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The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

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PALMER, J., with whom ROBINSON and SHELDON, Js., join, concurring in part and dissenting in part. "[A] sound education is the 'very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.' *Brown* v. *Board of Education*, [347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873 (1954)]. 'The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance. . . . We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government . . . and as the primary vehicle for transmitting the values on which our society rests. . . . [E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our [n]ation when select groups are denied the means to absorb the values and skills [on] which our social order rests.' " *Sheff* v. *O'Neill*, 238 Conn. 1, 43–44, 678 A.2d 1267 (1996). That is what this case is about.

I

A

Before I explain the nature of my disagreements with the majority, I begin by noting the substantial overlap between my views and those of the majority. As an initial matter, I agree, for the reasons articulated in the majority opinion, that both the individual plaintiffs[1] and the named plaintiff, the Connecticut Coalition for Justice in Education Funding, Inc., have standing to pursue the present action. I also agree with the majority's analysis of the equal protection issue and with its conclusion that the trial court correctly determined that there was no equal protection violation.

Turning to the principal substantive question—whether the state has satisfied its obligation to provide underprivileged children with minimally adequate educational opportunities as required by article eighth, § 1, of the Connecticut constitution—I agree with the majority's threshold determination that my articulation of the *Campaign I*[2] test in *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240,

342, 990 A.2d 206 (2010) (*Palmer*, *J.*, concurring in the judgment), represents the controlling legal standard. Furthermore, I largely agree with the way in which the majority characterizes my position in *Rell*, both in terms of how I articulated the *Campaign I* test and the extent to which my views differed from those of the plurality. First, the majority properly recognizes that whether the state has satisfied its obligation to afford minimally adequate educational opportunities may be evaluated on a district-by-district basis, and even at the level of individual schools;[3] the question is not merely whether Connecticut residents, in the aggregate, receive adequate schooling.[4] See, e.g., footnote 15 of the majority opinion.

Second, I agree with the majority that, when we consider whether the various *Campaign I* factors have been satisfied, we do not do so in a vacuum, divorced from the goals and purposes of a minimally adequate education. Instead, the state's compliance with its constitutional mandates must be evaluated in light of whether the specific educational facilities, instrumentalities, curricula, and personnel; see part I B of this opinion; that the state provides are rationally calculated to allow a student who takes advantage of them to become a functional member of society. As the majority explains, "[i]t is implicit in the *Campaign I* criteria . . . that the educational opportunities offered by the state must be sufficient to enable a student who takes advantage of them to attain a level of knowledge of reading, writing, mathematics, science, and social studies that will enable the student to perform the basic functions of an employable adult in our society, such as reading newspapers, tax forms and other basic texts, writing a basic letter, preparing a household budget, buying groceries, operating cars and household appliances, serving on a jury and voting." Footnote 25 of the majority opinion.

Third, the majority properly emphasizes that judicial review of the state's education policies and spending priorities under article eighth, § 1, should be highly deferential, as such considerations are quintessentially legislative in nature. As I explained in *Rell*, "the plaintiffs will not be able to prevail on their claims unless they are able to establish that what the state has done to discharge its obligations under article eighth, § 1, is so lacking as to be unreasonable by any fair or objective standard." *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 321 (*Palmer*, *J.*, concurring in the judgment); see id., 343 (*Palmer*, *J.*, concurring in the judgment) (plaintiffs must demonstrate that education "reasonably cannot be considered sufficient by any fair measure"); see also id., 335–43 (*Palmer*, *J.*, concurring in the judgment) (explaining reasons why "[s]pecial deference" to legislature is warranted in matters of educational policy and funding).

Fourth, the majority recognizes that the scope of my disagreement with the plurality in *Rell* was quite narrow. See footnote 47 of the majority opinion. My primary concern in *Rell* was that certain language in the plurality opinion could be construed to mean that article eighth, § 1, requires that the state *guarantee* that each student will receive a minimally adequate education.[5] I concluded, by contrast, that the state constitution only guarantees each student the *opportunity* to obtain such an education. As the majority puts it, "the state's offerings [must be] sufficient to enable a student who takes advantage of them to become a functional member of society." Text accompanying footnote 25 of the majority opinion. Requiring that each student actually be adequately educated would place an unreasonable burden on the state, insofar as schools "cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students." (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 345 (*Palmer, J.*, concurring in the judgment); see also id. (because students' failure to achieve goals of constitutionally mandated education may be caused by factors not capable of remediation by state action, article eighth, § 1, "is not a panacea for all of the social ills" that contribute to achievement deficiencies of underprivileged students [internal quotation marks omitted]). Beyond that, however, my understanding of the *Campaign I* test was not—and is not—substantively different from the standard that the plurality articulated in *Rell*.[6]

Finally, as I discuss more fully in part II B of this opinion, I agree with the majority that the trial court exceeded its mandate and failed to apply the proper standard of review in the second half (parts 5 through 8) of its memorandum of decision, in which it scrutinized the rationality of the state's various educational policies, procedures, and spending priorities. In the remainder of this opinion, I explain in what respects I do *not* agree with the majority opinion.

B

Before I explain in what respects I think that both the trial court and the majority have gone astray, it will be helpful briefly to review the *Campaign I* test and to set forth with greater precision certain aspects of that test that could perhaps have been stated more directly in my concurrence in *Rell*. At the most basic level, *Campaign I* stands for the proposition that, to afford students the opportunity to obtain a minimally adequate education, the state must ensure the presence of certain core or essential components: "Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat,

and air to permit children to learn. [Facilities]. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. [Instrumentalities]. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies [curricula], by sufficient personnel adequately trained to teach those subject areas. [Personnel]." *Campaign for Fiscal Equity, Inc.* v. *State*, 86 N.Y.2d 307, 317, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995). These core components—educational facilities, instrumentalities, curricula, and personnel—constitute the sine qua non of any educational system.

