X07 HHD CV 05 4050526 S	:	SUPERIOR COURT
CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	COMPLEX LITIGATION DOCKET
M. JODI RELL, ET AL.	:	DECEMBER 4, 2013

MEMORANDUM OF DECISION RE: MOTION TO DISMISS #164

FACTS

This action arises out of the plaintiffs' allegation that the state's current education system is in violation of the Connecticut constitution. The plaintiffs, Connecticut Coalition for Justice in Education Funding, Inc. (CCJEF), parents and their children, who attend public schools in various school districts across the state, bring this action against the defendants, the former governor, the former commissioner of education and various other state officials and members of the state board of education, alleging that the state's present system of funding public education deprives the students of their right to receive suitable and substantially equal educational opportunities and therefore is in violation of article eighth, § 1 and article first, §§ 1 and 20, of the Connecticut constitution.[1] Overall, the plaintiffs allege that the defendants' failure to provide a suitable educational opportunity has been caused by the unavailability or inadequate quality of educational resources for all students (inputs), that this failure has been evidenced by lower

[1] Article eighth, § 1, of the constitution of Connecticut provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

Article first, § 1, of the constitution of Connecticut provides: "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community."

Article first, § 20, of the constitution of Connecticut 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."

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achievement scores on many educational tests that have proportionately impacted minority students (outputs), and that the unsuitability of the education has been caused by a flawed educational funding system.

The procedural history of the case is as follows. This action was originally filed in 2005. In 2006, the defendants moved to dismiss the plaintiffs' complaint on the ground that the court lacked subject matter jurisdiction on the basis that CCJEF lacked standing. The court, *Shortall, J.*, granted the defendants' motion without prejudice and found that CCJEF lacked standing because it did not have parents in its membership and because the complaint did not allege that its membership included parents of Connecticut public school students. The plaintiffs moved for leave to amend their complaint to cure the defects, to which the defendants objected. The defendants objected on the basis that the plaintiffs were not permitted to amend the complaint to overcome the standing deficiency. The court overruled the defendants' objection and granted the request to amend.

Thereafter, the defendants moved to strike certain counts of the plaintiffs' complaint arguing that the state constitution does not guarantee "suitable" educational opportunities, particularly that it does not guarantee equality or parity of educational achievement or results. In 2007, the trial court, *Shortall, J.*, granted the defendants' motion to strike. The plaintiffs were permitted an interlocutory appeal of the decision.[2] On appeal in 2010, the Connecticut Supreme Court faced the specific issue of whether article eighth, § 1, of the constitution of Connecticut also guarantees students in our state's public schools the right to a particular minimum quality of education, namely, suitable educational opportunities. The court held that there is a qualitative standard underlying the right to education and that the fundamental right to education under

[2] The Supreme Court granted certification pursuant to General Statutes § 52-265a.

article eighth, § 1, of the state constitution guarantees public school students the right to a suitable education. Accordingly, the Supreme Court found that the trial court improperly granted the defendants' motion to strike the counts of the plaintiffs' complaint alleging a state constitutional right to suitable public education. The case was remanded for further proceedings to determine as a question of fact whether the state's educational resources and standards have in fact provided public school students with constitutionally suitable educational opportunities. *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 990 A.2d 206 (2010).

Subsequently, in 2012, the state legislature enacted various Public Acts, specifically Public Act 12-116 and Public Act 12-104, which set forth certain educational reforms. Public Act 12-116 made changes in education laws to: (1) address the state's academic achievement gap; (2) identify and intervene in school districts and schools with low academic performance; (3) increase state education funding to towns; (4) provide more financial support for school choice programs; (5) improve teacher training, qualifications, practice, and evaluations systems; and (6) establish a separate governing board for the state's technical high school system. Public Act 12-104 made adjustments to state expenditures for the fiscal year ending June 30, 2013.

Following the Supreme Court's decision, the plaintiffs have filed several amended complaints.[3] The operative complaint alleges the following relevant facts. The individual plaintiffs' children attend public schools in Bridgeport, Danbury, Windham, Hartford, New Haven, East Hartford, New London, Plainfield and New Britain. CCJEF is a "Connecticut not-for profit corporation, which is committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities. CCJEF's membership includes adult Connecticut resident parents of students in the public schools of Connecticut, Connecticut

[3] The plaintiffs filed a second amended complaint on November 19, 2010, a third amended complaint on December 21, 2012, and corrected third amended complaint on January 7, 2013. The corrected third amended complaint is the operative complaint.

public school students ages eighteen (18) years or older, education advocacy organizations, community groups, teachers' unions, municipalities and boards of education. . . ." The plaintiffs allege that the state has failed to provide their children with "suitable and substantially equal educational opportunities" because of inadequate and unequal "inputs," that "are essential components of a suitable educational opportunity," namely: (1) high quality preschool; (2) appropriate class sizes; (3) programs and services for at-risk students; (4) highly qualified administrators and teachers; (5) modern and adequate libraries; (6) modern technology and appropriate instruction; (7) an adequate number of hours of instruction; (8) a rigorous curriculum with a wide breadth of courses; (9) modern and appropriate textbooks; (10) a school environment that is healthy, safe, well maintained and conducive to learning; (11) adequate special needs services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (12) appropriate career and academic counseling; and (13) suitably run extracurricular activities.

The plaintiffs contend that the state's failure to provide "suitable educational opportunities," is demonstrated by educational "outputs" from the certain school districts, as measured by the "adequate yearly progress" on student achievement tests required under the federal No Child Left Behind Act; 20 U.S.C. § 6301 et seq.; including the Connecticut Mastery Test and the Connecticut Academic Performance Test, the higher than statewide average rates of students at certain schools who either are retained or advanced despite not being ready for promotion, and the higher than average cumulative dropout rate at these districts' high schools when compared to the statewide average. The plaintiffs also contend that the state has failed to create and maintain an education funding system that provides and effectively manages the resources needed to ensure that students receive suitable educational opportunities. The plaintiffs seek a judgment declaring that: (1) they have a right to receive suitable and substantially equal

educational opportunities as a matter of state constitutional law; (2) the state's failure to provide suitable and substantially equal educational opportunities violates article eighth, § 1, and article first, §§ 1 and 20, of the state constitution; and (3) the existing school funding system is unconstitutional, void and without effect. The plaintiffs also seek injunctions against the continued operation of the present funding system except in transition to a court-ordered and newly created constitutional funding system, as well as the appointment of a special master, and an award of reasonable attorney's fees.

