the statute leads to a bizarre or irrational result. See General Statutes § 1-2z ("The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.").

[20] Although the majority agrees that, on the basis of its analysis of § 10-223e (h), the training provision could not be waived even upon a 9 to 0 vote of the local board and upon unanimous community and political agreement, the majority suggests that there might be circumstances in which "the unanimous vote of a local board of education seeking reconstitution could serve to obviate the training requirement—for example, as the equivalent of a board's resignation contingent on reconstitution . . . [which would] not [be] in violation of § 10-223e (h) . . . ." Footnote 43 of the majority opinion. Whatever the majority might mean by "resignation contingent on reconstitution," it seems clear that any such attempt to circumvent the training provision would contravene the purpose that the majority ascribes

to § 10-223e (h)—to afford notice of a potential reconstitution and to promote transparency and deliberation during the reconstitution process—notwithstanding the majority's contrary suggestion.

[21] The majority seems unable to make up its mind about the extent of this state's preference for local control over education. The majority begins by proclaiming "the long-standing policy in Connecticut of local, rather than state, control over schools and school districts" but then performs an abrupt about-face in stating that § 10-223e (h) "remove[d] the last vestige of local control over low achieving schools and school districts," and that it "agree[s] . . . that § 10-223e . . . represented a sea change in educational policy in this state," only to perform *another* about-face by stating "that the legislature did not intend § 10-223e (h) to supplant Connecticut's long-standing policy of preferring and preserving locally elected boards of education," and that this state has a supposed "policy of maintaining a locally elected board of education *to the maximum extent possible* . . . ." (Emphasis added.)

[22] In its defense, the majority cites two cases, *Cotto* v. *United Technologies Corp.*, 251 Conn. 1, 738 A.2d 623 (1999), and *Washington* v. *Meachum*, 238 Conn. 692, 680 A.2d 262 (1996), for the proposition that "[a]lthough the comments of opponents of a bill are entitled to less weight than those of its proponents, there are instances in which we have found them to be relevant." (Internal quotation marks omitted.) Footnote 18 of the majority opinion, quoting *Cotto* v. *United Technologies Corp.*, supra, 12 n.7. I of course agree with the majority that the comments of a bill's opponents sometimes are relevant to the task of deciphering a statute's meaning. For example, the comments of a bill's opponents may be relevant when a court seeks to identify "the problem that the legislature intended to address"; *Cotto* v. *United Technologies Corp.*, supra, 12; or when a court seeks to discern what type of activity the legislature intended to regulate; see *Washington* v. *Meachum*, supra, 714 (holding that various comments in legislative history of wiretapping statutes, including several comments by legislators who opposed those statutes, "confirm[ed] [the] conclusion that the wiretapping statutes were intended to apply only to monitoring and recording done without the knowledge of either party to the conversation"). Yet the majority fails to show that *this* case is one of those "instances" in which the comments of a bill's opponents are relevant to the task of deciphering a statute's meaning. Although the majority correctly observes that "both the legislators in support of and the legislators in opposition to [P.A. 10-111] spoke about . . . the importance of preserving locally elected boards of education"; footnote 18 of the majority opinion; the majority does not acknowledge that the opponents accorded far *greater* importance to preserving locally elected boards than did the supporters. Only the opponents expressed grave reservations about the reconstitution authority. Ignoring this obvious disparity, the majority asserts inaccurately that the opponents and supporters of P.A. 10-111 "expressed identical concerns . . . ." Id.