1

Although these four components are individually necessary to the provision of a minimally adequate education, neither my concurrence in *Rell* nor *Campaign I* itself suggested that they are jointly sufficient. As I observed in *Rell*, for example, "[i]t goes without saying that a safe and secure environment also is an essential element of a constitutionally adequate education." *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 342 n.15 (*Palmer, J.*, concurring in the judgment). By the same token, in *Campaign I*, the New York Court of Appeals suggested that school transportation is necessary to ensure that students attend school a minimum number of days and thus receive a sound education. See *Campaign for Fiscal Equity, Inc.* v. *State*, supra, 86 N.Y.2d 316. Ensuring that students have access to sustenance of some sort during the school day is almost certainly of the same ilk. The point, which I think is beyond cavil, is that it is not enough to satisfy constitutional requirements for the state simply to set up and equip school buildings and then hire teachers to teach therein. Reasonable efforts must be made to ensure that those students who would avail themselves of the educational opportunity have a means of getting themselves to school and, once there, are not so preoccupied by hunger, fear for their personal safety, or other serious distractions as to render learning effectively impossible. See *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 315 (plurality opinion) ("[t]o satisfy this standard, the state, through the local school districts, must provide students with an objectively meaningful opportunity to receive the benefits of this constitutional right" [internal quotation marks omitted]).

2

It also bears emphasizing that the provision of books, teachers, buildings, and the like is not an end in itself, but all to the purpose of giving students the opportunity to obtain a minimally adequate modern education. What constitutes a minimally adequate education is, within

reasonable limits, to be left to the discretion of the legislature. See, e.g., id., 332 (*Palmer*, *J.*, concurring in the judgment). Viewed in the broadest terms, such an education is one "suitable to give [its students] the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting, and to prepare them to progress to institutions of higher education, or to attain productive employment and otherwise to contribute to the state's economy." Id., 270 (plurality opinion). On a more practical level, the state has established various benchmarks, including standardized test scores, that, when taken together, help to inform our understanding of what a student who has received a minimally adequate education can be expected to know. What article eighth, § 1, requires, then, is that the state establish and maintain free public schools the core elements of which are reasonably calculated to deliver a minimally adequate education, as so defined, to all those students who would take advantage of the opportunity.

3

It follows from these principles that the state, in designing an educational system and delivering educational services, must make at least some reasonable effort to account for the distinct learning challenges that confront many of our state's least fortunate children. Although it may be assumed that many if not most of the students in Connecticut's more affluent towns have had their basic needs satisfied and arrive at school ready to learn, the same cannot be said for children who have spent their entire lives in poverty. Residents of our poorest communities, even those hungry to learn, may have to overcome a host of obstacles before they are able to attend to fractions and Fitzgerald. These run the gamut from homelessness, malnutrition, and illness, to violence in the home and in the community, to the pervasive and pernicious effects of racism. Some students struggle to learn in a non-native tongue; others wrestle with undiagnosed disabilities, whether physical, academic, or emotional/psychological.

As I acknowledged in *Rell*, article eighth, § 1, is not a panacea for all of society's ills, and the state cannot be expected to "overcome every serious social and personal disadvantage that students bring with them to school . . . ." (Internal quotation marks omitted.) Id., 345 (*Palmer*, *J.*, concurring in the judgment). As I also made clear in that decision, however, as part of its reasonable efforts to afford each child the opportunity to obtain a minimally adequate education, the state must "tak[e] into account any special needs of a particular local school system." (Internal quotation marks omitted.) Id., 345 n.19 (*Palmer*, *J.*, concurring in the judgment). The quoted language is drawn from Justice Borden's dissent in *Sheff* v. *O'Neill*, supra, 238 Conn. 143, an opinion in which I joined. That part of Justice

Borden's opinion makes clear that the symptoms of poverty that I have described are precisely the types of "special needs of a particular local school system"; id. (*Borden*, *J.*, dissenting); that the state must take into consideration: "[T]est scores do not take into account important variables that erect difficult barriers to achievement, such as socioeconomic status, early environmental deprivations, low birth weight, mothers on drugs [when their children are born], diminished motivation to succeed academically, extraordinary mobility, limited English proficiency, and all of the other dismal factors associated with the concentration of poverty in the Hartford school district." Id., 144 (*Borden*, *J.*, dissenting). "This is not to say that, as part of its . . . constitutional obligation to provide a minimally adequate education, the state has no obligation to attempt, by reasonable means, to ameliorate these problems." Id. Consistent with Justice Borden's opinion, I concluded in *Rell* that the plaintiffs had stated a legally cognizable cause of action when they alleged, among other things, that "significant disparities in [education] input statistics [exist] between the plaintiffs' schools and the state school average . . . . [M]any [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students . . . [and] the state has failed to provide the resources necessary to intervene effectively on behalf of [at risk] students, that is, students who, because of [a] wide range of financial, familial, and social circumstances, [are] at greater risk of failing or experiencing other unwanted outcomes unless intervention occurs . . . . As a consequence . . . Connecticut has an educational underclass that is being educated in a system [that] sets them up for economic, social, and intellectual failure." (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 346 n.20 (*Palmer*, *J.*, concurring in the judgment). There should be no doubt, then, that the *Campaign I* test, as articulated and applied in my concurrence in *Rell*, requires not only that the state provide the essential components of a minimally adequate education, including facilities, instrumentalities, curricula, and personnel, but also that some reasonable effort be made to ensure that those modalities are designed to address the basic educational needs of at risk learners in underprivileged communities.

