

NO.: CV 07 4006100 : SUPERIOR COURT
JOHN M. PRATT, JR., ET AL : J. D. OF LITCHFIELD
VS. : AT LITCHFIELD
THE BOARD OF EDUCATION : OCTOBER 26, 2009
FOR REGIONAL DISTRICT 14

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO REARGUE

I. THE PLAN IS NOT AMBIGUOUS; AND THE DEFENDANT'S
"RECONFIGURATION" IS NOT PROVIDED FOR OR PERMISSIBLE UNDER
THE PLAN:

On page one of the final report, **in bold-faced print**, the temporary regional study committee outlined a series of recommendations including but not limited to:

. . . That grades kindergarten through twelve be divided into elementary schools (grades K through 5), a middle school (grades 6 through 8), and a high school (grades 9 through 12).

. That grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury.

(hereafter "recommendation two" and "recommendation three")

No reasonable person, reading these words *in context* can read them to mean that there would be or could be a consolidated K-2 primary school in one town; and a consolidated 3-5 intermediate school in the other town.

This is plainly evident for the following reasons:

1. The Plan defines “elementary schools as “K through 5” schools (not K-2 or 3-5).
2. The Plan distinguishes “elementary schools” from “middle school” (grades 6 through 8), and a “high school” (grades 9 through 12) thereby underscoring its definition of “elementary schools”.
3. The Plan clearly states that grades K through 5 be housed in “the elementary school” buildings in Woodbury and Bethlehem, i.e. clearly not a K-2 school in one town and a 3-5 school in the other. Since the plan defines “elementary schools” as K through 5, we know with certainty that where the Plan uses the words “the elementary schools” it is referring to the K through 5 buildings in each town; as opposed to some other configuration, as suggested by the defendant.
4. The Plan provides for ONLY three (3) types of schools: K through 5 elementary schools (in each town), a 6 through 8 middle school, and a 9 through 12 high school. It does not provide for a consolidated K-2 school located in only one town; or a consolidated 3-5 school, located only in the other town, nor can it be read in any way that would allow such a thing.
5. Tellingly, the Plan does not require that each town have its own middle school or high School. It does, however, guarantee that the region’s youngest children will have a **K through 5 elementary school in each town**. The only inference that one can draw from this fact is that it was an important assurance under Regionalization that the youngest children (contrasted with grades 6-12 and grades 9-12) would be educated closer to home.

At the Reargument hearing, (despite the fact that it closed down the two K through 5 schools in each town that were established under the Plan and then created two new and different types of schools, not contemplated anywhere in the Plan) the defendant attempted to argue that: *“technically speaking, grades K-5 are still housed in elementary school buildings in Woodbury and Bethlehem”*.

That argument fails for a number of reasons:

1. The Plan defines elementary schools as K through 5. It does not define elementary schools as a K-2 or 3-5. Also, The Plan actually uses the word “through”, when referring to the grade levels, rather than just a hyphen. The only interpretation that can be gleaned from this is that the drafters intended to make it clear that the schools established would contain those grade levels ***in their entirety***.
2. The K through 5 schools, in each town, provided for by the Plan, no longer exist, and; that’s hardly an “incidental change”.
3. The Plan did not allow for their closure.
4. The Plan did not allow for the creation of two new and different types of schools.
5. A consolidated K-2 school in one town and a consolidated 3-5 school in the other town, each housing **all** of the students from **both** towns, is quite obviously, not a K through 5 elementary school in either town; which is the only definition of an elementary school that the Plan required or allowed.
6. The defendant’s argument isolates one phrase in the Plan, “that grades K through five be housed in the elementary schools in Bethlehem and Woodbury” and then reads it totally out of context, to suit its purposes, then ignores the rest of the plan.
7. The defendant’s argument ignores the additional references to K through 5 elementary schools on pages 5 and 6 of the Plan.
8. The defendant’s argument ignores almost forty (40) years of implementation.
9. The defendant’s argument pre-supposes that a “reasonable person” would or could read the Plan as allowing a K-2 school in one town and a 3-5 in the other, when no such aberration is even remotely alluded to anywhere in the Plan.