The defendants move to dismiss the plaintiffs' complaint on the ground that the court lacks subject matter jurisdiction. Particularly, the defendants base their motion on the grounds that the claim is not ripe for adjudication, the claim is moot, and CCJEF lacks associational standing. The defendants submitted numerous documents in support of their motion.[4] In response, the plaintiffs filed a memorandum of law in opposition and numerous documents in support.[5] The defendants thereafter filed a reply.

DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the

[4] In support of their motion, the defendants have submitted the following: Summaries of Public Acts 12-116, 12-104, 12-1, 12-2, 11-57, and 12-189; Affidavit of Stefan Pryor, Commissioner of the Connecticut State Department of Education; Affidavit of Brian Mahoney, Chief Financial Officer of the Connecticut State Department of Education; Highlights of Connecticut's ESEA Flexibility Request; Affidavit of Richard Seder, an expert for the defendants; A message from the superintendent of the New Britain school district; Minutes from a Board of Education Meeting.

[5] In support of their opposition, the plaintiffs have submitted the following: January 2013 Final Report, Task Force to Study State Education Funding; Evaluation of Connecticut's Educational Cost Sharing Program; Estimating the Cost of an Adequate Education in Connecticut; Affidavit of Bruce D. Baker, a consultant for CCJEF; 2011-2012 Net Current Expenditures (NCE) per pupil (NCEP) and 2012-2013 Special Education Excess Cost Grant Basics Contributions for the February Payment; two articles from the CT Mirror; Affidavit of Dianne Kaplan DeVries, consultant for CCJEF; and Affidavit of Dustin N. Nofziger, creator of the 2011-2012 Net Current Expenditures (NCE) per pupil (NCEP) and 2012-2013 Special Education Excess Cost Grant Basics Contributions for the February Payment.

record, the court is without jurisdiction." (Internal quotation marks omitted.) *Dayner* v. *Archdiocese of Hartford*, 301 Conn. 759, 774, 23 A.3d 1192 (2012). "Pursuant to the rules of practice, a motion to dismiss is the appropriate motion for raising a lack of subject matter jurisdiction." *St. George* v. *Gordon*, 264 Conn. 538, 545, 825 A.2d 90 (2003).

"[C]ourts are called upon to determine existing controversies, and thus may not be used as a vehicle to obtain advisory judicial opinions on points of law. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant." (Citations omitted; internal quotation marks omitted.) *ABC, LLC* v. *State Ethics Commission*, 264 Conn. 812, 824-25, 826 A.2d 1077 (2003). "A case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 86, 952 A.2d 1 (2008). "[J]usticiability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 536, 46 A.3d 102 (2012).

"[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." (Internal quotation marks omitted.) *Electrical Contractors, Inc.* v. *Dept. of Education*, 303 Conn. 402, 413-14, 35 A.3d 188 (2012).

"[I]t is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 531, 46 A.3d 102, 107 (2012).

I

RIPENESS

The defendants move to dismiss the plaintiffs' complaint on the ground that the court lacks subject matter jurisdiction because the plaintiffs' claims are not ripe for adjudication. Specifically, the defendants argue that the 2012 legislative educational reforms, particularly Public Act 12-116 and Public Act 12-104, enacted by the government have dramatically and comprehensively altered the public education system. The defendants therefore argue that at this time, the court is unable to evaluate the constitutionality of the reformed education model because the reforms require a reasonable time period to be fully implemented.

The plaintiffs counter that the 2012 legislative reforms do not resolve the constitutional defects that render the state's educational system unlawful and therefore the claims are ripe for adjudication. The plaintiffs also argue that, in the alternative, the defendants' motion to dismiss on the ground of ripeness is "premature." In this regard, the plaintiffs argue that the defendants' arguments, at best, raise a question of jurisdiction that is intertwined with the merits of the case and the jurisdictional issue should therefore be deferred until further discovery or a trial on the merits has occurred.

"[R]ipeness is a sine qua non of justiciability . . . . An issue regarding justiciability . . . must be resolved as a threshold matter because it implicates [the] court's subject matter jurisdiction . . . . If it becomes apparent to the court that such jurisdiction is lacking, the [cause of action] must be dismissed." (Internal quotation marks omitted.) *Liberty Mutual Ins. Co.* v. *Lone*

Star Industries, Inc., 290 Conn. 767, 812, 967 A.2d 1 (2009). "[T]he rationale of the ripeness requirement . . . [is] to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . ." (Internal quotation marks omitted.) Id., 813–14. "In light of the rationale of the ripeness requirement . . . we must be satisfied that the case before the court does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire." (Citations omitted; internal quotation marks omitted.) *Esposito* v. *Specyalski*, 268 Conn. 336, 346, 844 A.2d 211 (2004).

Moreover, "[t]rial courts addressing motions to dismiss for lack of subject matter jurisdiction pursuant to [Practice Book] § 10-31 (a) (1) may encounter different situations, depending on the status of the record in the case. . . . [L]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. . . . Different rules and procedures will apply, depending on the state of the record at the time the motion is filed." (Citation omitted; internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 650-51, 974 A.2d 669 (2009). Furthermore, "where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts." Id., 652. Generally, "[a] preliminary evidentiary hearing ordinarily will suffice where the jurisdictional issue is distinct and severable from the merits of the action, for example, when personal jurisdiction is called into question." Id., 653 n.15. "When the jurisdictional facts are intertwined with the merits of the case, [however], the court may in its discretion choose to postpone resolution of the jurisdictional question until the parties complete further discovery or, if necessary, a full trial on the merits has occurred." Id., 653 n.16.

In the present case, the court finds that the jurisdictional determination as to ripeness is dependent on the resolution of a critical factual dispute. At the core of the ripeness issue is the question of whether the 2012 legislative reforms may, with time, remedy the alleged constitutional deficiencies in the state's education system. The defendants and the plaintiffs maintain differing positions as to the extent to which the 2012 legislative reforms affect the state's educational system. The plaintiffs have accounted for their position in their complaint. Paragraph 160 of the plaintiffs' complaint expressly alleges: "The July 1, 2012 enactment of Public Act 12-116 failed to fix the problems with the ECS [Educational Cost Sharing] grant formula. With the July 1, 2012, enactment of Public Act 12-116, Connecticut essentially no longer has a functioning ECS formula." The plaintiffs therefore argue that because the reforms do little to alter the flaws in the state's education system and time will not remedy the constitutional deficiencies, their claims remain ripe for adjudication. Although the defendants maintain the position that the legislative reforms must be given time, the defendants have failed to submit any concrete or undisputed evidence that demonstrates conclusively to the court that the 2012 reforms were enacted for the sole purpose of curing the alleged constitutional inadequacies of the state's education system or funding.