The majority correctly notes that elementary and secondary schools are not the only source of support services, and that the state may choose to address the social, economic, and mental and physical health needs of underprivileged students through other state agencies, preschools, and other programs. See footnote 41 of the majority opinion. It is important to bear in mind, however, that article eighth, § 1, requires that the *state*, not the schools, provide students with the opportunity

to obtain a minimally adequate education. If the plaintiffs were able to establish that (1) such needs can be met through reasonable interventions, (2) the schools are not meeting such needs, and (3) the failure to meet such needs is denying high needs children the opportunity to receive a minimally adequate education, then the state must prove that it is addressing such needs outside of the school environment. In other words, the fact that the state has the discretion to address educational impediments through nonschool agencies does not relieve the state of its ultimate constitutional responsibility to ensure adequate educational opportunities.[7]

II

In order to understand how this constitutional standard applies in practice, it will be helpful to briefly review where and how the trial court went astray. Although it is not entirely clear, I understand the trial court to have taken the following path.[8]

A

The court appears to have concluded that the *Campaign I* test that this court articulated in *Rell* involves two components, each of which is subject to a different standard of review. The first component is adequate funding. In the first half (parts 3 and 4) of its memorandum of decision, the trial court evaluated aggregate state funding of facilities, equipment, teachers, and curricula, and assessed whether those expenditures were constitutionally sufficient. The trial court reviewed the state's educational expenditures according to a highly deferential standard, as prescribed in my concurrence in *Rell*, proceeding according to the principle that "any constitutional standard the courts set for overall spending levels must be modest." The court evaluated whether overall state educational spending levels exceed the bare constitutional minimum, bearing in mind that, to find a violation, it had to conclude beyond a reasonable doubt that the resources that the state dedicates to education are "unreasonable by any fair or objective standard . . . ." (Internal quotation marks omitted.) Assessing the trial evidence according to this standard, the court concluded that the plaintiffs had failed to demonstrate that the state's aggregate educational expenditures are constitutionally insufficient.

In this first portion of its analysis, the trial court also specifically concluded that the state has spent more than the constitutional minimum—whatever that sum might be—on new school building projects. It noted that the state (1) allocated $1 billion per year to spending on school buildings, (2) increased such spending over the course of the prior decade, and (3) approved and helped to fund more or less every new building project proposed by poor school districts such as those in the cities of Bridgeport and Hartford. The court further

concluded that, when judged by a "minimal standard," there was no evidence that there was a "statewide failure" to provide schools with adequate resources to train their teachers, to acquire reasonably current books and other suitable equipment and facilities, or to deploy interventionists, teacher coaches, and technical support staff. In addition, the court discussed the various financial resources that are available to help the lowest performing districts invest in areas such as school improvements, student meals, after-school programs, and services for homeless and pregnant students, young parents, and individuals with mental health needs. Although the court's primary focus in this section of its decision was on financial resources, the court did also briefly observe that Connecticut's children are taught by minimally adequate teachers and provided with reasonably up-to-date basic curricula, and also that there was no evidence that the state's schools, when considered in the aggregate, lack enough light, space, heat, air, desks, chairs, pencils, or textbooks to permit children to learn. On the basis of these findings and conclusions, the court ultimately concluded that the *Campaign I* test that this court adopted in *Rell* had been satisfied and that the plaintiffs had failed to establish a constitutional violation in that respect.

The second portion of the trial court's analysis involved a more wide ranging review of the state's specific educational policies, procedures, and priorities. In parts 5 through 8 of its decision, the trial court scrutinized everything from the amount of money spent on educating severely disabled students to the formula for teacher compensation set forth in individual school districts' collective bargaining agreements; from social promotion policies to the role that pork-barrel politics play in deciding which school construction projects will be authorized. The court appears to have concluded that its assessment of the rationality of these various policies and priorities was subject to a heightened standard of review rather than the highly deferential standard that I articulated in my concurrence in *Rell* and that the trial court itself applied in parts 3 and 4 of its decision when it assessed the state's aggregate spending in accordance with the four *Campaign I* factors. Specifically, the court proceeded on the assumption that not only specific educational policies and priorities but also the "first principles" that underlie them must be "rationally, substantially, and verifiably" related to teaching.

B

In analyzing the plaintiffs' claims under article eighth, § 1, in this manner, the trial court failed to properly apply the *Campaign I* test in several respects. First, and most fundamentally, the court should not have treated educational funding and educational policy as distinct legal issues, subject to different legal standards. Rather, the proper approach was to evaluate whether the state's

comprehensive system for delivering educational services—including financial and other resources, policies, and procedures—is rationally designed to ensure that each student will have the opportunity to obtain a minimally adequate education.

In this respect, I agree with the majority insofar as it holds that the trial court, having once concluded that the *Campaign I* test was satisfied, should not have proceeded to assess the rationality of the state's various education policies. There is no rationality test above and beyond the *Campaign I* standards. Rather, the rationality test is part and parcel of *Campaign I*.

What the majority fails to recognize, however, is that the trial court improperly stripped out this rationality review from its *Campaign I* analysis and thus fundamentally misapplied that test. As I set forth in greater detail in part III of this opinion, it is clear that the trial court ultimately concluded that schools in many of our state's less affluent cities and towns are "utterly failing . . . ." The court found that underprivileged students attend schools staffed by inexperienced and unqualified teachers. It determined that some cities and towns routinely ignore or under identify students with learning disabilities, and that guidance, counseling, and early intervention resources are woefully inadequate. It observed how the elimination of school bus services in Bridgeport requires some high school students to switch multiple transit buses just to make it to school in the morning. It concluded that many impoverished students, and many racial minorities, reach adulthood without having achieved even basic literacy and numeracy skills, and suggested that dedicating additional resources to programs such as high quality preschool could improve high school success rates. Many of these findings would, presumably, be highly relevant to the question of whether the state is affording minimally adequate educational opportunities to all of its students.