In support of its reliance on the remarks of Representative Marilyn Giuliano, who voted against P.A. 10-111, the majority claims that her remarks are relevant "to show that the legislature was aware of the full implications of § 10-223e (h)"; footnote 22 of the majority opinion; in particular, that § 10-223e (h) empowered the state to dissolve a duly elected body. In making this claim, the majority ignores the incontrovertible fact that, if the legislature passed P.A. 10-111 *despite being aware* that it empowered the state to dissolve a duly elected body, the legislature could not have found this grant of power to be troubling or problematic. The majority also contends that the fact that the legislature passed P.A. 10-111 over Representative Giuliano's concerns "does not . . . negate the veracity of these concerns . . . ." Id. No matter how "veraci[ous]" Representative Giuliano's concerns might have been, however, the fact that the legislature passed P.A. 10-111 *notwithstanding* those concerns certainly calls into question whether they reflected the concerns of the legislature as a whole. In addition to quoting Representative Giuliano, the majority quotes Representative Lawrence F. Cafero, Jr., another opponent of P.A. 10-111, who stated: "[W]e take [great] pride . . . here in New England, and Connecticut in particular, about local control. . . . The referendum that people mostly have is at the polling booth. If they believe their [b]oard of [e]ducation is failing . . . [t]hey could vote them out . . . ." 53 H.R. Proc., Pt. 15, 2010 Sess., pp. 4631–32. The majority acknowledges that Representative Cafero voted against P.A. 10-111 but asserts that his remarks are relevant nonetheless because his "view of Connecticut's educational administration coincides with the policy embodied in the statutory scheme." Footnote 25 of the majority opinion. In light of the fact that the statutory scheme unquestionably *undermines* local control of failing

schools, I am unable to understand the majority's assertion.

In its search for the legislature's intent, the majority relies not only on irrelevant legislative history but also on an assortment of cases and other statutes that actually support the opposite of the majority's conclusion. The majority cites two cases, namely, *New Haven* v. *State Board of Education*, 228 Conn. 699, 638 A.2d 589 (1994), and *West Hartford Education Assn., Inc.* v. *DeCourcy*, 162 Conn. 566, 295 A.2d 526 (1972), in support of its contention that the legislature did not intend that § 10-223e (h) would supplant Connecticut's long-standing policy of preferring local control of education. Both of these cases were decided many years before the sweeping changes to Connecticut's education law that culminated in the enactment of § 10-223e (h). More to the point, both of these cases, in language that the majority itself quotes, affirm that the predominant interest in public education belongs not to Connecticut's various localities *but to the state*. *New Haven* v. *State Board of Education*, supra, 703 ("[t]he state board is charged with the broad and general power to *supervise and control* the educational interests of the state" [emphasis added; internal quotation marks omitted]); *West Hartford Education Assn., Inc.* v. *DeCourcy*, supra, 573 ("[t]he state has had a vital interest in the public schools from the earliest colonial times"). The majority also cites a handful of statutes in the same or surrounding chapters of the General Statutes—General Statutes §§ 10-220 (a), (b) and (e), 10-4g (a) and (b), and 10-221 (a) and (b)—that, in the majority's view, "demonstrate a clear policy of defining a supervisory role for the state board separate and distinct from local boards . . . ." These statutes are irrelevant to the present case. To the extent that the statutes evince a policy of defining a supervisory role for the state board separate and distinct from local boards, they evince such a policy only with respect to school districts *that are not failing*. With respect to school districts that are failing, § 10-223e establishes a contrary policy, one of robust state direction and control. Connecticut education law may still evince a *general* policy of preferring and preserving local control, but no such policy pertains to Connecticut's failing school districts.

[23] Nor is the supposed *strength* of the statute's mandatory language evidence that the training contemplated by § 10-223e (h) is nonwaivable. Examples abound of provisions that are forcefully worded, mandatory, and waivable. For instance, the sixth amendment to the United States constitution provides: "In *all* criminal prosecutions, the accused *shall* enjoy the *right* to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." (Emphasis added.) Notwithstanding the sixth amendment's strong, mandatory language, a criminal defendant can waive nearly all of his sixth amendment rights. See, e.g., *Melendez-Diaz* v. *Massachusetts*, U.S. , 129 S. Ct. 2527, 2534 n.3, 174 L. Ed. 2d 314 (2009) (confrontation); *Barker* v. *Wingo*, 407 U.S. 514, 528–29, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) (speedy trial); *Levine* v. *United States*, 362 U.S. 610, 618, 80 S. Ct. 1038, 4 L. Ed. 2d 989 (1960) (public trial); *Johnson* v. *Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938) (assistance of counsel); *Patton* v. *United States*, 281 U.S. 276, 308–309, 50 S. Ct. 253, 74 L. Ed. 854 (1930) (trial by jury). For similar reasons, it is insignificant that § 10-223e (h) does not explicitly provide for waiver. The Bill of Rights does not explicitly provide for waiver, either. Also insignificant is whether the training provision of § 10-223e (h) is unusually important. No mandatory provision in our law is more important than any provision in the sixth amendment, yet nearly all of the rights guaranteed by the latter can be waived. Indeed, many important rights may be waived by defense counsel without prior consultation with the defendant. See *State* v. *Gore*, 288 Conn. 770, 779 n.9, 955 A.2d 1 (2008).