There is no dispute that 2012 legislative reforms, in some respect, implicate the state's educational system. The extent to which these reforms alter the system for the purpose of meeting constitutional standards in regard to adequacy remains in dispute. This is partly seen by the affidavits submitted by both the plaintiffs and the defendants in support of their positions. See Defendants' Exhibit 2; Defendants' Exhibit 5; Plaintiffs' Exhibit 4. For example, in support of the defendants' position, Stefan Pryor, commissioner of the Connecticut state Department of Education attests: "As a result of having just adopted such significant reforms, time is needed to

be able to evaluate the beneficial impact of such changes." Defendants' Exhibit 2, paragraph 52. Likewise, Richard Seder, an expert of the issue of educational equity and adequacy, avers: "The results of many of Connecticut's reforms seeking to close the achievement gap, like any educational reforms in general, will be seen at the earliest in 2 years and in earnest starting 3 years following the first year of implementation and carrying over into subsequent years. In many instances, the effects of the reforms will reverberate throughout the system and not be apparent for years to come." Defendants' Exhibit 5, paragraph 8.

On the other hand, Bruce D. Baker, a consultant for CCJEF, states in support of the plaintiffs' position: "[N]either the additional funding nor reforms substantively alter the opportunities provided to Connecticut school children," " [i]t is highly unlikely that these reforms could have any substantive effect on the distribution of opportunities to Connecticut school children and these reforms do little or nothing to alter the equity or adequacy of resources available," and "the proposed reforms, lacking any substantive provision of additional resources, threaten to accelerate a downward spiral of districts already in long-run economic and educational decline." Plaintiffs' Exhibit 4, paragraphs 7, 22, 28. At the very least, these statements demonstrate to the court that the jurisdictional determination here is dependent on the resolution of a critical factual dispute.

Generally, as stated by our Supreme Court in *Conboy* v. *State*, supra, 292 Conn. 642, in a situation in which the jurisdictional determination is dependent on the resolution of a critical factual dispute, the court would hold an evidentiary hearing to resolve this dispute. This approach, however, is effective only to the extent the jurisdictional issue may be severed from the merits of the case. Given that the merits of the plaintiffs' claims concern the constitutionality of the state's

current education system, the question becomes whether the issue of ripeness, specifically the effects of the 2012 reforms, may be severed from constitutional claims set forth by the plaintiffs.

The court finds that the question of jurisdiction is intertwined with the merits of the case, and may not be severed from the merits of the case, for the following reasons. The merits of the plaintiffs' case entail the constitutionality of the state's current education system. The plaintiffs have set forth various allegations that call into question the adequacy of the state's current education system and the flaws regarding the state's educational funding formula, as well as by providing detailed allegations regarding "inadequate and unequal educational inputs." The plaintiffs have also provided statistical data from various school districts throughout the state exemplifying how the state is allegedly failing to provide suitable and substantially equal educational opportunities. Public Act 12-116 and Public Act 12-104 set forth various reforms that are tailored to improving the education system. Thus, an evaluation of the state's current educational system and its alleged constitutional deficiencies would require the court to include and take into consideration these reforms in its determination. It would be impossible for the court to attempt to evaluate the constitutionality of the state's current education system without exploring the impact of the 2012 reforms, and the manner in which the reforms impact the validity of the plaintiffs' allegations. The extent to which these reforms impact the adequacy of the state's education system in the context of constitutional standards, however, remains unascertainable at this stage.

The plaintiffs may be able to demonstrate to the court that these reforms and their corresponding effects, although a step in the right direction, would still render the education system inadequate pursuant to constitutional standards without having to wait the few years that the defendants are requesting of the court. As previously mentioned, the plaintiffs have accounted

for this position in paragraph 160 of their complaint: "The July 1, 2012 enactment of Public Act 12-116 failed to fix the problems with the ECS grant formula. With the July 1, 2012, enactment of Public Act 12-116, Connecticut essentially no longer has a functioning ECS formula." The plaintiffs should be given an opportunity to prove the allegations set forth in the complaint, specifically that the education system remains unconstitutional in spite of the 2012 reforms. This can only be done through the discovery process and the development of a factual record. Likewise, through such a process, the defendants may also be able to establish through extensive evidentiary support, rather than speculating at this pre-trial and pre-discovery stage, that the claim remains unripe for adjudication. Therefore, the jurisdictional issue should be deferred until further discovery or a trial on the merits has occurred.

Furthermore, the court's approach in regard to this ground is very similar to the approach taken by other jurisdictions. See, e.g., *Hussein* v. *New York*, 81 App. Div. 3d 132, 914 N.Y.S. 2d 464 (2011), aff'd, 19 N.Y. 3d 899, 973 N.E. 2d 752 (2012). For example, in New York, parents of children brought a similar claim against the state of New York alleging that their children were being deprived of the opportunity of a sound basic education. The state moved to dismiss on the ground that the claim was not ripe for review and/or moot. Specifically, in regard to the ripeness argument, the state argued that the plaintiffs' claims were based on factual data obtained before the enactment of education aid reform legislation and because the legislation had yet to be fully implemented, the factual record was incomplete, and the effects of the legislation could not be measured. The Appellate Division found it would be "premature" for the court to determine the merits of the plaintiffs' allegations that the present and contemplated funding levels were inadequate to meet constitutional standards and stated: "Only after discovery and the development of a factual record can this issue be fully evaluated and resolved . . . ." (Internal quotation marks

omitted.) Id., 136. The court also emphasized "[t]he fact that the court may be required to determine the rights of the parties upon the happening of a future event does not mean that the declaratory judgment will be merely advisory." (Internal quotation marks omitted.) Id., 135. Therefore, the court found the claim to be justiciable. Although the New York court did not hold that the jurisdictional issue was intertwined with the merits of the case and correspondingly did not find that the issue should be deferred until further discovery or a trial on the merits has occurred, its emphasis on the necessity of developing a factual record in such a matter is equally and pertinently applicable here. Without the development of a factual record, the court is incapable of determining the extent to which the 2012 reforms alter the education system for purposes of evaluating the system's constitutionality.

Next, it is worth noting that many of the cases to which the defendants cite in support of their ripeness argument are distinguishable. See *Lehrer* v. *Davis*, 214 Conn. 232, 571 A.2d 691 (1990); *Sheff* v. *O'Neill*, 45 Conn. Supp. 630, 733 A.2d 925 (1999). For example, the defendants rely on *Lehrer*, in support of the proposition that the plaintiffs are unable to meet their burden of providing an adequate factual record of an adverse impact given the legislative reforms. The focus in *Lehrer*, however, was not on the *inability* of the parties to establish an adequate factual record, but on the fact that given the "fact-bound nature of the defendants' constitutional challenge," the parties had not provided the court with an adequate factual record necessary for the challenge. The court held that "[u]ntil the defendants establish a factual basis for the alleged violation of their constitutional rights, they have not established the predicate conditions for the adjudication of their constitutional claim." *Lehrer* v. *Davis*, supra, 236. In the case at hand, the court should give the plaintiffs the opportunity to provide a factual record as to the implications of the legislative reforms.