And yet there is no indication that the court considered any of these findings in parts 3 and 4 of its decision before it concluded that the plaintiffs had failed to demonstrate that the state does not provide minimally adequate facilities, instrumentalities, curricula, and personnel.[9] Although the court made a few references to "anecdotal evidence" of physical deficiencies in some schools and of teachers having to purchase their own supplies, it appears to have proceeded on the assumption that the *Campaign I* test is concerned largely, if not exclusively, with financial matters—whether the state is spending large sums on education, in the aggregate, and is helping cities and towns to build new schools and to pay for support services.[10] In other words, the court appears to have believed that it was not free to consider most of the potentially relevant evidence before it when it was conducting its constitutional analysis.[11] I fail to understand how that could not

constitute reversible error. See part III of this opinion.

A second problem with the trial court's *Campaign I* analysis is that the court appears to have been operating under the mistaken belief that the four *Campaign I* factors are to be assessed solely at the statewide level, rather than with regard to specific districts and schools. In the course of its analysis, the court made numerous statements suggesting that it felt constrained to evaluate the state's educational spending, and compliance with the *Campaign I* requirements more generally, solely in the aggregate. The court began by noting, in the context of discussing its standard of review, that "the judiciary is constitutionally unfit to set the *total amount* of money the state has to spend on schools." (Emphasis added.) "Thus, if the court weren't limited by the minimal elements listed in [*Campaign I*], it would still reject an expansive view of its power to set *overall* state educational spending levels." (Emphasis added.) Turning to the first *Campaign I* factor, namely, facilities, the court began and more or less ended its analysis with the observation that the state spends $1 billion per year on school buildings. The court proceeded to emphasize that the state has committed $378 million for new projects in Bridgeport alone and briefly alluded to "anecdotal evidence of physical deficiencies in some schools . . . ." Nonetheless, it dismissed such concerns not by concluding that each such deficiency failed to reach the level of a constitutional violation but, instead, by explaining that the record contained "nothing to suggest a *statewide* failure to provide adequate facilities . . . ."[12] (Emphasis added.)

The court's analysis of the other *Campaign I* factors likewise suggests that the court was concerned only with whether the plaintiffs could establish systemic, statewide failures to provide minimally adequate educational opportunities. With regard to instrumentalities, the court reasoned: "[T]here is no proof of a *statewide* problem caused by the state sending school districts too little money. . . . There are certainly some hardships with computers and significant disparities in computer access, but against a minimal standard the plaintiffs have not proved . . . that there is a *systemic* problem that should spark a constitutional crisis and an order to spend more on school supplies." (Emphasis added.) The court's analysis of the state's educational personnel was in the same vein: "No one suggests that teaching in Connecticut is *broadly incompetent.* The claim is that opportunities for good teaching are not being rationally marshaled in favor of needy kids. Judged against a low minimum *and judged as a system*, the plaintiffs have plainly not met their burden . . . ." (Emphasis added.) True, the court proceeded to consider whether the state dedicates enough resources to "needy schools," concluding that it does. Even there, however, the court considered such spending only in the aggregate. The theory seemed to be that, if the state

budget contains a sizable line item for needy school support, then the constitutional requirement is necessarily satisfied. No consideration was given to whether there are *particular* schools in which spending on *particular* academic programs or needs is insufficient to provide the students who attend those schools with minimally adequate educational opportunities.[13]

The trial court made other, different missteps in the second half of its decision. In that section of the analysis, the court properly considered the specific quality of education afforded to students in individual school districts such as Bridgeport, specifically, whether schools receive adequate financial support to hire and retain essential support staff, whether students are provided with adequate transportation, whether they are able to master basic literacy skills, and how they perform on standardized assessment tests and based on other measures of high school achievement.

But, here, the court applied a standard of review—requiring that the state's educational policies and priorities be reasonably, substantially, and verifiably related to teaching—that finds no support in *Rell* and that had the practical effect of shifting to the state the burden of proving that every aspect of its educational system complies with article eighth, § 1, by requiring that all of the state's "efforts" be "verifiable enough to be measured . . . ." Having adopted this novel standard of review, the trial court proceeded to identify various, purported irrationalities in the system that required the court to choose sides on philosophical questions that are hotly contested by educators and academics, some of which the plaintiffs had not even challenged.[14] All of this ran afoul of my warning in *Rell* that "[t]he very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them, and that, within the limits of rationality, the legislature's efforts to tackle the problems should be entitled to respect. . . . In such circumstances, the judiciary is well advised to refrain from imposing on the [state] inflexible constitutional restraints . . . ." (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 336 (*Palmer, J.*, concurring in the judgment); see also id., 344 n.18 (*Palmer, J.*, concurring in the judgment) ("[I]t is one thing for a court to determine whether the legislature has acted rationally in fulfilling its obligation under article eighth, § 1, and something entirely different for a court to decide which of two positions concerning the specific parameters of a minimally adequate education in practice . . . is the better position. . . . [T]he latter methodology unduly involves the judiciary in matters of educational policy that are primarily reserved to the political branches, and for which the judiciary is both ill suited and ill equipped.").