The Plan Cannot be read to mean that it permits this reconfiguration:

The Defendants also attempted to argue in the alternative that the Plan allows for reconfiguration. But this claim ignores the fact that the recommendations repeat **twice** the provision calling for K through 5 elementary schools and pages five and six of the final report reference "K through 5" and "Kindergarten through five" elementary schools, respectively. Again, recommendation two of the Plan, defines an elementary school as a grades K through 5 facility:

. . . . That grades kindergarten through twelve be divided into elementary schools (grades K through 5), a middle school (grades 6 through 8), and a high school (grades 9 through 12)

In addition, recommendation three reiterates that there will be K through 5 elementary schools in Bethlehem and Woodbury:

. . . That grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury.

The defendant would have us believe that we must read the plan in a manner that ignores entirely the explicit definition of an elementary school provided for in the parentheses in **recommendation 2** of the Plan, (grades K through 5) and, once we have completely ignored that definition, then go ahead and apply a distorted interpretation of recommendation number three. The defendant's argument also would have us believe that the study committee chose to be **specific** in terms of the middle school (**grades 6 through 8**) and the high school (**grades 9 through 12**) but vague and misleading in relation to the elementary schools (**grades K through 5**).

II THE INCLUSION OR EXCLUSION OF THE ADJECTIVE “HOMETOWN” IS IRRELEVANT TO THE ISSUE BEFORE THE COURT:

Simply stated, the central question this Court must answer is whether or not the defendant’s actions constitute *any* change to the Plan, other than one that is merely “incidental”. Region 12.

At the reargument hearing, the defendant attempted to distinguish this case from the Region 12 case by pointing out that our Plan does not use the word “hometown”. This is of absolutely no legal significance, and it does not even come close to distinguishing the relevant legal issues in this case from the Region 12 matter.

What the defendant is asking this Court to do is to ignore the fact that the Plan defines elementary schools as “K through 5” buildings; and to further ignore the fact that the Plan requires that ***these*** K through 5 schools be “housed in the elementary school buildings in Woodbury and Bethlehem”. The inclusion of the word “hometown” would not have added anything to this Plan’s definition of an elementary school, nor would it have altered or obviated this Plan’s requirement that there be a “K through 5” school housed in each town.

One can speculate that the word “hometown” was not utilized in this Plan because the demarcation line for each town’s K through 5 school did not fall right on the towns’ borders. One can also speculate that the word “hometown” was not used because it would have been superfluous to the language that was used—because these schools were already “hometown” schools; and the Plan already referred to them ***even more specifically*** as “*the elementary school buildings in Woodbury and Bethlehem*”. One can also speculate that the drafters just did not want to or need to use an additional, superfluous adjective because the language that they did use was clear on its face. The bottom line is that there is nothing to be gained in this case by speculating about why a superfluous adjective was or was not used.

The issue before this Court is NOT whether the Region 14 schools were intended to be more or less “hometowney” than the Region 12 schools. Rather, the issue is whether or not the changes implemented by this defendant are anything other than a

“merely incidental change” to the Plan. If the changes are anything other than “merely incidental”, then a 10-47c referendum is required—and it’s required before the changes are made, not after the fact.

III. THE DEFENDANT FAILS BOTH PRONGS OF THE SUPREME COURT’S TWO-PRONG TEST:

(To determine if a change in the Plan is “merely incidental” and does not require a 10-47(c) vote)

In the Region 12 case, the Supreme Court reaffirmed the Atwood Court's conclusion that the recommendations found in the final report constitute the Regional Plan, **but** found that there was no basis for the court's previous suggestion in *Atwood* that only those amendments "affecting the size of the board or the number of representatives from each town" warrant referenda approval.

Rather, the Supreme Court held that "nothing in the relevant statutory scheme expressly grants regional school districts the power to create or modify the terms of a plan." Additionally, the Court determined that the legislature enacted 10-47c so that "the individual towns that had voted to join a regional school district in reliance on the recommendations of the study committee -- i.e, the "plan"-- would have the opportunity to vote on ***any change to an existing plan that is not incidental, regardless of the nature of the change.***"

In the Region 12 opinion, the Supreme Court held that whether or not a change is "**merely incidental**" must be determined on a case by case basis considering the following (TWO PRONG TEST):

1. Is the proposal of a type that a reasonable person would expect it to be included in the original plan?

AND

2. Whether it is reasonably likely that the inclusion of the proposal in the original plan could have affected an elector's vote?

