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Defendants.

Defendants.

**THE NEW BOARD OF SCHOOL COMMISSIONERS AND THE *BRADFORD*
PLAINTIFFS' JOINT MEMORANDUM IN SUPPORT OF THE NEW BOARD'S
PETITION FOR FURTHER RELIEF PURSUANT TO THE CONSENT DECREE**

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The New Board of School Commissioners for Baltimore City (the “New Board”) and the *Bradford* plaintiffs submit this joint memorandum in support of the Petition of the New Board of School Commissioners for Further Relief Pursuant to the Consent Decree, filed herewith.

PRELIMINARY STATEMENT

The New Board’s petition asks this Court to declare that substantial additional State funding is necessary in order to provide the schoolchildren within the Baltimore City Public School System (“BCPSS”) with the “thorough and efficient” education that is guaranteed them by Maryland’s Constitution. Specifically, the petition seeks a declaration that: (1) despite recent improvements made under the new City-State Partnership, the education being provided to schoolchildren by the BCPSS remains constitutionally inadequate; (2) in order to provide a constitutionally adequate education, the BCPSS requires substantial additional State funding of approximately \$260 million per year for educational operating expenses and approximately \$600 million for capital improvements over a reasonable number of years; and (3) as an initial step toward reaching a constitutionally adequate level of education, the State is obligated by the Constitution and the Consent Decree to provide the BCPSS with an additional \$49.7 million for instructional programs in Fiscal Year 2001.

The time is ripe for this petition under the November 26, 1996 Consent Decree governing the consolidated cases involved in this proceeding. That Consent Decree created a unique City-State partnership to run the schools, and it provided a base level of additional State funding to provide the BCPSS with a start down the road to providing a constitutionally adequate education: \$30 million in FY 1998 and \$50 million in each of FY 1999 through FY 2002. Most importantly for this petition, the Consent Decree also created a mechanism by which the New Board may seek a Court order determining that additional funding, beyond the agreed-upon base levels, is needed in order for the BCPSS to provide a constitutionally adequate education to its schoolchildren.

The key feature of the Consent Decree's mechanism for addressing the need for additional State funding is its requirement that the performance and needs of the BCPSS be evaluated by a jointly-retained independent consultant. The Consent Decree also requires that any request by the New Board for additional State funding be supported by a detailed plan, and that the New Board negotiate with the State to attempt to reach agreement over additional State funding. The independent consultant, Metis Associates, Inc. (or "Metis") has issued its report, the New Board has provided its detailed remedy plan, and negotiations have been unsuccessful. The New Board is now entitled to seek this Court's determination of the need for additional funding. As shown herein, the Metis report, the New Board's remedy plan, and other substantial evidence demonstrate that the New Board is entitled to the relief sought by its petition.

First, despite important improvements brought about under the New Board, the education being provided to the schoolchildren within the BCPSS remains constitutionally inadequate. The facts that led to this Court's 1996 ruling of inadequacy still point to the same conclusion today. The BCPSS still performs far below State standards, and far below the remainder of the districts in the State, both on the State's own Maryland School Performance Program standards for satisfactory school performance and on other objective standards of student achievement. Indeed, the Metis report noted that, although the BCPSS is improving faster than the statewide rate of improvement, at the current pace it would take nearly 20 years to close the achievement gap between the BCPSS and the rest of the State. Moreover, almost half of Baltimore City's schools have now been designated "reconstitution-eligible," meaning they are so far below State standards, and so significantly failing to improve, that the State may turn them over to a private contractor to run. All of Baltimore City's schools, moreover, still have physical facilities that are woefully inadequate.

Second, in order to provide a constitutionally adequate education, the BCPSS needs to implement additional instructional programs that adequately serve its largely disadvantaged student population. The evidence shows that the additional funding required for these programs

is on the order of \$2,700 per pupil, which is approximately \$260 million annually. The Metis report concluded that it would take an additional \$2,698 in annual per pupil expenditures -- somewhat more than \$260 million -- to fund the programs required for the BCPSS to approach State performance standards. Similarly, in its Remedy Plan, the New Board identified each of the programs and services it needs to provide for educational adequacy and estimated that those programs would cost approximately \$260 million per year. Other evidence, including State admissions that additional funding is appropriate, all point to the same conclusion: the students in Baltimore City cannot be afforded a constitutionally adequate education without substantial additional money from the State.