So what should the trial court have done? It should have performed a single legal analysis, applying the *Campaign I* test, as articulated in my concurrence in *Rell*, to the specific educational failings that the plaintiffs allege exist in specific schools and school districts. It should have determined whether, in light of its factual findings regarding both financial and nonfinancial considerations, the state's educational programs are reasonably calculated to satisfy each of the *Campaign I* criteria so as to ensure that students in those districts have the opportunity to secure the fruits of a minimally adequate education. And it should have made these determinations in light of the "special needs of . . . particular local school system[s]," as defined in Justice Borden's dissent in *Sheff* v. *O'Neill*, supra, 238 Conn. 143.

III

My disagreement with the majority over the controlling legal standard compels me to part ways with respect to the appropriate resolution of this appeal. The majority concludes that the trial court (1) applied the correct legal standard in parts 3 and 4 of its decision, and (2) properly determined that the plaintiffs had failed to establish that Connecticut's schools have delivered less than a minimally adequate education. For this reason, the majority would simply reverse the judgment of the trial court—because it exceeded its mandate in parts 5 through 8 of its decision—with direction to render judgment for the defendants.

The plaintiffs argue that they are entitled to an opportunity to prevail at a new trial under the *Campaign I* standard, as properly applied. They emphasize, and the majority acknowledges, that the trial court found, among other things, that (1) the Bridgeport public schools have been forced to cut key support personnel and even school bus service at the same time as some wealthier districts have received an influx of new state funds; see footnote 1 of the majority opinion; (2) other high needs schools have inadequate classroom facilities and shortages of experienced teachers, specialists, interventionists, and counselors, (3) large numbers of high needs students are not even approaching appropriate educational outcomes, (4) preschool opportunities are unavailable for large numbers of low income students, despite their proven link to improved educational outcomes, and (5) the state has provided inadequate socioemotional and related support services for high needs students. Indeed, the majority readily acknowledges that "the plaintiffs have convincingly demonstrated that in this state there is a gap in educational achievement between the poorest and neediest students and their more fortunate peers . . . ." Nevertheless, it is the view of the majority that such findings are simply irrelevant under the "narrow *Campaign I* criteria."[15] Text accompanying footnote 41 of the major-

ity opinion.

I disagree. As I explained in part II B of this opinion, I believe that the trial court misapplied *Campaign I* in several respects. "We have often stated that a party is generally entitled to a new trial when, on appeal, a different legal standard is determined to be required, unless we conclude that, based on the evidence, a new trial would be pointless." *McDermott* v. *State*, 316 Conn. 601, 611, 113 A.3d 419 (2015); see, e.g., id., 612 (holding that Appellate Court, having concluded that trial court applied wrong legal standard, should have remanded case for new trial rather than directing judgment); see also *In re Joseph W.*, 305 Conn. 633, 648, 46 A.3d 59 (2012) (citing cases). Having reviewed the trial record in the present case, I cannot conclude that a new trial under the correct legal standard would be pointless. Rather, the trial court's factual findings indicate that some of our state's most disadvantaged students may not be receiving a minimally adequate education, which is their constitutional right. The evidence that, according to the plaintiffs, warrants a new trial falls into three broad categories: (1) academic outcomes; (2) educational inputs; and (3) educational policies. I briefly consider each in turn.[16]

A

I agree with the majority that the trial court's *primary* focus in evaluating whether the state has complied with its constitutional obligations should be on the adequacy of educational inputs, rather than on students' level of academic achievement. As I explained in *Rell*, "student achievement may be affected by [too] many factors outside the state's control" for the state to be able to guarantee academic outcomes. *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 345 n.19 (*Palmer, J.*, concurring in the judgment).

I have never suggested, however, that educational outcomes are uninformative or irrelevant to the constitutional analysis. See id. ("I do not suggest that educational 'outputs' are never relevant to the determination of whether the state has complied with the requirements of article eighth, § 1"). I agree with the majority, for example, that the fact that high needs students in one school or district have experienced some measure of academic success while students with a similar demographic profile in another school or district have failed, in the aggregate, to demonstrate even minimal progress may indicate that the latter have not been afforded minimally adequate educational opportunities. See footnote 32 of the majority opinion. At the very least, it suggests that closer scrutiny is warranted.

More fundamentally, evaluation of educational outputs will, in many instances, be a fundamental and necessary starting point in evaluating claims brought

under article eighth, § 1. This is because outcomes provide the clearest evidence of whether Connecticut's students are in fact receiving a minimally adequate education. Although one can imagine extreme cases in which the failure to achieve educational objectives may be presumed,[17] challenges such as those brought by the plaintiffs in the present case are most reasonably resolved by first determining whether students have in fact been unable to obtain a minimally adequate education, as defined by the state. If the plaintiffs can establish such a deficiency, then the trial court must determine whether "the failure of students to achieve the goals of a constitutionally mandated education [are] the result of specific deficient educational inputs, or [have been] caused by factors not attributable to, or capable of remediation by, state action or omission . . . ." *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 318 (plurality opinion).

In the present case, the trial court found that a number of the state's schools are "utterly failing" and that one third of high school students in poorer communities such as Bridgeport, Windham, and New Britain fail to reach even the most basic levels in math and reading. In the trial court's words, "[n]ot reaching the most basic level means they [do not] have even limited ability to read and respond to grade level material. There can be no serious talk of these children having reached the goals set for them." The trial court made numerous specific findings regarding the failure of different underprivileged student populations to achieve minimal academic success according to various objective benchmarks established by the state.

With respect to economically disadvantaged students, the court found, among other things, that Connecticut's fourth and eighth grade students who qualify for free and reduced lunch services rank among the lowest in the nation on National Assessment of Educational Progress (NAEP) math assessments. Between 80 and 90 percent of the state's poor students failed to reach the minimum standards for high school reading as assessed by Smarter Balanced Assessment Consortium (SBAC) tests. More than 70 percent of the impoverished students entering the state's higher education system lack basic literacy and numeracy skills.