With respect to the first prong of the test, we examine the language of the Region 14 Plan:

. . . . That grades Kindergarten through twelve be divided into elementary schools (grades K through 5), a middle school (grades 6 through 8), and a high school (grades 9 through 12).

. . . . That grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury.

PRONG 1: Reading the above language of the Plan; and contrasting it with what the defendant has in fact done to the schools, leaves no doubt that “a reasonable person” would have expected to find some provisions, or at the very least, *permission*, for the defendant’s actions in the Plan”. No such provision or permission exists anywhere in the plan.

It is axiomatic under the first prong of the test that the closure of the two K through 5 elementary schools, the consolidation of all the youngest students of the two towns, and the establishment of two new and different types of schools is not anything that a reasonable person can find anywhere in this Plan

Moreover, The Plan on page 6, in a section entitled “Primary Schools,” provided, in contrast to continuing with the [then] present arrangement of organization in Bethlehem K-8 with tuition 9-12, that:

“The Bethlehem elementary school and the Woodbury elementary school should be converted to primary schools for **grades kindergarten through five.**” [Bold and underlined emphasis provided.] (Thus The Region 14 Plan uses the terms “primary” and “elementary” *interchangeably* to mean a **K-5 School**. It is of no relevance in this case how Webster’s Dictionary defines or differentiates between “Primary” and

“Elementary” schools, some 40 years after the fact....What matters is how THIS PLAN defined those terms)

In addition, on page 5 the study committee referenced projected enrollment numbers for the elementary school facilities in question, referring to grades "**K thru 5.**" These references, throughout the Plan, are consistent with the Plan’s definition of an “elementary” school as a K through 5, and are also consistent with the page 1 language that calls for a K through 5 school in each town. These references further prove the point that no reasonable person, having read any part of the Plan, or the entire Plan, could possibly envision a consolidated K-2 school for all the students in one town and a consolidated 3-5 School for all the students located in the other town. Therefore, the Plaintiff in this case easily meets the first prong of the test.

Prong II: Whether it is reasonably likely that the defendant’s actions would have affected an elector's vote:

There is little that needs to be said about this prong. Giving up local elementary schools, increasing bus runs by 900 miles per day, slashing class time across all grade levels, busing little children out of town, just to name a few; are all factors that clearly could have affected a voter (and undoubtedly would have affected thousands of voters!!).

Therefore, the plaintiff easily meets the second prong of the test. The only conclusion is that the defendant was required to conduct a referendum pursuant to CGS 10-47(c), and obtain the approval of each town, before doing what it has done—and not after the fact.

In evaluating the Region 12 case, the Supreme Court noted the language contained in the Region 12 plan as well as the historical context of that plan. In *Regional School District Number 12 v. Bridgewater*, the Supreme Court cited the legislative history in the state of Connecticut when applying the reasonable person standard. The Court noted that the legislature through PA 698 1969, expanded the

autonomy and control granted to small towns within the regions in part because many small towns expressed distrust for the concept of regionalization, particularly as it related to giving up local schools and thereby sacrificing their right to educate smaller children close to home. In light of this, the Court concluded in Region 12 that "it is reasonable to assume that the plan provided hometown elementary schools because it was important to the townspeople in the proposed district to keep their elementary school children in schools close to home and therefore would have been less likely to approve a regional school plan that called for a consolidated elementary school."

The undeniable importance of this language is not found in the word "hometown" but in the principle that the townspeople want their littlest children closer to home. Eliminating the word "hometown" from the paragraph does not change the meaning of the paragraph at all.

It is clear from both the Plan itself and the record that there was no mention of either a possible K-2 consolidated primary school or a consolidated 3-5 Intermediate School. Indeed, it is also clear that the reconfigured consolidated schools represent a significant change to the 1968 Plan. Dr. Cronin himself is on the record testifying to the "**significant**" nature of the change and his view was seconded in this court's initial decision. A "**significant change**" is clearly a change a reasonable person would have expected to find included in the 1968 Plan, and a **significant** change is clearly a change that would have affected an elector's vote, so by the Supreme Court's rationale, a 10-47c vote is required.

IV. K-2 AND 3-5 CONSOLIDATED SCHOOLS ARE NOT A TYPE OF SCHOOL AUTHORIZED BY THE REGION 14 PLAN. THEREFORE THE DEFENDANT CANNOT ESTABLISH THESE TYPES OF SCHOOLS WITHOUT A 10-47C REFERENDUM.