The defendants also cite to the trial court's decision in *Sheff* v. *O'Neill*, supra, 45 Conn. Supp. 630 for the position that the parties may not effectively litigate the constitutionality of Connecticut's education system before the 2012 reforms are in place for a sufficient time to be properly assessed. *Sheff*, however, may also be distinguished. The court in *Sheff* did not face the specific issue of "ripeness," but rather faced the issue of whether the state properly complied with the Supreme Court's decision. Id., 667. In *Sheff*, our Supreme Court found Hartford public school students were not being provided a substantially equal educational opportunity under the state constitution. *Sheff* v. *O'Neill*, 238 Conn. 1, 37, 678 A.2d 1267 (1996). As a result, the legislature, *in response*, passed legislation specifically designed to address the Supreme Court's decision. The trial court found that "[t]he plaintiffs have sought court intervention before the state has had an opportunity to take even a 'second step' in the remedial process. The state has acted expeditiously and in good faith to respond to the decision of the Supreme Court in this case. It has devised a comprehensive, interrelated, well-funded set of programs and legislation designed to improve education for all children, with a special emphasis on urban children, while promoting diverse educational environments. The legislative and executive branches should have a realistic opportunity to implement their remedial programs before further court intervention." *Sheff* v. *O'Neill*, supra, 667. Thus, given the fact that the reforms in question in *Sheff* were enacted in direct response to the Supreme Court's decision, as well as the fact that the court on remand was not addressing the issue of "ripeness" in the manner in which the defendants are addressing it here, *Sheff* is distinguishable.[6] The case at hand does not involve a situation in which the

[6] *Hancock* v. *Commissioner of Education*, 443 Mass. 428, 822 N.E. 2d 1134 (2005) and *Columbia Falls Elementary School District* v. *Montana*, 326 Mont. 304, 109 P.3d 257 (2008) may also be distinguished for the same reasons as *Sheff* v. *O'Neill*. *Sherman Liberty, Inc.* v. *Williams*, 52 Conn. Supp. 118, 28 A.3d 1026 (2011) and *Valeria* v. *Wilson*, 12 F. Supp. 2d 1007 (1998), aff'd, 307 F.3d 1036 (2002) may be distinguished for other factual reasons. Both *Sherman Liberty, Inc.* and *Valeria* involved situations in which the plaintiffs were challenging either the Public Act or proposition itself on constitutional grounds. Such a challenge formed the basis for the entire claim. In *Sherman Liberty, Inc.* the plaintiffs were challenging the constitutionality of a Public Act that was not a final rendition of the

Supreme Court found in favor of the plaintiffs on the issue of liability, and the legislature, in response to the court's finding, enacted reforms to address the constitutional issues.

Accordingly, given that the issue of ripeness is dependent on the resolution of a critical factual dispute that may not be severed from the merits of the case, the court will postpone resolution of the issue until further discovery or full trial on the merits has occurred.

II

MOOTNESS

The defendants also move to dismiss the plaintiffs' complaint on the ground that the court lacks subject matter jurisdiction because the plaintiffs' claims are moot. Specifically, the defendants argue that because of the 2012 legislative reforms, and the receipt of the No Child Left Behind waiver, the court would be evaluating a system that is no longer in place. The plaintiffs argue that the legislative reforms have not significantly altered the education system, and therefore the reforms have not mooted their claim.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [the] court's subject matter jurisdiction . . . ." (Internal quotation marks omitted.) *Valvo* v. *Freedom of Information Commission*, 294 Conn. 534, 540, 985 A.2d 1052 (2010). "Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties." (Internal quotation marks omitted.) *Wilcox* v. *Ferraina*, 100 Conn. App. 541, 547, 920 A.2d 316 (2007). "The test for determining mootness is whether a judgment, if rendered, would have any

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General Assembly's budget for the biennium and had not yet been implemented, but was still in the process of being revised and was merely an important step in a budgeting process that had yet to conclude. *Sherman Liberty, Inc.* v. *Williams*, supra, 126-27. In *Valeria*, the court found the plaintiffs' claim challenging a proposition on equal protection ground was not ripe because it had yet to be adopted or implemented. *Valeria* v. *Wilson*, supra, 1016. Here, the plaintiffs' claim is not primarily based on the allegation that the 2012 reforms themselves are unconstitutional. Instead, the plaintiffs allege that in spite of the 2012 reforms, the state's current educational scheme remains unconstitutional.

practical legal effect upon an existing controversy. Thus, the central question in a mootness problem is whether a change in the circumstances that prevailed at the beginning of the litigation has forestalled the prospect for meaningful, practical, or effective relief." *Statewide Grievance Committee* v. *Burton*, 282 Conn. 1, 13, 917 A.2d 966 (2007).

Here, for the same reasons seen in regard to the issue of ripeness, the court finds that the defendants' arguments as to mootness raise a question of jurisdiction that is intertwined with the merits of the case. Essentially, the defendants base their argument on the assumption that the 2012 reforms cure *all* the constitutional deficiencies upon which the plaintiffs originally relied when filing their claim in 2005. The plaintiffs, on the other hand, argue that the essential framework of education funding in Connecticut remains the same in spite of the 2012 reforms. See Plaintiffs' Exhibit 4 (characterizing the reforms as trivial and nominal and doing "nothing to substantively change, or improve, the equity of adequacy of resources available to Connecticut school children"). Thus, there is an issue of fact as to whether the education system that existed in 2005 continues to remain in effect. For the same reasons seen in regard to the ripeness issue, this issue of fact may not be severed from the merits of the case. As stated, an evaluation of the constitutionality of the state's current educational system would require the court to include and take into consideration the 2012 reforms. Therefore, the effects of these reforms and the manner in which they alter the education system that existed in 2005 go to the merits of this case. Without the development of a factual record, the court is incapable of determining the extent to which, if any, the 2012 reforms alter or replace the previous education system in regard to constitutionality. See *Hussein* v. *New York*, supra, 81 App. Div. 3d 132 (court held that parents' claim in declaratory judgment action that their children were being deprived of opportunity of sound basic education, in violation of state constitution, based on allegation their school districts were

substantially underfunded was not rendered moot by legislation addressing alleged deficiencies because it was possible that plaintiffs would successfully demonstrate, based on available data, that even the planned increases in aid were insufficient). Accordingly, the plaintiffs should be provided the opportunity to develop a factual record and prove the allegations set forth in their complaint.