The court also found that success rates for economically disadvantaged students vary dramatically between school districts, which suggests that differing academic outcomes may arise from differing inputs and educational strategies rather than any intractable barriers to learning created by poverty. On the 2015 SBAC mathematics test, for example, only 9.1 percent of Bridgeport students and 11 percent of New Britain students who qualified for free or reduced lunch performed at level 3 or above, whereas over 40 percent of students who

qualified for free and reduced lunch reached that level in towns such as Darien, Ridgefield, and Weston. At the other end of the spectrum, approximately two thirds of students eligible for free and reduced lunch in Bridgeport and New Britain performed only at level 1, more than twice the rate as in Darien.

More generally, the trial court's findings highlight the dramatic differences in educational outcomes between the state's more affluent and less affluent communities. The court found that students in struggling elementary schools in poor communities are not acquiring basic reading, writing, and math skills, and that virtually none of the students in many inner-city schools has the skills needed to progress beyond third grade. On the 2013 Connecticut Academic Performance Test (CAPT) mathematics assessment, over 38 percent of students in New Britain, over 41 percent of students in Bridgeport, and nearly one half of all Windham students scored in the "Below Basic" range. In more affluent towns such as Westport and Weston, by contrast, the number of students scoring in the "Below Basic" range was negligible. Similar disparities were observed on the CAPT reading and science assessments.

With respect to the secondary level, out of 1177 students attending Bridgeport's Bassick High School in 2013, only 6 percent even attempted to take an advanced placement (AP) exam, and, of those who did, only 3 students earned a qualifying score, which indicates an ability to complete college level work. By contrast, approximately one fourth of all students at Darien High School took AP exams and almost all earned qualifying scores. No more than 15 percent of high school graduates in Bridgeport, Hartford, New Haven, and Waterbury were deemed to be college and career ready. As judged by Preliminary Scholastic Aptitude Test (PSAT) scores, less than 2 percent of students in Bridgeport were on track to be college and career ready.

The court also made specific findings with respect to the academic success of students who are not native English speakers or are racial minorities. As of 2012–2013, for example, the school districts of Bridgeport, Danbury, East Hartford, Hartford, Meriden, New Britain, New Haven, New London, Norwalk, Norwich, Stamford and Waterbury all had failed to meet Annual Measurable Achievement Objectives (AMAO) performance targets for English as a Second Language students for the previous ten years. This means that English language learning students do not have the language or vocabulary skills needed to pass a language proficiency test. On the 2013 CAPT mathematics assessment, nearly 50 percent of all African-American students scored in the "Below Proficient" range versus 10.6 percent of white students.[18] Ultimately, on the basis of such findings, the trial court concluded beyond a reasonable doubt that, "for thousands of Connecticut students

there is no elementary education, and without an elementary education there is no secondary education." (Emphasis omitted.)

B

There is little dispute that educational inputs represent the most important consideration in assessing whether the state has satisfied its constitutional obligation to ensure that Connecticut residents have a reasonable opportunity to obtain a minimally adequate education. If students in each school have access to adequate facilities, equipment, teachers, and curricula, as well as other essentials such as transportation and security, then a presumption arises that they have been afforded this opportunity. By contrast, the failure to provide these basic essentials supports a conclusion that the state has failed to meet its obligations under article eighth, § 1.

In the present case, notwithstanding its conclusion that the four *Campaign I* factors have been satisfied and that the state invests heavily in the lowest performing and highest needs schools, the trial court clearly was of the view that academic inputs in our state's most disadvantaged communities are not reasonably calibrated to achieve minimally adequate academic outcomes. With respect to staffing levels, for example, the court emphasized that schools with higher percentages of low income and minority students are forced to hire inexperienced and unqualified teachers and administrators at higher rates, and that more than one half of the professional staff in such schools depart, on average, within five years. Moreover, although wage premiums are often required to attract teachers to high poverty and high minority school districts and thereby improve student achievement, state educational funds have flowed in the opposite direction. Although educator salaries in the state's poorest communities are significantly lower than the state average, wealthy school districts have been allowed "to raid money desperately needed by poor towns . . . ." For instance, the state recently cut educational aid to the poorest school districts by over $5.3 million, forcing districts such as Bridgeport to cut essential staff, including guidance counselors and special education paraprofessionals, while simultaneously increasing aid to many comparatively wealthy towns.

Schools in low income, high poverty districts already had significantly fewer counselors and academic support staff per student, despite demonstrably greater needs. Among the court's many specific findings in this regard: Bridgeport's Bassick High School has only 4 full-time guidance counselors for nearly 1200 students and New London has only 3 to serve over 900 students. Windham has only 4 full-time school psychologists serving a population of almost 3200 students; the student to psychologist ratio is far lower in more affluent towns

such as Greenwich and Westport, even though those towns have a lower percentage of students with disabilities. Waltersville School in Bridgeport, which has a student population of approximately 600 ranging from prekindergarten to eighth grade, has only one literacy coach, one guidance counselor, and no social workers available to meet the socioemotional needs of students who do not have individual education plans. Roosevelt School and Bryant Elementary School in Bridgeport suffer from similar staffing shortages. Ultimately, the court found that inadequate staffing levels meant that schools in certain less affluent school districts were unable to satisfy their legal requirements to meet the needs of special education students.