The Supreme Court has made it clear in *Regional School District Number 12 v. Town of Bridgewater* that a Board of Education has no authority to create a *type* of

school not contemplated under the Plan. (See Id at footnote 13) "We conclude, however, that the construction of a *type* of school not contemplated under the original plan, i.e.- a consolidated school, as distinct from a traditional hometown school- is not within the powers granted to the board under 10-56a." The undersigned lawyer would respectfully submit that this language is incredibly compelling, precisely on-point, and it is clear as a bell. In this case, the defendant established and created not one, but *two* types of schools not contemplated by the Plan; and it also eliminated *two* schools that were established and provided for by the Plan.

V. CGS 10-220 CANNOT BE USED BY THIS DEFENDANT TO DO AN END-RUN AROUND AN ENTIRE STATUTORY SCHEME;

1. 10-47c and 10-220:

Another issue that has plagued the discussion in this case is the supposed difficulty in reconciling CGS 10-220 and 10-47c. Here again the Supreme Court's decision in *Regional School District Number 12 v. Town of Bridgewater* has provided clear guidance. The Supreme Court in that case was forced to examine a particular statute, in that case CGS 10-56, and reconcile it with 10-47c and the greater statutory scheme to which it belongs, the regionalization statutes contained in Part III. In *Regional School District Number 12 v. Town of Bridgewater* the Court stated:

Reading 10-56 in conjunction with the statutes governing the adoption and the amendment of the school plans, however, we conclude that 10-56(a) (a) authorizes a regional school district to construct a school only if the school is contemplated under the regional plan. If 10-56 (a) were construed to authorize regional school districts to build and equip schools entirely as they see fit, then the requirement under 10-43 (a) that the study committee

include in its final report the a description of the facilities recommended and estimates of the cost of land and facilities would be superfluous. See, e.g., state v Gibbs, 254 Conn. 578, 602, 758, A.2d 327 (2000) ("It is a basic tenet of statutory construction that the legislature did not intend to enact meaningless provisions . . . statutes must be construed if possible, such that no clause, sentence or word shall be superfluous, void, or insignificant . . .

The exact same logic must be applied in this case when considering CGS 10-220 as it pertains to the Board's authority to designate the schools to which children attend. For 10-47c and the regionalization statutes as a whole to retain their meaning, CGS 10-220 can only be applied within the framework of the 1968 Regional Plan. Consider the following example which represents the logic applied above by the Supreme Court in the Region 12 case with CGS 10-220 substituted for 10-56:

Reading 10-220 in conjunction with the statutes governing the adoption and the amendment of the school plans, however, we conclude that 10-220 authorizes a regional school district only to designate the schools that the students attend within the framework contemplated under the regional plan. If 10-220 were construed to authorize regional school districts to designate the schools the students attend by reconfiguring the existing facilities entirely, as the defendant claims, then the requirement under 10-43a that the study committee include in its final report a description of all **programs and facilities** recommended would be superfluous. See, e.g., state v Gibbs, 254 Conn. 578, 602, 758, A.2d 327 (2000) ("It is a basic tenet of statutory construction that the legislature did not intend to enact meaningless provisions . . . statutes must be construed if possible, such that no clause, sentence or word shall be superfluous, void, or insignificant..")

The Defendant may “designate the schools which shall be attended by the various children...” (CGS10-220). But according to the logic outlined by the Supreme Court in *Regional School District Number 12 v. Town of Bridgewater*, this isolated provision in that statute cannot be applied in a manner that renders the entire scheme of the regionalization statutes meaningless.

“Designate” is not meant to permit either the elimination or “reconfiguration” of the existing Plan designated schools. The Board must operate within the parameters defined by the plan, for example, the forty year old practice of educating students from North Woodbury at the Bethlehem Elementary School is a designation allowed for by the Plan. The language of the Plan allows for the flexible allocation of students based on geographic proximity by adjusting the boundary line **while at the same time maintaining the basic tenets provided for in both recommendation 2 and 3 of the plan, a K through 5 elementary school in Bethlehem and a K through 5 elementary school in Woodbury.**

2. 10-47:

In addition to the Supreme Court's interpretation in the Region 12 case, let us also consider some relevant facts, and the insight offered by the statutes themselves. The defendant incorrectly presumes that "to designate the schools attended by the various children. . ." as authorized in CGS 10-220 permits them to do so in violation of the Region 14 Plan.