[24] I also find this discussion highly unpersuasive. To begin with, the fact that § 10-223e (c) (1) "uses strong, presumptively mandatory language in describing the role that the state board occupies with regard to low achieving schools and districts" has no bearing whatsoever on whether § 10-223e (h)—*a separate subsection*—is mandatory. Equally irrelevant is the fact that § 10-223e (d) employs mandatory language. I fail to see how italicizing every occurrence of the word "shall" in § 10-223e (c) (1) and (2), and (d) lends any support to the majority's otherwise sensible, and unchallenged, conclusion that § 10-223e (h) is mandatory.

[25] I disagree with the majority's related contention that, "when § 10-223e

(h) is analyzed in the context § 10-223e (c) (1) and (2), the logical inference is that the state board should pursue the remedial actions in § 10-223e (c) (2), with regard to the low achieving school or school district overseen by a local or regional board of education, before it pursues the seemingly severe remedy of reconstituting that local or regional board of education under § 10-223e (h)." The legislature made just *one* of the actions enumerated in § 10-223e (c) (2) a precondition to reconstitution under § 10-223e (h). Our rules of statutory construction require us to assume that, if the legislature had intended to make *all* of the remedial actions enumerated in § 10-223e (c) (2) a precondition to reconstitution, it would have done so explicitly. See, e.g., *Genesky* v. *East Lyme*, 275 Conn. 246, 258, 881 A.2d 114 (2005) ("if the legislature wants to [engage in a certain action], it knows how to do so"); *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 135, 848 A.2d 451 (2004) (same). Also unsound is the majority's contention that, in view of the legislative history, "the reference in § 10-223e (h) to § 10-223e (c) (2) (M) can easily be understood as signaling the legislature's preference that the state board pursue the cooperative remedial and supervisory options under § 10-223e (c) (2) prior to eliminating all local control through reconstitution." Even if the majority's characterization of the legislative history were correct—and none of the sources that the majority cites suggests that any legislator understood § 10-223e (h) to oblige the state board to perform all of the actions enumerated in § 10-223e (c) (2) before reconstituting a local board—the majority ignores the bedrock principle that "[t]he intent of the legislature . . . is to be found not in what the legislature meant to say, but in the meaning of what it did say." (Internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 370, 984 A.2d 705 (2009).

[26] At the meeting of the state board, state board member Joseph Vrabely, Jr., stated:"We've already intervened in Bridgeport with our programs, and those programs are not working."

[27] Notwithstanding the plain meaning of § 10-223e (h), the majority denies that the state board properly could reconstitute a local board of education in a manner that affords the locality no notice whatsoever, relying on what it describes as "the clear legislative intent that the state board should authorize reconstitution only if a procedure for doing so is in place." Footnote 27 of the majority opinion. Regardless of whether there is any such "clear legislative intent," the majority again ignores the bedrock principle that "[t]he intent of the legislature . . . is to be found not in what the legislature meant to say, but in the meaning of what it did say." (Internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 370, 984 A.2d 705 (2009). The legislature said *nothing* about there being any prereconstitution procedure other than the training provision itself.

A further reason why the majority disputes my assertion that the state board properly could reconstitute a local board in a fashion that affords the locality no notice whatsoever is that, in the majority's view, reconstituting a board in such a fashion would "[frustrate] one of the purposes of the training requirement that [it has] identified, namely, to provide notice." Footnote 27 of the majority opinion. The majority simply begs the question, arguing that, *because* the training provision serves to provide notice of an impending reconstitution, the state board properly could not reconstitute a local board of education in a manner that affords the locality no notice whatsoever. The far more logical inference runs the other way. Because it is obvious from the plain meaning of the statute that the state board properly *could* reconstitute a local board of education in a manner that provides the locality no notice whatsoever, providing notice cannot possibly be the training provision's purpose.