Furthermore, although the defendants also base their mootness argument on the state having received a No Child Left Behind waiver, this position does not render the entire claim moot. A review of the complaint shows that the allegations pertaining to the No Child Left Behind Act and student test scores are just one of many examples upon which the plaintiffs rely to demonstrate the state's alleged failure to provide suitable educational opportunities. The plaintiffs also rely on and emphasize the higher than statewide average rates of students at certain schools who either are retained or advanced despite not being ready for promotion, and the higher than average cumulative dropout rate at these districts' high schools when compared to the statewide average. Even if the waiver were to moot a portion of the plaintiffs' complaint, courts have held that a motion to dismiss directed to counts over which the court has partial jurisdiction must be denied. See e.g., *Bazzano* v. *Arroyo*, Superior Court, judicial district of Litchfield, Docket No. CV 93 0063015 (November 2, 1993, *Pickett, J.*) (a motion to dismiss a single count must be denied when the court has jurisdiction over a portion of that count). Nevertheless, as explained above, given that the jurisdictional issue is intertwined with the merits of the case, the jurisdictional issue should be reserved until further discovery or a full trial on the merits has occurred.

Lastly, the cases to which the defendants cite in support of their mootness argument are distinguishable. See *Maryland Highways Contractors Assn.* v. *Maryland*, 933 F.2d 1246 (4th Cir. 1991), cert. denied, 502 U.S. 939, 112 S. Ct. 373, 116 L. Ed. 2d 325 (1991); *Londonderry School*

District v. *New Hampshire*, 157 N.H. 734, 958 A.2d 930 (2008). In *Maryland Highways Contractors Assn.*, for example, the court faced a situation in which while the appeal of the district court's decision was pending, the Maryland legislature repealed the statute at issue and replaced it with a new statute. The court found that the repeal and subsequent enactment rendered that case moot, and therefore vacated the district court's decision and remanded to the district court with instructions to dismiss. *Maryland Highways Contractors Assn.* v. *Maryland*, supra, 1249. Unlike *Maryland Highways Contractors Assn.*, the present case does not involve a situation in which the plaintiffs brought a claim based on a particular statute, which was subsequently repealed and replaced.

The defendants also cite to *Londonderry School District* v. *New Hampshire*, which may be distinguished for many of the same reasons *Sheff* may be distinguished. In *Londonderry School District*, the trial court declared a particular house bill unconstitutional because it "failed to fulfill [the State's] duty to define a constitutionally adequate education, failed to determine the cost of an adequate education." (Internal quotation marks omitted.) *Londonderry School District* v. *New Hampshire*, supra, 157 N.H. 735. The legislature responded by passing several statutes that defined a constitutionally adequate education, and attempted to satisfy its duty to determine the cost of and fund a constitutionally adequate education. The state argued that with the enactment of the subsequent laws, the state had taken sufficient steps toward satisfying its constitutional duty to render the prior dispute over the house bill moot. The state also noted that the subsequent legislation was neither challenged nor subjected to a factual inquiry before the trial court. The New Hampshire Supreme Court agreed with the state and found that because the original house bill that was in question was no longer in effect, the claim was therefore moot. Id., 736-37. Unlike the sequence of events in *Londonderry School District*, the case at hand does not involve a

situation in which the court declared the state's education system unconstitutional, and the legislature subsequently passed laws in direct response to the court's declaration. Furthermore, it is also worth noting that one of the points that the state made in *Londonderry School District* was that the subsequent legislation was never subject to a factual inquiry at the trial level. This only supports the court's position here that the plaintiffs should be provided an opportunity to establish a factual record in order to demonstrate to the court the extent to which, if any, the 2012 reforms alter or replace the state's education system.

Accordingly, given that the issue of mootness is dependent on the resolution of a critical factual dispute that may not be severed from the merits of the case, the court will postpone resolution of the issue until further discovery or a full trial on the merits has occurred. [7]

III

STANDING

The defendants move to dismiss the plaintiffs' complaint on the ground that CCJEF lacks associational standing. The defendants primarily rely on the three requirements for associational standing set forth by our Supreme Court in *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, 199 Conn. 609, 508 A.2d 743 (1986) and argue that CCJEF fails to meet any of these requirements. As to the first requirement, the defendants argue that CCJEF did not have members at the time of original filing that had standing to sue in their own right. The defendants contend that the court must look to the original complaint when determining whether a plaintiff has standing, and no subsequent amendment may cure such a jurisdictional defect. Because no parents were members at the time of the original complaint and the original complaint did not allege public school students or their parents were members of CCJEF, none of the listed members of

[7] Given that the court finds that the jurisdictional issue of mootness is intertwined with the merits of the case, the court need not delve into whether any of the exceptions for mootness apply at this time.

CCJEF had any right to suitable and equal educational opportunities. As to the second requirement, the defendants argue that CCJEF has failed to meet the "germaneness" prong primarily because CCJEF's diverse membership creates a direct conflict among its members. As to the third requirement, the defendants argue that the plaintiffs' claims require the participation of individual members. Particularly, the claim will require the testimony of the parents, teachers, teachers unions, and parent-teacher organizations as to their knowledge of the educational opportunities and outcomes. Additionally, different municipalities and boards of education within CCJEF will need to testify about their individualized harms through the application of the ECS formula.

The plaintiffs argue that this court has already determined that CCJEF has associational standing and, as a result, its prior ruling is the law of the case. Nonetheless, the plaintiffs contend that CCJEF has met the three requirements for associational standing under *Worrell*. As to the first requirement, the plaintiffs contend that only one member of CCJEF needs to have standing in order for CCJEF to have standing, the pleadings properly allege that CCJEF has members that have standing to sue in their own right, and any jurisdictional defects at the time of filing of the original complaint were curable and have subsequently been cured. As to the second requirement, CCJEF meets the "germaneness" prong, there is no "lack of conflict" requirement, and in the event that there is such a requirement, there are no obvious or direct conflicts among the members. As to the third requirement, the plaintiffs argue that CCJEF's satisfaction of the third *Worrell* requirement has been previously decided and that because CCJEF seeks only declaratory relief, CCJEF's claims do not require the participation of individual members of the organization.

Our Supreme Court has recognized associational standing, also known as representational standing, in accordance with the holdings of the United States Supreme Court. *Connecticut Assn.*

of Health Care Facilities, Inc. v. *Worrell*, supra, 199 Conn. 609. The United Stated Supreme Court has long held that "[t]here is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy. Moreover, in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties. . . . Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. . . . So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction." (Citations omitted.) *Warth* v. *Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975). This position was reiterated by the United States Supreme Court in *Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S.Ct. 2434, 533 L.Ed. 2d 383 (1977).