To begin with, the defendant's actions are hardly a mere “designation” of what students go to which school. Rather, the defendant has eliminated two (2) Plan designated schools and created two (2) entirely new schools in their places. The new schools have different grade levels, different teachers, different start times and different end times, different administrators, and an entirely different student body, i.e. student bodies comprised of out of town students, as well as just local students. The new

schools also have parents from two different towns, which impact many aspects, such as participation at PTO, after school activities, extra-curricular activities, etc. The new schools require significantly more bus runs also. These actions go far beyond a mere “designation” of which students attend what school.

However, and most significantly, the defendant’s reliance on CGS 10-220 as an excuse of its actions is not only factually misplaced, but legally incorrect.

The hierarchy of the **Plan** in relation to those powers and duties granted to the Region 14 board of education is quite clear if one considers CGS 10-47. This statute imposes a clear limitation on the powers of a regional board. “Regional boards ... shall have all the powers and duties conferred upon boards ... by the general statutes *not inconsistent with the provisions of this part.*” (emphasis added) (“This part” refers to Part III of the Statutes, the regionalization statutes.) CGS 10-47. This law specifically rules out any reliance on CGS 10-220, given the undisputed facts of this case.

Therefore, if there happen to be any powers or duties of the board, contained elsewhere in the general statutes, that are inconsistent with the requirements of CGS 10-47c; then those powers cannot be vested in a regional board by some other statute of a different part. The hierarchy of the plan in relation to those “powers and duties conferred upon the board” outlined in 10-47 is not only sensible and rational, but it happens to be the law of this State.

Regional Board of Education Number 14 is the product of the regionalization process provided for by the regionalization statutes contained in Part III outlining the establishment of a region. First, according to **10-43a and 10-43b**, the committee is required to study the advisability of forming a region, issue a series of recommendations, and compile their findings and suggestions in a final report; the report is then submitted to the State Board of Education and the towns for approval and certification, then a referendum on the “Plan” is held in accordance with **CGS 10-45**. If the region is formed, it is formed “in accordance with the plan approved by the State Board of Education”. (CGS 10-45(b)) Only then do the towns, pursuant to CGS 10-46, elect their members to form the board. The Plan is for all intents and purposes the

guiding document approved **by the towns** and provided to the board of education as a framework within which they must exercise their powers and duties.

VI. THE FACT THAT THE PLAN DOES NOT PROHIBIT HYPOTHETICALS SUCH AS RECONFIGURATION DOES NOT EQUATE TO THE STATEMENT THAT IT ALLOWS IT:

At the Reargument hearing, the defendant's lawyer repeatedly stated: "The plan does not prohibit reconfiguration". This argument has no legal relevance nor does it make any logical sense. Nowhere in the statutes does it even remotely suggest that the Board of Education shall have any and all powers not specifically prohibited under the Plan.

Defendant's counsel failed to mention that the law of this State, as applied to the facts of this case, clearly and unambiguously prohibits this reconfiguration, unless it is approved by a 10-47c referendum. .. And, that is the issue this Court must decide; not whether some "significant" change to the plan was specifically ruled out by it. The Plan also does not mention the firing squad as an acceptable alternative to detention hall.

Despite the clarity of recommendations 2 and 3, the defendant seems to suggest that the study committee was required to prohibit reconfiguration. In other words, based on their distorted interpretation of recommendation 3 (and absolute failure to acknowledge recommendation 2 at all), it would have been necessary to include language in the report explicitly prohibiting a consolidated K-2 Primary school in Bethlehem and a consolidated 3-5 Intermediate School in Woodbury. This distorted logic presumes that the study committee was required to draft hypotheticals that could be possible *if* one chose not to accept the recommendations and then prohibit them in the Plan.¹ But nothing in any of the Regionalization statutes or the Supreme Court's

¹ The point was also raised in court that it is possible to accept the parameters defined in recommendations two and three, strictly apply them, and propose a hypothetical in which the Region 14 Board could conceivably send all the K through five students from Woodbury to Bethlehem and all the K through five students from Bethlehem to Woodbury. Although one

decision in *Regional School District Number 12 v. Bridgewater, or even the Atwood Case*, suggests that the study committee was required to list endless, hypothetical prohibitions as well as recommendations.