[28] In this connection, the majority baldly asserts that the training provision "furthers a policy of maintaining a locally elected board of education *to the maximum extent possible* . . . ." (Emphasis added.) The majority offers no evidence to show that this state has any such policy—a policy that would force a local board of education to remain in place even after it has made a desperate plea for state intervention with the backing of the municipality's mayor and superintendent of schools.

[29] In a footnote, the majority cites four out-of-state authorities in support of the proposition that a public obligation created by statute cannot be waived by any individual or group of individuals. See footnote 37 of the majority opinion. As I explain more fully hereinafter; see footnote 32 of this opinion; none of these authorities supports the majority's premise.

[30] The two cases that would be binding if they were on point are *Hatch* v. *Merigold*, 119 Conn. 339, 176 A. 266 (1935), and *L'Heureux* v. *Hurley*,

117 Conn. 347, 168 A. 8 (1933). We are not bound by *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, 272 Conn. 676, 717, 866 A.2d 554 (2005) (*Lavery* and *Dranginis*, *Js.*, dissenting), because it is a dissenting opinion. Nor are we bound by *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 65 S. Ct. 895, 89 L. Ed. 1296 (1945), a case in which the United States Supreme Court interpreted a federal statute. Id., 698. The fifth case that the majority cites in the text of its opinion is *Beasley* v. *Texas & Pacific Railway Co.*, 191 U.S. 492, 24 S. Ct. 164, 48 L. Ed. 274 (1903), a case that has nothing at all to do with waiver.

[31] See *L'Heureux* v. *Hurley*, 117 Conn. 347, 355–56, 168 A. 8 (1933).

[32] In a footnote, the majority cites four additional authorities for the proposition that a public obligation created by statute cannot be waived by any individual or group of individuals. See footnote 37 of the majority opinion. Again, the majority does little more than pluck superficially favorable language from these authorities; not one of them actually stands for the broad proposition that statutorily created public obligations cannot be waived by anyone. Three of these authorities establish at most that public obligations cannot be waived by individuals. Cal. Civ. Code § 3513 (Deering 2005) ("Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a *private agreement*." [Emphasis added.]); *Campbell* v. *Campbell*, 87 Ohio App. 3d 48, 50, 621 N.E.2d 853 (1993) ("The public interest may not be waived. [28 Am. Jur. 2d, supra, § 161, p. 847]. Just as with laches and estoppel, it would not be sound public policy to allow individuals employed by [the county child support enforcement agency] to waive the public's right to the support arrearages owed by [the appellee]."); *Isenhower* v. *Isenhower*, 666 P.2d 238, 241 (Okla. App. 1983) ("when a statute contains provisions that are founded [on] public policy, such provisions cannot be waived by a *private party* if such waiver thwarts the legislative policy which the statute was designed to effectuate" [emphasis added]). The fourth authority establishes not that statutorily created public obligations cannot be waived by anyone but, rather, that a municipality cannot waive bidding requirements when "the statute evinces a clear intention to provide maximum protection for the taxpayer." *Hillside* v. *Sternin*, 25 N.J. 317, 325, 136 A.2d 265 (1957); see also id., 326 ("[o]nly by this approach can the desirable protection be afforded to the taxpayers; only in this way can perfect equality be maintained among bidders").

[33] The majority argues against an obvious straw man when it asserts that "the legislature did not intend that the state board's reconstitution authority would supersede the existing, comprehensive statutory scheme that provided for other means of supervising and intervening in local educational issues." Text accompanying footnote 27 of the majority opinion. Nowhere do I claim that § 10-223e (h) was meant to "supersede" the rest of § 10-223e. Indeed, I have no idea what such a claim would even mean. Nor do I have any idea what the majority means when it states, "we construe the reconstitution [power] . . . narrowly, so as not to *supplant* the other remedies already available to the state board." (Emphasis added.)