Turning to East Hartford, the trial court found that that economically disadvantaged school district has only one translator, who speaks Spanish, even though the district's students collectively speak 50 different languages; has 4 or 5 elementary schools that do not have a social worker; has only 1 social worker for 400 ninth grade students, which is insufficient to meet their varied socioemotional needs; has only 1 high school reading intervention teacher, which leaves many students who are far below grade level unable to access reading support services; and employs only 1 high school psychologist who, despite working 70 to 90 hours per week, is unable to meet the needs of the district's 1700 high school students.

Some of the court's findings in this respect were so dramatic that it is questionable whether the *Campaign I* factors are being satisfied even under the narrowest reading of that case. For example, there are no reading teachers or reading interventionists to provide necessary literacy interventions in Bridgeport's comprehensive high schools. During the 2015–2016 school year, New London High School filled a Spanish language instruction position with a substitute teacher who could not even speak or read that language. New Britain has no significant programs for homeless students, despite having approximately 500 homeless students in the district.

The court also found that, while there is widespread agreement that high quality preschool is perhaps the single most effective tool for narrowing achievement gaps and preparing underprivileged students for success at the primary and secondary levels, a great number of children in Connecticut do not participate in preschool programs, and not all children who live in poverty have access to affordable programs. The court also found that insufficient funding was a significant impediment to broader access. Although there is no express constitutional requirement that the state provide free preschool programs, the state is required to take reasonable steps to ensure that students are able to learn, with an eye toward all of the available tools and

their proven effectiveness. See part I B 3 of this opinion.

Finally, with respect to transportation and facilities, the trial court found that Bridgeport no longer provides school bus service to the comprehensive high schools, forcing students to transfer between multiple public transit buses to get to school in the morning. Some Bridgeport schools also have unreliable boilers, and ceilings fell in one building. In light of these findings, the trial court's ultimate conclusion appears to be that our "constitution's promise of a free elementary school education" could be realized if additional resources were marshaled in support of "drastic interventions" for the most troubled school districts.

C

Finally, the trial court identified various policies and procedures that, in its view, the state could modify in order to improve educational outcomes for underprivileged students. Indeed, the court went so far as to conclude that "many of our most important [educational] policies are so befuddled or misdirected as to be irrational."

As I explained in part II B of this opinion, I agree with the majority that the trial court generally overstepped its authority in parts 5 through 8 of its decision. Some of its policy prescriptions and related findings fail to afford sufficient deference to the political branches and to school administrators, taking sides in ongoing debates among educational experts or requiring that the state adopt or reject one among many facially reasonable approaches. In other instances, the court invalidates certain educational policies without making the necessary predicate finding that those policies have resulted in the state's failure to afford minimally adequate educational opportunities.

That is not to say, however, that policy questions fall completely beyond the legitimate ambit of the court's authority to review alleged violations of article eighth, § 1, or that a violation of that provision might not result from policy choices rather than from inadequate resourcing. This idea is implicit in *Campaign I*, which requires that schools adopt modern, age appropriate educational curricula. The majority concedes as much when it recognizes that "if the plaintiffs had shown that the state was providing elementary school students with books and curricula only intended for advanced college students, a court could conclude that the state was not reasonably meeting the minimal educational needs of these students . . . ."

The majority fails, however, to follow this hypothetical to its logical conclusion. If the constitution is violated when schools do not provide students with learning materials reasonably suited to their level of cognitive development, why is it not also offended if, for example, a school fails to provide instruction or

instructional materials that are comprehensible to a substantial subpopulation of students whose primary language is not English? At a minimum, it would seem that public schools must supply adequate professional staff to screen for and identify students who have serious impediments to learning and to refer them for appropriate services. In the present case, the trial court found, among other things, that some poor school districts consistently ignore or under identify students with special educational needs and, therefore, fail to provide them with appropriate support services. In the face of such findings, I am unable to conclude that, if the plaintiffs were afforded the opportunity to prove their allegations under the correct legal standard, it is impossible that they could demonstrate that their right to a minimally adequate education has been violated.

IV

The state's duty to act rationally in developing and implementing a system for affording all students the opportunity to receive a minimally adequate education is not a duty disconnected from reality but a duty that must be exercised with a clear-eyed view of its essential purpose and a commitment to dealing with those circumstances of modern life that tend to frustrate that purpose. It is not enough to seek success in some places, for some children. Our schools must carry on in the faith that all students can learn, and our state must aspire to no less. Although the ultimate measure of an adequate educational opportunity for purposes of article eighth, § 1, cannot be educational outputs, the educational system must be reasonably designed to achieve results in every district and neighborhood. Our state constitution simply will not allow us to leave our neediest children behind.

Because the plaintiffs were not afforded the opportunity to prove their case according to the correct legal standard, and because there is reason to believe that the trial court may have found one or more violations of *Campaign I* if that test had been applied properly, I dissent from that portion of the majority opinion that directs judgment for the defendants. Instead, I would remand the case for a new trial.

[1] See footnote 3 of the majority opinion.

[2] *Campaign for Fiscal Equity, Inc.* v. *State*, 86 N.Y.2d 307, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995).

[3] See *Campaign for Fiscal Equity, Inc.* v. *State*, supra, 86 N.Y.2d 307, 318, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (trial court required to determine whether New York City school children were receiving sound, basic education).

[4] Because the question is not before us, I express no opinion as to whether and under what circumstances article eighth, § 1, might be offended solely on the basis of evidence that an individual *student* has been denied minimally adequate educational opportunities.

[5] See, e.g., *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 244–45 (plurality opinion) ("we conclude that article eighth, § 1, of the Connecticut constitution *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" [emphasis added]); id., 314–15 (plurality opinion) ("Thus, we conclude that article eighth, § 1, entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting. A constitutionally adequate education also will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy.").