On the contrary, the reasonable person standard employed by the Court compels us to review the plan from a reasonable person's perspective, "the court should consider whether it is reasonably likely that the inclusion (as opposed to the exclusion) of the proposal in the original plan could have affected an elector's vote."

It is respectfully submitted that a reasonable person would expect that the K through 5 elementary schools in Bethlehem and Woodbury provided for in recommendations two and three be just that, K through 5 elementary schools in Bethlehem and Woodbury!

To suggest that a voter in 1968 could have *reasonably* concluded that the K through 5 Elementary schools could "become Bethlehem Primary School housing all kindergarten, first, and second grade students from Bethlehem and Woodbury, and Mitchell Elementary School would become Mitchell Intermediate School containing all of the district's third, fourth, and fifth graders" as dictated by Dr. Cronin's reconfiguration proposal, is farfetched and clearly *unreasonable*

All one needs to do is read the regionalization statutes to conclude that we cannot read the study committee recommendations in isolation from one another or isolated from the report itself. This is true because the recommendations serve a statutory purpose in terms of how they relate to CGS 10-43 and 10-45 in that they provide a comprehensive plan of regionalization to be considered by the voter.²

could argue that this example is technically not disallowed by the language, it is an unreasonable application of the language and as such does not pass the Supreme Court's reasonable person test.

² CGS 10-43 defines what the report should contain, including, the feasibility of establishing a region, the towns included, the grade levels for which educational programs will be provided; detailed budget plans which include enrollment projections, staff needs and services; the facilities recommended; estimates of cost; capital contributions of the member towns; the size of the board; and other matters the committee deems pertinent; 10-43b requires that the study committee file their report with the state board of education for approval and "if the report is accepted, the state board of education shall certify the town clerk in each of the participating

On page 6 of the Plan, the **following organizational structure is offered:**

The Bethlehem Elementary school and the Woodbury Elementary School should be converted to primary schools for grades kindergarten through five. This would allow space in each school for a library, art and music room. So adapted the buildings would provide for a working capacity of 400 in Bethlehem and 575 in Woodbury.

Similarly, Page 5 of the report contains additional information referencing the enrollment projections, again citing enrollment figures based on "K thru 5" elementary schools. Clearly if the study committee had intended for the elementary schools to be organized in alternative configurations, the study committee could have included enrollment projections based on those configurations. But again they did not, because as the record and the Plan show, a K-2 and 3-5 configuration was never contemplated. In fact, the only configuration contemplated in the Plan is exactly the one that was implemented following regionalization and upheld for almost forty years, K through 5 elementary schools in Bethlehem and Woodbury .

VII. THE DEFENDANT'S RELIANCE ON THE ENROLLMENT FORECASTS AT PAGE 5 OF THE PLAN AS A GRANT OF PERMISSION FOR ITS ILLEGAL ACTS IS COMPLETELY MISPLACED:

towns that the committee recommendations have been approved." Consequently, the town clerk shall make the certified report available and circulate the report throughout the town. The committee shall hold a public hearing in each participating town "to present the certified report." 10-45 requires that a referendum on the Plan is held "in accordance with the Plan approved by the state's board of Education."

Although the defendant ignores the report in relation to the organizational structure provided for therein, (Kindergarten through five elementary schools in Bethlehem and Woodbury), the defendant does reference the projected enrollment numbers on page 5 as well as the heading of page 6, "Educational Program as forecast for 1969-1970" to imply a sense of "impermanence".

First, this interpretation ignores the fact that CGS 10-43 actually requires a study committee to provide enrollment numbers for a period of five years.³ Second, this interpretation fails to take into account the significance of the word "forecast." Certainly a reasonable person understands that to "forecast" is to predict.⁴ One would assume that the study committee, comprised of reasonable people, expected the enrollment numbers to change over time and therefore they did not attempt to *predict* or *forecast* how many students would be housed in each facility indefinitely. But the absence of indefinite predictions in the report certainly does not render a sense of impermanence; there is absolutely nothing in either of these pages or in the report itself for that matter that would lead a reasonable person to believe that the local K through 5 elementary schools would one day be eliminated and then replaced with a reconfigured consolidated Primary School in Bethlehem housing grades K-2 and a reconfigured consolidated Intermediate School in Woodbury housing grades 3-5.