[34] The majority asserts that the record is "ambiguous" with respect to whether the Bridgeport board, in passing the July 5 resolution, intended to waive the training provision or simply "believed that the statute had been substantially complied with because the [Bridgeport] board already had received some training." Footnote 39 of the majority opinion. Contrary to the majority's assertion, there is no ambiguity at all in the Bridgeport board's July 5 resolution, which expressly requests that the state board reconstitute the Bridgeport board and notes that "further training would [not] be productive or [otherwise] enable the [b]oard to carry out [its] responsibilities . . . ." Moreover, even if the resolution did appear ambiguous on its face, no such appearance could survive the assertion of the defendant board members, in their briefs and at oral argument before this court, that relinquishing the benefit of additional training is *precisely what the board intended to do*.

In asserting that the July 5 resolution was ambiguous with respect to whether the Bridgeport board intended to waive the training provision, the majority trades on the law's well-known aversion to countenancing ambiguous waivers. That aversion simply is irrelevant to this case. The obvious rationale behind the law's aversion to countenancing ambiguous waivers is to protect those who might claim that they did *not* waive a right, specifically by requiring the adverse party—the party claiming that waiver occurred—to prove its claim through competent evidence. I am not aware of any case, and the majority cites none, in which the law's reluctance to

countenance ambiguous waivers was invoked to *defeat* a party's claim that it *did* waive a right.

Even if such a case existed, the defendants would have no trouble demonstrating that the Bridgeport board waived the training requirement. To do so, the defendants would need to demonstrate only that, when the Bridgeport board voted for reconstitution, it was aware of its statutory right to training. See, e.g., *Wadia Enterprises, Inc.* v. *Hirschfeld*, 224 Conn. 240, 252, 618 A.2d 506 (1992) ("[a]ssuming [the threshold applicability of the doctrine of] implied waiver [to the present case] . . . the plaintiff[s] would . . . have to make a showing that the defendants knew of their right[s] [under the statute] . . . before they could [intentionally] waive [them]"). The record is replete with evidence that the Bridgeport board was aware of that statutory right. Not only did the July 5 resolution expressly reference § 10-223e (h), but the transcript of the hearing at which the resolution was adopted reveals that the discussion actually *centered* on the issue of whether the mandatory training provision precluded the Bridgeport board from adopting the proposed resolution. One of the named plaintiffs, Maria Pereira, argued vehemently that it did, reading aloud from the statute in an unsuccessful attempt to persuade her fellow board members that the Bridgeport board could not pass the resolution until after it had received training. Barbara Bellinger, president of the Bridgeport board, took the opposite position, stating: "I disagree [that the state board cannot authorize reconstitution unless and until there has been compliance with mandatory training]. [W]e have already discussed this with the state board . . . and they have indicated that we [can] move forward, that efforts for training have been fulfilled and that further training would not ameliorate the situation. . . .

"[H]aving experienced some training with some members of this board, [I] do not believe that further training, given the level of dysfunctionality that we're experiencing, will help us. We need a new idea, we need the state's assistance, we need [the state] to step in and help fix these issues. . . . And training isn't the answer to that. Training is the answer to a lot of things, especially when people are willing to collaborate and work together on issues."

Furthermore, even though no one at the Bridgeport board hearing formally described the board's resolution as a "waiver" of the training provision, it is indisputable that "[w]aiver need not be express, but may consist of acts or conduct from which a waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so." (Internal quotation marks omitted.) *Wadia Enterprises, Inc.* v. *Hirschfeld*, supra, 224 Conn. 252. In the present case, one would have to blink at reality in order to maintain that the Bridgeport board waived the training requirement without full awareness of its right to receive additional training prior to reconstitution. It is clear that the Bridgeport board was aware of that right but had concluded that, given its extreme level of dysfunction and acrimony, no amount of training would have enabled it to fulfill its constitutional duties to the schoolchildren of Bridgeport.