[6] I wrote separately in *Rell* primarily (1) to emphasize the special and considerable deference that is owed to the legislature in these matters; see, e.g., *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 321–22, 332, 335–43, 344 n.18 (*Palmer, J.*, concurring in the judgment); (2) to highlight the importance of defining the constitutional standard with sufficient precision at the outset to give the parties and the trial court adequate guidance; id., 342–43 n.17 (*Palmer, J.*, concurring in the judgment); and (3) to express my belief that it was inappropriate to defer to the remedy stage (a) the question of whether the plaintiffs' claims were justiciable; id., 327–28 n.10 (*Palmer, J.*, concurring in the judgment); and (b) related prudential considerations. Id., 338–39 n.12 (*Palmer, J.*, concurring in the judgment).

[7] The majority contends that the standard that I articulate in this opinion goes beyond and is broader than the one that I articulated in *Rell*. For the reasons set forth herein, that is incorrect. In any event, as I explain in part II of this opinion, the trial court failed to properly apply the *Campaign I* test under even the narrowest fair reading of that standard.

[8] I wish to recognize, and to emphasize, that the trial court had before it a Herculean task. It was charged with divining a governing legal standard from the area of overlap between two less than crystal clear opinions in *Rell* and then applying that standard, with virtually no guiding precedent, to an enormous and complex factual record covering a field—education—that accounts for a significant share of all public expenditures.

[9] There also is no indication that the trial court even considered whether school security, transportation, and other essentials are minimally adequate before concluding that the plaintiffs had failed to establish a violation under *Campaign I*.

[10] The trial court appears to have read my concurrence in *Rell* to mean that *Campaign I* was concerned principally with questions of financial resources. The court stated, for example, that "Justice Palmer appeared to view [*Campaign I*] as enough to consider *about resources* . . . ." (Emphasis added.) The court also referenced my concurrence in support of its conclusion that, "[b]eyond a bare minimum, the judiciary is constitutionally unfit to set the total amount of money the state has to spend on schools." I do not believe, and I do not understand the majority to believe, that my concurrence in *Rell* supports such an interpretation.

[11] The majority contends that we must assume that the trial court considered all of its 1060 specific factual findings in conducting the *Campaign I* analysis in parts 3 and 4 of its decision, and that it is implicit in the trial court's factual findings that this reasonableness standard was met. This reading of the trial court's decision, however, is demonstrably wrong. It defies logic to think that the trial court, which waited to expressly evaluate these findings and described the state's educational failings at great length in the second half of its decision, already had considered all of them sub silentio in the context of its *Campaign I* analysis but concluded that not even one of its hundreds of troubling findings regarding deficiencies in the schools warranted mention or discussion therein. That would be a truly bizarre way to craft a judicial decision, and there is simply no indication that the court did so. Rather, it is readily apparent that the court misread *Rell* and felt constrained not to consider in the context of *Campaign I* either its conclusion that many of Connecticut's schools are "utterly failing" or the myriad factual findings that supported that conclusion. If there were any doubt as to whether the court factored its findings into its *Campaign I* analysis, then this court should order an articulation. See Practice Book § 60-5.

For the same reason, the majority's reliance on the assumption that the court found that "the state's educational offerings, even in the poorest school districts, are sufficient to enable students who take advantage of them to become functional members of society" is misplaced. There is no indication whatsoever in the trial court's memorandum of decision that the trial court ever made such a finding, and the majority is unable to point to any language to support its reading of the court's decision.

[12] The court also noted that facility issues in the town of Windham and the city of New London were "already on the state's list to be fixed and fixed mostly with state money." It is unclear how this observation factored into the court's *Campaign I* analysis.

[13] That the court considered educational adequacy only from an aggregate standpoint in the first half of its decision becomes clear in the second half, when the court turns its attention to the problems facing individual school districts, explains the "flaw of averages," and concludes that the state is not allocating sufficient funds to its poorer cities. The court states, for example, that "[t]he children in most Connecticut towns do well on tests and some do extremely well, pulling up the average to impressive heights. But viewed individually, the state of education in some towns is alarming." The court ultimately concluded: "But if the egregious gaps between rich and poor school districts in this state don't require more overall state spending, they at least cry out for coherently calibrated state spending."

[14] The court concluded, for example, that a different method of evaluating and compensating teachers would be preferable, social promotion should be curtailed, and fewer resources should be spent educating severely disabled children. These are matters over which administrators reasonably may disagree with teachers, parents with students, and legislators with taxpayers. The irrationality of one position or the other would have to be far more conspicuous for a court to be justified in resolving the debate by judicial fiat.

[15] The majority relies in this respect on the circular argument that, because the *Campaign I* test encompasses certain considerations, and because the trial court purported to apply *Campaign I*, the court must have taken those considerations into account and found them to be satisfied. The obvious flaw in this reasoning is that, if the court misunderstood and misapplied *Campaign I*, as I have demonstrated in part II B of this opinion, then there is no reason to assume consequences that would flow from the court's proper application of the test.

[16] What follows should not be taken either as a determination that the plaintiffs have established a constitutional violation or as a comprehensive canvass of the constitutionally relevant evidence that was presented at trial. My purpose is merely to identify examples of some of the types of evidence the plaintiffs have presented that the trial court, serving as the finder of fact, would need to consider under the proper legal standard.

[17] For example, "[a] town may not [merely] herd children in an open field to hear lectures by illiterates." (Emphasis omitted; internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, supra, 295 Conn. 283–84 (plurality opinion).

[18] The term "white students," as used in this opinion, refers to non-Hispanic, white students.