The defendant also claims that the "K thru five" enrollment numbers cited on page 5, 238 in Bethlehem and 638 in Woodbury, coupled with the building capacity noted on page 6 support the defendant's extrapolation that the regional study committee did not intend for a literal interpretation of Kindergarten through 5 students attending the respective (K through 5) elementary schools- the assumption, according to the defendant, is that they knew at the outset that they would have been overcapacity. First there is no evidence on the record or in the plan to suggest that the temporary regional

³ "its report shall contain. . . detailed educational and budget plans for at least a five year period including projections of enrollments, staff needs and budget plans for at least a five year period including projection of enrollments, staff needs, and a description of all programs and supportive services planned for the proposed regional school district . . ."

⁴ Webster's defines "forecast" as "to calculate or predict some future event or condition usually as a result of study and analysis of pertinent data."

study committee contemplated any configuration other than a K through 5 configuration in each town. And second, the information on pages 5 and 6 is consistent with the facts on the record which indicate that some students from North Woodbury have attended the Bethlehem Elementary School since regionalization. Therefore, the "line" could be moved to best suit the demographic needs of the two communities such that children who lived more or less as close to one school as they do to the other could be sent to either school. This was simple and practical and sensible, given the geography of the region and the location of the two elementary schools in the centers of the two towns..

In other words, the supposed conflict in the Plan between the forecasted enrollment numbers and the building capacity cited by the defendant is totally resolved by and consistent with the approach that was followed for nearly 40 years, and allowed for the flexible allocation of students based on geographic proximity by adjusting the boundary line **while at the same time maintaining the basic tenets provided for in both recommendation 2 and recommendation 3 of the plan, Kindergarten through five Elementary schools in both Bethlehem and Woodbury.**

VIII. THE DEFENDANT'S CLAIM THAT IF THIS COURT FOUND FOR THE PLAINTIFF, IT MAY INCONVENIENCE OTHER BOARDS OF ED. ACROSS THE STATE IS NOTHING BUT A SCARE TACTIC:

The defendant claimed, in what amounted to nothing more than a scare tactic, that if this Court recognized the legal truth that CGS 10-220 does not allow the defendant to do what it has in this case, then it may impose a hardship on the board in not allowing them to freely assign students and grades as they see fit. The defendant then went on to suggest that this could have some illusionary impact throughout the state where boards *may* have redistricted in violation of their respective agreements (whatever that means). Let's be very clear, this defendant is the one on trial. This defendant violated the law, (whether intentionally or not) and continues to operate in violation of the law. This defendant denied the townspeople their right to vote on a

significant amendment to their Regional Plan, and this defendant must restore the schools to their original K through five configuration so that they are in compliance with the law. If some other Board of Education somewhere else in the State has violated the law, then that may or may not be the topic of some other claim. It's not up to this Court to second guess the Supreme Court's unanimous opinion in a recent, watershed case.

IX. THE TEMPORARY FIFTH GRADE MOVE IN 2003 DOES NOT GRANT THE DEFENDANT FREE REIGN TO VIOLATE THE PLAN AT WILL.

The defendant has also argued that because the fifth grade at Mitchell Elementary School was temporarily moved to the Middle school in 2003 to relieve a perceived overcrowding at MES, the Region 14 Plan was already compromised; and since nobody sued the Board of Education, this Court should somehow interpret this to mean that this Board of Education can now ignore the Plan at will. Previous, unchallenged infractions to the Plan are irrelevant, to submit that a previous *temporary*, and far less significant violation of the plan, that went un-challenged, makes this new and significant violation of the plan permissible defies common sense.

X. THE DEFENDANT MUST RESTORE THE SCHOOLS TO CONFORM TO THE PLAN BEFORE CONDUCTING A REFERENDUM IN ACCORDANCE WITH CGS 10-47(C)

The defendant cannot be permitted to hold a referendum in an effort to try to obtain a vote that would authorize its illegal reconfiguration, unless and until it restores the schools to the status quo ante, and comes into compliance with the Plan. This is true for several reasons:

1. The defendant should not profit by the plaintiff's reasonableness. At the October 2nd hearing, the Court inquired of the plaintiff as to when it might expect the defendant to physically restore the schools, assuming the Court

accepted the Plaintiff's arguments and ordered this. The plaintiff reasonably offered that the most convenient time for the defendant to have to make the move would be over the summer break. The plaintiff was under no obligation to make such an accommodation, but merely did so because it was the most convenient time for the defendant, the teachers, the townspeople and the children. If, by chance, this hearing took place on June 2nd, rather than on October 2nd, the defendant would not have time to hold a referendum before restoring the schools over the summer recess.