In *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, our Supreme Court adopted the test for associational standing set forth by the United Stated Supreme Court. The court in *Worrell*, focusing primarily on *Hunt*, stated: "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither

the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, supra, 199 Conn. 616. The court emphasized public policy considerations underlying associational standing and stated: "Certain policy reasons, not expressly embodied in the *Hunt* test, also favor recognition of association standing. Allowing associations to represent their members' interests in appropriate cases may promote judicial economy and efficiency. One plaintiff can, in a single lawsuit, adequately represent, and perhaps vindicate, the interests of many members, thus avoiding repetitive and costly independent actions. Permitting the association or organization to sue to protect the interests of its members avoids the multiplicity of suits by similarly situated plaintiffs involving the same or similar causes of action and provides an efficient and expeditious method of adjudicating disputes." (Internal quotation marks omitted.) Id., 617-18.

Moreover, our Supreme Court has also noted that the propriety of accepting "[r]epresentational standing depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. . . . Associational standing is particularly appropriate . . . where the relief sought is . . . a declaratory judgment . . . ." (Internal quotation marks omitted.) *Assn. of Not-For-Profit Providers for the Aging* v. *Dept. of Social Services*, 244 Conn. 378, 386-87, 709 A.2d 1116 (1998). Here, the plaintiff is non-profit organization seeking declaratory and injunctive relief on behalf of its members, and if the three elements set forth above are met, associational or representative standing is appropriate.

A

In regard to the first element, the requirement that an association's members would otherwise have standing to sue in their own right, courts have held that not all members of the association must be similarly injured. *Timber Trails Corp.* v. *Planning & Zoning Commission*, 222 Conn. 380, 395, 610 A.2d 620 (1992) ("We have implicitly rejected the notion that aggrievement must be universal among the membership of an association before it may have representative standing."). See also *Assn. of Not-For-Profit Providers for the Aging* v. *Dept. of Social Services*, supra, 244 Conn. 387-88. As long as at least one member has standing, an organization has standing. *United Food & Commercial Workers Union Local 751* v. *Brown Group, Inc.*, 517 U.S. 544, 555, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996) ("[T]he test's first requirement, that at least one of the organization's members would have standing to sue on his own, is grounded on Article III as an element of the constitutional requirement of a case or controversy." [Internal quotation marks omitted.]). For a member to have standing on his or her own, one must present "a colorable claim of injury; a plaintiff ordinarily establishes his standing by allegations of injury. . . . As long as there is some direct injury for which the plaintiff seeks redress, the injury that is alleged need not be great." (Citations omitted; internal quotation marks omitted.) *Johnson* v. *Rell*, 119 Conn. App. 730, 737, 990 A.2d 354, 360 (2010).

In the present case, the plaintiffs have met the first element of associational standing. The defendants pertinently concede that "only public school students, and their parents acting as 'next friend,' have standing to bring the claims . . . ." The plaintiffs have met the first requirement by alleging in paragraph forty-seven of their complaint that "CCJEF's membership includes adult Connecticut resident *parents of students* in the public schools of Connecticut, Connecticut public *school students* ages eighteen (18) years or older . . . ." (Emphasis added). See also Plaintiffs' Exhibit 8 ("[A]t least 26 parents of at least 39 students at public schools through the [s]tate of

Connecticut are members in good standing of CCJEF. In addition, CCJEF has three students of Connecticut public schools ages 18 or over, who are also residents in Connecticut, as members in good standing."). This statement sufficiently alleges that parents who are alleged to be members of CCJEF are in fact the parents of children in Connecticut's public schools. These parents, similar to the other named plaintiffs in the complaint, have standing and could have sued in their own right if they chose to do so.

Additionally, the plaintiffs describe how CCJEF draws its members from various towns and school districts in Connecticut, and alleges throughout the remainder of the complaint educational deficiencies that are particular to many of these school districts. Given that a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader, it is inferable that CCJEF has members who are parents of children in these districts that are allegedly providing inadequate education. Furthermore, the plaintiffs specifically set forth allegations, paragraphs 162-167, describing the nature of the injury to the plaintiffs. Because the "plaintiffs" here include CCJEF, it is therefore implicit that such injury extends to the parents of students and school students who are members of CCJEF. These allegations, construed collectively and most favorably to the pleader, are distinguishable from cases in which courts have found that the plaintiffs failed to meet the first element of associational standing. See, e.g., *Fort Trumbull Conservancy, LLC* v. *New London*, Superior Court, judicial district of New London, Docket No. 4003165 (January 10, 2006, *Hurley, J.T.R.*) (complaint contained no allegations of injury and although complaint did contain allegations of due process violations, court unable to link those alleged violations to an injury to any member of plaintiff LLC). Accordingly, the plaintiffs' allegations meet the first element for associational standing.

Nevertheless, it is worth noting that the defendants neither contest nor challenge whether the plaintiffs' allegations in the complaint are substantively insufficient for jurisdictional purposes. Instead, the defendants' challenge centers on two other arguments: (1) Because CCJEF also has members that include local boards of education and municipalities, who are creatures of the state, these members have "no standing to challenge the constitutionality of legislation enacted by their creator"; and (2) The court must look to the original complaint and jurisdiction may not be subsequently cured. As to the first argument, because all that is required is that only one member of the association have standing to sue in his or her own right, it is irrelevant whether other members of CCJEF lack standing. The plaintiffs' allegation that CCJEF comprises members who are parents of students in the state of Connecticut meets the requirement that only one member needs to have standing. Thus, this argument is without merit. The defendants' second argument, however, requires more attention.

The plaintiffs' response to the defendants' argument is that this court has already determined CCJEF has associational standing and its prior ruling is therefore law of the case. Our Supreme Court has stated that the law of the case doctrine "expresses the practice of judges generally to refuse to reopen what [already] has been decided . . . . New pleadings intended to raise again a question of law which has been already presented on the record and determined adversely to the pleader are not to be favored. . . . Where a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case, *if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance.*" (Emphasis added; internal quotation marks omitted.) *Brown & Brown, Inc* v. *Blumenthal*, 288 Conn. 646, 656, 954 A.2d 816 (2008). "The law of the case is not written in stone but is a flexible principle of many facets adaptable to the exigencies of the

different situations in which it may be invoked. . . . In essence, it expresses the practice of judges generally to refuse to reopen what has been decided and is not a limitation on their power. . . . A judge should hesitate to change his own rulings in a case and should be even more reluctant to overrule those of another judge." (Internal quotation marks omitted.) *Bridgeport* v. *Triple 9 of Broad Street, Inc.*, 87 Conn. App. 735, 741, 867 A.2d 851 (2005). "Nevertheless, if . . . [a judge] becomes convinced that the view of the law previously applied by his coordinate predecessor was *clearly erroneous* and would work a manifest injustice if followed, he may apply his own judgment." (Emphasis added; internal quotation marks omitted.) *Total Recycling Services of Connecticut, Inc.* v. *Connecticut Oil Recycling Services, LLC,* 308 Conn. 312, 322, 63 A.3d 896 (2013).

