

# The Aftermath Of The CCJEF Ruling: What Is Next For Public Education In Connecticut?

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## Education Law Notes

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On September 7, 2016, Superior Court Judge Thomas G. Moukawsher issued a lengthy decision in *Connecticut Coalition for Justice in Education Funding v. Rell*. As its name would suggest, this case involved a challenge to inequities in educational funding in the State of Connecticut. But the court's ruling has led to far broader consequences (and uncertainty) for almost all aspects of education in the state.

**The case:** The Connecticut Coalition for Justice in Education Funding, Inc. ["CCJEF"] alleged that the State's present system of funding public education deprives students of their right to receive "suitable and substantially equal educational opportunities" and therefore is in violation of the Connecticut Constitution, which establishes a right to public education and a right to equal protection of the laws. The plaintiffs alleged that: (1) the State's failure to provide such suitable educational opportunity has been caused by the lack of resources for students, (2) this failure has been evidenced by lower achievement scores on many educational tests, proportionately affecting minority students, and (3) the unsuitability of this education has been caused by a flawed educational **funding** system.

**The decision:** The court addressed the funding issue by determining that while the aggregate amount of money spent by the State met constitutional requirements, the actual funding system was "irrational" and thus unconstitutional. The judge ordered the State to draft for the court's review by March 7, 2017 a new state educational spending plan and funding formula that "rationally, substantially, and verifiably connects education spending with educational need." The judge appeared to be most critical of 1) the State's increasing deviation from the ECS grant formula, resulting in increased funding for wealthier towns and reductions in funding for poorer towns and cities, especially in light of the often dire situations faced by poorer urban school districts and the much-discussed achievement gap between rich and poor in Connecticut, and 2) the State's school construction spending, which he characterized as allotting substantial amounts of monies for building projects without (in the judge's words) "following any rational criteria for what should be built or renovated and what shouldn't" or "consideration of relative needs across the state," thus draining money that be used for other educational needs.

**But there's more:** The judge, however, did not stop at the funding issues that appeared to be at the center of the *CCJEF* litigation. Judge Moukawsher reviewed not only the State's school funding system but also the "major policies" carrying these resources into action. Finding many of these policies to be unconstitutional,

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the judge ordered the State - by March 7, 2017 - to undertake the following additional actions:

1. The State must submit an **objective and mandatory statewide high school graduation standard**. The judge appeared both to find that a high school diploma is often meaningless, and to favor enactment of some form of statewide test for graduation.
2. The State must submit a **“rational, substantial, and verifiable definition of elementary education.”** The judge noted that a “lost child” is “hard to recover” after third grade.
3. The State must submit plans for a **“rational” system for evaluating and compensating educational professionals, including proposals for hiring, evaluating, promoting, removing and paying educational professionals (teachers, principals and superintendents)**, with implementation schedules. The judge seemed deeply troubled by the fact that 98% of teachers statewide had been evaluated as being “proficient” or “exemplary” under the new teacher evaluation guidelines; the judge attacked what he perceived to be a lack of rigor in the guidelines and a lack of a “rational, substantial and verifiable link” between evaluations and student learning, noting that these “empty evaluation guidelines mean that good teachers can’t be recognized and bad teachers reformed or removed.” The judge noted that a teacher compensation system solely based upon years of experience and degree status is “irrational.”
4. The State must submit **new standards which “rationally, substantially, and verifiably link special education spending with elementary and secondary education,” and which will address “funding, identification and educational services standards for special education.”** The judge appeared to indicate that too much money is spent on students who have multiple disabilities and who (in his opinion) are incapable of benefiting from education at all, and chastised school districts for giving in to parent demands to provide unnecessary and costly educational services rather than making “judgment calls.” The judge also was troubled by “markedly different rates of disability identification using the same state definitions and classification criteria.”

Finally, the judge also appeared to order the State “to **assume unconditional authority to intervene in troubled school districts**” and **“redefine the relationship between the state and local government in education.”**

**So what does this all mean?** This post cannot do justice to the significant issues raised by this decision (should it not be appealed and should it ever be implemented). That a judge has now ordered the legislature to address the State’s educational funding system as a result of this case may not be a surprise; the changes the judge has ordered (without any corresponding increase in the aggregate amount of spending) may lead to numerous school districts receiving significantly less state funding, some of which may not be “rich” districts. Equally as important, the judge has mandated a veritable revolution in almost every aspect of public education, which could eviscerate many state laws and result in both intended and unintended consequences.

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The orders with respect to the teacher evaluation and compensation system would lead to massive changes in the collective bargaining and teacher tenure systems. Interestingly, school districts now in the midst of negotiating teacher contracts are in the position of having to address teacher salary schedule compensation systems that have in effect been declared to be unconstitutional. In special education, school districts may eventually be placed in the position of receiving less state funding for expensive out-of-district placements, but still facing the prospect that in the course of interpreting and applying federal and state special education laws, special education due process hearing officers will continue to order such placements. Given that, will the judge's decision be an impetus to change the burden of proof in special education due process hearings so as to place it on the parent challenging the appropriateness of an educational program or placement?

Finally, the judge's ruling appeared to place a higher premium on high stakes testing at a time that there is a backlash against such testing, and also opened the door to the State further intervening in (if not "taking over") troubled school districts.

No one can credibly claim to know how this process will exactly end up; interested stakeholders must now pay closer attention to the legislative process (which is currently on hiatus during the election cycle), should there be no appeal of the decision. Stay tuned, as we will further discuss the ramifications of this decision in these pages.

*A more in-depth discussion of the decision is on the agenda for our Superintendents' Legal Issues Forum, which we are hosting on Thursday morning in our Hartford office. If you are interested in attending, please contact Bill Connon at [wconnon@pullcom.com](mailto:wconnon@pullcom.com)*

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