2. It smacks of unfairness for the plaintiff to generously and reasonably offer that the move can take place over the summer recess, only to have the defendant take advantage of that reasonableness and profit by the fact that this hearing happened to take place in October rather than in June, and by sheer chance, be allowed to conduct a referendum on the issue before it restores the schools.
3. A referendum in accordance with CGS 10-47(c) is, by that very statute, to occur prior to amending the Plan, not afterward. In this case, the defendant has already and illegally amended the Plan by action and implementation. It was supposed to amend the language of the Plan by referendum before it amended it by action and implementation. In any event, a referendum held prior to restoring the status quo ante would not be a referendum held in accordance with CGS 10-47(c).
4. A referendum held before the defendant restores the schools to the status quo ante would be very much akin to putting one of two possible candidates in office with no election, then allowing him to execute his duties, make new policies, appoint new cabinet members, and then after a couple of years of this, finally having the election to see if the other candidate who was running for the same office might have been elected.
5. Some people's votes will be affected by the fact that the change in the Plan has already taken place; and anyone's vote to change the words of the Plan

will amount to nothing but a meaningless formality, since the Plan was already amended (illegally) by action and implementation. The plaintiffs and all of the other taxpayers, parents and citizens have a right to a fair vote under 10-47(c). (Rather than an unfair vote that is not contemplated by any statute) Allowing the defendant to amend the Plan by action and implementation, with no vote, and then allowing the defendant to hold the vote some two years later, smacks of unfairness and foul play.

6. Any hardship that the defendant might endure by having to restore the schools so that they are in compliance with the Plan (and the law) is a self-imposed hardship. The defendant could have followed the statutory procedure before reconfiguring the schools... That would have been the sensible thing to do. However, it chose not to do so. It should not now be heard to complain about a possible hardship if the referendum were to subsequently go in its favor.
7. The hardships of paying for the extra busing, slashing class times, disrupting families, busing little children miles from home, imposing an additional transition between second and third grade; and numerous other hardships far outweigh any potential or possible hardship on the defendant.
8. The plaintiffs seek a declaratory judgment requiring the defendant to conduct a referendum in accordance with the applicable law (CGS 10-47c) before proceeding with reconfiguration, not after the fact. This was quite clear in the many paragraphs in the Claim for Relief in the Second Amended Verified Complaint that the plaintiffs proceeded on at trial. It is no surprise to the defendant, and well-within this Court's discretion to Order it.
9. The plaintiff's sought, in their prayer for relief, an injunction preventing the defendant from expending any taxpayer monies in furtherance of reconfiguration. The injunction is an equitable remedy as well as a legal remedy. Equitably, it would be grossly unfair to the plaintiffs (as well as thousands of other people) to allow the defendant to subvert and undermine

the law by amending the plan by action and implementation prior to doing so by referendum. Legally, it would be entirely wrong and also unfair to allow the defendant to ignore the clear language of 10-47(c) and hold its referendum to amend only the language of the Plan, after it has clearly amended it by action. The amendment to the language of the Plan is a meaningless formality. What matters is what happens in the day-to-day lives of the people--- that's what people are voting on.

10. The Declaratory Judgment sought by the Plaintiffs is, for all practical purposes, a Judgment of this Court stating that the Plan cannot be amended (either by action or in words alone) without first having a referendum as provided for by law.

Wherefore, these reasons, the plaintiffs request that this Court declare judgment in their favor, grant the relief requested in the prayer for relief contained in the Second Amended Verified Complaint, and require the defendant to restore the schools to conform to the Plan and that, if the defendant wants to wait until next summer to comply with the Court's Order, it may do so, but not at the plaintiff's expense of holding a referendum before it has complied with the Judgment of this Court (lest the plaintiff should withdraw its offer and require that the schools be restored immediately).

Respectfully submitted

By: _____

Robert S. Kolesnik, Jr.