Although the original complaint lacked allegations regarding CCJEF's membership, the plaintiffs were granted leave, over the defendants' objection, to amend the complaint in order to cure the jurisdictional defect. The court had found in dismissing the complaint that "neither the allegation as to [CCJEF's] membership in the amended complaint nor the affidavit of its counsel established that the parents who are now claimed to be members are parents of students in the public schools of Connecticut." The plaintiffs, accordingly, corrected the complaint to reflect this language, which the court allowed. Because this matter has previously been ruled upon, the court now may treat that decision as the law of the case.

The defendants argue that this court's previous ruling is not the law of the case because the court was incorrect in allowing the plaintiffs to cure the jurisdictional defect retrospectively. In support, the defendants cite to several cases standing for the proposition that the operative complaint for jurisdictional purposes is the original complaint. See *Connecticut Associated Builders & Contractors* v. *Hartford*, 251 Conn. 169, 740 A.2d 813 (1999); *Fairchild Heights*

Residents Assn., Inc. v. *Fairchild Heights, Inc.*, 131 Conn. App. 567, 27 A.3d 467 (2011); *Disability Advocates* v. *N.Y. Coalition for Quality Assisted Living*, 675 F.3d 149, 160 (2d Cir. 2012). None of these cases, however, stand for the proposition that a plaintiff in a *multi-plaintiff* case, who originally may have had standing, but initially failed to set forth proper allegations, may not subsequently be granted leave to amend the complaint in order to set forth proper allegations for jurisdictional purposes. See *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 186-89 (case based its standing analysis on the original complaint because there was never any amended complaint filed by the plaintiffs); *Fairchild Heights Residents Assn., Inc.* v. *Fairchild Heights, Inc.*, supra, 568 (single plaintiff case in which plaintiff's amended complaint merely set forth an additional claim and did not add any allegations implicating subject matter jurisdiction); *Disability Advocates* v. *N.Y. Coalition for Quality Assisted Living*, supra, 160-61(originally a single plaintiff case in which plaintiff, who lacked standing, sought to cure the jurisdictional defect by arguing that because intervening plaintiff had standing the case could move forward). Thus, there is nothing in either the holdings or the dicta of these cases that insinuates that finding this court's prior ruling allowing the plaintiffs to cure the jurisdictional defect as the law of the case would be "clearly erroneous and would work a manifest injustice if followed." Likewise, the defendants have not emphasized or articulated any "new or overriding circumstance." Thus, this court may treat the previous ruling as the law of the case.

Accordingly, because the plaintiffs have adequately cured the jurisdictional defect and set forth the proper allegations regarding the membership of CCJEF and the defendants do not contest the sufficiency of these allegations, as well as the ability of the court to treat this court's previous ruling as the law of the case, the court finds that the plaintiffs have met the first requirement for associational standing.

B

As to the second requirement, defendants argue that CCJEF has failed to meet the "germaneness" prong primarily because CCJEF's diverse membership creates a direct conflict among its members. The germaneness element for associational standing requires that the interests which the organization seeks to protect through this lawsuit be "germane to the organization's purpose . . . ." (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, supra, 119 Conn. 616. In *Paucatuck Eastern Pequot Indians* v. *Indian Affairs Council*, 18 Conn. App. 4, 11, 555 A.2d 1003 (1989), our Appellate Court turned to federal law, specifically *Humane Society of the United States* v. *Hodel*, 840 F.2d 45, 53 (D.C. Cir. 1988), and discussed the germaneness requirement: "In *Humane Society of the United States* v. *Hodel* . . . the court examined the function and rigor of the germaneness test. In doing so, the court noted that the parameters of germaneness [had] never been explored in meaningful detail by either the Supreme Court or by any federal circuit court. . . . In *Humane Society,* the District Court had held that the germaneness prong had not been met because the purpose of the litigation was not central to the purpose of the organization. The court of appeals examined the Supreme Court decisions in *Hunt* v. *Washington State Apple Advertising Commission* . . . and *United Automobile Workers v. Brock*, 477 U.S. 274, 106 S. Ct. 2523, 91 L.Ed. 2d 228 (1986), and concluded that it is highly unlikely the second prong of germaneness was meant to set the narrow perimeter of centrality of purpose . . . . Rather, it would seem to require only that an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together. . . . Thus, the court characterized the germaneness prong as one mandating mere pertinence between litigation subject and organizational purpose." (Citations omitted; internal quotation marks omitted.)

In the present case, the plaintiffs have met the second requirement for associational standing. All that is required is there be a mere pertinence between litigation subject and organizational purpose. In paragraph forty-seven of the complaint, the plaintiffs allege: "The plaintiff, Connecticut Coalition for Justice in Education Funding, Inc. (CCJEF) is a Connecticut not-for-profit corporation, which is committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities." The declaratory judgment and injunctive relief sought are germane to these purposes because the relief requested will address the deficiencies in the current education system and possibly improve the quality of educational opportunities. See, e.g., *State Medical Society* v. *Board of Examiners in Podiatry*, 203 Conn. 295, 305, 524 A.2d 636 (1987) ("The stated organizational purposes of the medical society, as set forth in its bylaws, include the extension of medical knowledge and the promotion of high quality medical care that benefits the public in the care and prevention of disease. This medical society's lawsuit is germane to these purposes because an expansion of podiatry practice, if unwarranted, threatens to erode the level of medical care available to the public."); *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, supra, 199 Conn. 609 ("The stated organizational purposes of the plaintiff associations, as set forth in their respective bylaws, include the promotion of sound state and federal laws for the welfare and benefit of health care facilities and the establishment and promotion of high quality and efficient patient care. The declaratory judgment actions are germane to this purpose because the relief requested will improve the quality and availability of health care services.") Thus, the plaintiffs have met the second elements for associational standing.