In view of these facts, the majority's assertion that the evidence is inadequate to support a finding of waiver is nothing short of astounding. This court has found an implicit waiver of a *constitutional* right on the basis of far less evidence. See *State* v. *Kitchens*, 299 Conn. 447, 482–83, 10 A.3d 942 (2011) (holding that defendant will be found to have knowingly and intentionally waived by implication his constitutional right to adequate jury instruction when counsel was provided copy of proposed instructions and, after meaningful opportunity to review and comment on them, counsel affirmatively accepted proposed instructions even though record contained no other indicia of waiver).

The majority accuses me of dismissing a statement that Bellinger made at the state board hearing on July 6, 2011, a statement that, according to the majority, "injects ambiguity" into the meaning of the July 5 resolution and calls into question whether the local board intended to waive its right to training. Footnote 39 of the majority opinion. In the majority's words, Bellinger "stated that the [Bridgeport] board had not received enough training and [perhaps] could benefit from additional training." Id. Viewed in their proper context, however, Bellinger's actual statements inject no ambiguity at all into the meaning of the July 5 resolution. When a member of the state board asked Bellinger to identify the main "divide" on the Bridgeport board, she responded, "the divide is on almost every issue." The same state board member then queried: "I know you are a training professional. You said [the Bridgeport board] had training. What kind of training have you had? Have you had lighthouse training?" Bellinger responded: "We had training that I

arranged for with an outside consultant, to help people understand their roles and responsibilities. It was not attended by 100 percent of [our members], nor do I feel that that was adequate training. Don't forget, I am a training person. I really think that training is important." Whatever the significance of these particular remarks, Bellinger's testimony as a whole contains repeated assertions that *no amount of training could enable the Bridgeport board to achieve its objectives*, *given its profound level of dysfunction*. Marion Martinez, a representative of the state department of education, reinforced Bellinger's view, explaining that the training programs then offered by the state, including the lighthouse program, simply were not designed to address the kind of problem that the Bridgeport board was experiencing. As Martinez succinctly put it, "lighthouse does not repair damaged relationships."

[35] Because there is ample legal support for the Bridgeport board's competency to waive the protection afforded by § 10-223e (h), it is irrelevant, contrary to the assertion of Maria Pereira and other plaintiffs, that § 10-223e (h) does not explicitly provide that a local board of education can request reconstitution.

[36] Even though the state board was perfectly free to reject or ignore the Bridgeport board's request for reconstitution, Justice Harper appears to believe that the Bridgeport board did in fact dispossess its three member minority. He states that "the resolution adopted by six members of the Bridgeport board to forgo training cannot logically be separated from the intended effect of that decision—to displace duly elected board members through a state created reconstituted board." I am unable to discern why Justice Harper accords this purported dispossession any significance at all, given that he joins a majority opinion under which a local board of education could not waive the training provision even upon a *unanimous* vote—a vote that dispossess no one.

[37] General Statutes § 10-219 provides: "If a vacancy occurs in the office of any member of the local board of education, unless otherwise provided by charter or special act, such vacancy shall be filled by the remaining members of said board until the next regular town election, at which election a successor shall be elected for the unexpired portion of the term, the official ballot specifying the vacancy to be filled."

[38] The constitution of Connecticut, article tenth, § 1, provides: "The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices. After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation."

[39] The constitution of Connecticut, article sixth, § 4, provides: "Laws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult and other improper conduct."

[40] The constitution of Connecticut, article first, § 1, 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."

[41] The constitution of Connecticut, article first, § 4, provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

[42] The constitution of Connecticut, article first, § 20, 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 civil or political rights because of religion, race, color, ancestry or national origin."

[43] General Statutes § 9-185 provides in relevant part: "Unless otherwise provided by special act or charter, (1) members of boards of assessment appeals, (2) selectmen, (3) town clerks, (4) town treasurers, (5) collectors of taxes, (6) constables, (7) registrars of voters, (8) *subject to the provisions of subsection (h) of section 10-223e*, members of boards of education, and (9) library directors shall be elected . . . ." (Emphasis added.)

[44] For the same reason, there is no merit to the plaintiffs' contention that

§ 10-223e (h) violates article first, § 4, of the state constitution because it burdens their "access to the ballot."