Nevertheless, the defendants argue that because of CCJEF's diverse membership, the interests of the members are in direct conflict and therefore CCJEF fails to meet the germaneness

requirement. In support, the defendants primarily rely on *Fairfield County Medical Assn.* v. *CIGNA Corp.*, Superior Court, complex litigation docket at Waterbury, Docket No. X06 CV 075007159 (August 19, 2008, *Stevens, J.*) (46 Conn. L. Rptr. 200). Aside from the fact that *Fairfield Country Medical Assn.* is not binding authority and therefore there may not be a "lack of conflict" requirement for purposes of determining associational standing, the case is nonetheless distinguishable. The court in addressing the germaneness element explained: "In evaluating these conflicting positions, the court adopts what appears to be the majority position, that the second prong of the *Hunt* test cannot be met when an association's lawsuit creates an obvious or direct conflict with or among its members that is *serious or profound*, particularly when no evidence is presented indicating that the conflicts have been addressed by the association itself through an authorization of the litigation in accordance with the association's rules or bylaws. . . . By definition, *an association's lawsuit that is plainly and directly adverse to the pecuniary interests of its general membership involves a profound conflict which can rarely, if ever, be consistent with or germane to the association's legitimate interests and purposes*." (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 202.

The court found plaintiff Fairfield County Medical Association's (FCMA) action created an obvious or direct conflict among its members that was serious or profound in the fact that half of its physician members possessed an elite designation which the FCMA wanted an injunction against. Id., 203. The litigation goal of the FCMA was directly at odds with the pecuniary interests of its members who had the elite designation. The FCMA had conceded that the complaint expressly excluded those members of the FCMA who are deriving an acknowledged benefit from the disputed designation programs. Thus, the court found that there was no dispute that the association had taken a position that on its face was unequivocally contrary and detrimental to the

financial interests of a clearly identifiable part of its membership and the remedy sought by the representative association would actually deprive some of its own members of an acknowledged benefit. Id., 203.

In the present case, despite the "diverse" membership of CCJEF, the allegations of the complaint cannot be construed in a manner that demonstrates CCJEF has taken a position unequivocally contrary and detrimental to the interests of a part of its membership. The defendants argue that because CCJEF "is made up of both the providers of education (teachers) and the consumer-representatives of the educational product (student-parents)," the interests are not identical and may conflict. The defendants further state that the "potential for divisiveness is readily apparent." Such "potential" conflict, however, falls short of the type of "obvious or direct" conflict that was seen in *Fairfield County Medical Assn.* The overriding goal of this litigation, to ensure an adequate and equitable education system, remains common. Possible conflicts as to the manner in which such a system should be subsequently implemented does not equate to a conflict in the goal itself. Thus, given that the action here does not create an obvious or direct conflict among the members of CCJEF and the relief sought is germane to CCJEF's purpose, CCJEF meets the second element of associational standing.

C

As to the third element, the defendants argue that the plaintiffs' claims require the participation of individual members. As our Supreme Court in *Worrell* stated: "Representational standing depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. . . . Associational standing is particularly appropriate . . . where

the relief sought is . . . a declaratory judgment . . . ." (Citations omitted; internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, supra, 199 Conn. 616. In regard to the third element, the court in *Worrell* found that because the relief sought was a declaratory judgment, neither the claim asserted nor the relief requested required the participation of the individual members of either plaintiff association. Id., 617. The court explained that because the claims asserted did not involve money damages and the claims were not sought for alleged injuries to the individual members, proof relating solely to the variant experiences of each member would not be necessary. This approach, characterizing the nature of relief sought for purposes of determining whether the third element has been met for associational standing, has been followed by subsequent courts. See *Assn. of Not-For-Profit Providers for the Aging* v. *Dept. of Social Services*, supra, 244 Conn. 387 ("[B]ecause this action seeks only a general declaration concerning the legality of the department's practice, it is unnecessary for any individual member to be a party to this action."); *Paucatuck Eastern Pequot Indians* v. *Indian Affairs Council*, supra, 18 Conn. App. 10-11 (The "third requirement also has been met, because the named plaintiff does not seek money damages. . . . This prayer for relief does not require the court to consider the individual circumstances of any aggrieved tribal member." [Citation omitted.]); *Connecticut Hospital Assn., Inc.* v. *Commission on Hospitals & Health Care*, Superior Court, judicial district of New Haven, Docket No. CV 91 0316008 (December 9, 1992, *Hodgson, J.*) (8 Conn. L. Rptr. 53, 54) ("Since the complaint seeks only declaratory relief and not money damages to recoup past discounts, nor a determination of the circumstances of any particular member . . . there is no necessity for participation of individual members." [Citation omitted.]).

In the present case, CCJEF meets the third requirement for associational standing. In paragraph 180 of the complaint, the plaintiffs request relief in the form of declaratory judgment

and injunctions. Because this action seeks such forms of relief, as opposed to monetary damages, it is unnecessary for any individual member of CCJEF to be a party to this action.[8] The defendants argue that because the face of the complaint does not assert that all public school students in Connecticut are being deprived of their education, testimony will therefore be required from members of CCJEF from the school districts in question. The defendants also argue that different municipalities and boards of education within CCJEF will need to testify about their individualized "economic harms" through the application of the allegedly flawed ECS funding formula. Both of these arguments are without merit. The plaintiffs are not requesting the court to grant relief in the form of any monetary amount particular to any specific student, and are not requesting that the court order a precise amount of funding be allocated to specific school districts. Instead, the plaintiffs are asking the court to provide injunctive relief and possibly appoint a Special Master that would make findings and report recommendations with regard to any new education system that may be proposed. Neither of these arguments demonstrates that any individual member of CCJEF will need to participate in the proceedings. Although the defendants are arguing that because testimony of individual members will be needed and therefore the third requirement is not met, this court previously noted in the initial motion to dismiss that "nowhere in *Worrell* or its progeny is it suggested that the scope of admissible evidence determines whether the third requirement is met." Thus, CCJEF meets the third requirement for associational standing.

Accordingly, given that CCJEF meets all three requirements of associational standing, the court denies the defendants' motion to dismiss the plaintiffs' complaint on the ground that the court lacks subject matter jurisdiction based on lack of standing.

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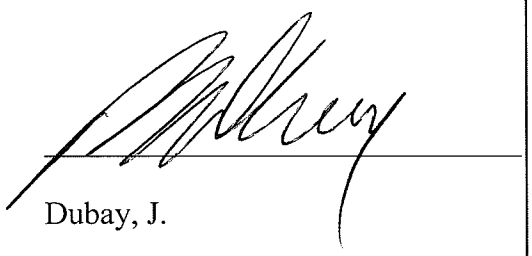
[8] As this court, *Shortall, J.*, previously stated: "In this case, the relief claimed is limited to declarations of rights under the state constitutional and injunctions meant to remedy alleged violations of those rights. Individual damages are not sought on behalf of the individual members of the coalition."

CONCLUSION

For the foregoing reasons, the court postpones resolving the jurisdictional issue of ripeness and mootness until a full trial on the merits has occurred, and denies the defendants' motion to dismiss on the ground that the court lacks subject matters jurisdiction over the plaintiffs' claim based on lack of standing.



Dubay, J.