Third, although additional funding on the order of \$260 million is required to reach constitutional adequacy, the BCPSS' most pressing immediate need is for an additional \$49.7 million in State funding for FY 2001. This additional funding for FY 2001 is plainly required as part of the State's even larger unmet constitutional obligation to provide an adequate education. Such additional funding also is independently required as part of the State's obligations under the Consent Decree. Under the Consent Decree, the State is obligated to use its best efforts to meet the additional funding requests that the New Board has supported by a detailed plan, subject only to the availability of funds. The New Board provided the State with such a detailed plan seeking \$260 million to achieve constitutional adequacy, but, at the State's request, also submitted a plan for \$49.7 million in additional funding in FY 2001 to meet the most pressing immediate needs of the BCPSS. Nevertheless, in a year of record budget surpluses with hundreds of millions of dollars available for new government programs, the State breached its Consent Decree obligations and provided only \$8 million in additional funds for the BCPSS remedy plan.

Accordingly, as shown by the evidence cited herein and the evidence to be provided at the hearing on this petition, the New Board is entitled to the relief it now seeks.

PROCEDURAL HISTORY¹

I. THIS COURT HELD THAT THE EDUCATION PROVIDED BY THE BCPSS IS CONSTITUTIONALLY INADEQUATE

Six years ago, the *Bradford* plaintiffs and the City plaintiffs filed two separate suits in this Court, both alleging that the State was failing to provide the students of Baltimore City with the constitutionally required “thorough and efficient” education. The *Bradford* plaintiffs are parents of children attending Baltimore City public schools who are “at risk” of educational failure, meaning that they live in poverty or otherwise are subject to economic, social, or educational circumstances increasing the odds that they will not receive an adequate education. The *Bradford* plaintiffs sued the Maryland State Board of Education, the Governor, the State Superintendent of Schools, and the State Comptroller of the Treasury on December 7, 1994. The City case, filed on September 15, 1995, was brought by the Mayor, the City Council of Baltimore, and the Board of School Commissioners of Baltimore City and its President against the same State defendants.² The suits were consolidated for trial.

On October 18, 1996, this Court entered partial summary judgment for the City and for the *Bradford* plaintiffs and held that BCPSS schoolchildren were not receiving the constitutionally required “thorough and efficient” education. The Court first affirmed the relevant legal standard, holding that the “thorough and efficient” language of Article VIII

¹ Along with the petition and this memorandum, the New Board and the *Bradford* plaintiffs have filed an Appendix of Primary Exhibits. The Appendix contains the affidavits cited in this memorandum (along with the exhibits to those affidavits) and the primary exhibits on which plaintiffs rely. Thus, the Appendix contains the affidavits of J. Tyson Tildon, Elizabeth Morgan, Gayle V. Amos, Darlene Abney, and Howard Linaberg at Tabs A through E, respectively. The report of the independent consultant, Metis Associates, is included at Tab F. The BCPSS’ 1999 report of Maryland School Performance Program data is included at Tab G (MSPP data is also available on the MSDE’s web site, at <http://www.msp.msde.state.md.us>). Finally, the MDSE’s 1998-99 statistical handbook, the Fact Book, is included at Tab H. For the convenience of the Court, the tab at which each document is located in the Appendix is also identified by an index at the beginning of the Appendix.

Most of the remainder of the documents cited in this memorandum are already available to the State, either because they are State-generated documents or because they have already been made part of the record in this proceeding. Plaintiffs anticipate filing supplemental appendix volumes shortly that contain the remainder of the documents cited.

² The Governor and the Comptroller of the Treasury were dismissed from both suits, after the Court found that “relief can be granted without the Governor being a party to the litigation.” (Transcript of Apr. 4, 1995, at 12).

requires that “all students in Maryland be provided with an education that is adequate when measured by contemporary educational standards.” (10/18/96 Order, ¶ 1). Next, the Court found that students in Baltimore City were not receiving an adequate education. In their motion papers, the *Bradford* plaintiffs and the City had presented the Court with undisputed evidence demonstrating that the BCPSS was failing dismally to meet the State’s own standards for adequate school performance: the Maryland School Performance Program (“MSPP”) standards.³ It also was failing on an extensive set of other objective measures. In light of this evidence, the Court held:

There is no genuine material factual dispute in these cases as to whether the public schoolchildren in Baltimore City are being provided with an education that is adequate when measured by contemporary educational standards. This Court finds, based on the evidence submitted by the parties . . . that *the public schoolchildren in Baltimore City are not being provided with an education that is adequate when measured by contemporary educational standards.*

(*Id.* ¶ 2) (emphasis added).

The Court’s partial summary judgment decision did not resolve the parties’ disputes over the cause of that inadequate education and the appropriate remedy. During the 1996 proceedings, the State contended that the City was to blame for failing to manage the BCPSS adequately. The City contended that the State was not providing funding sufficient to support a constitutionally adequate educational system. The *Bradford* plaintiffs contended that a combination of factors was involved, and that a remedy would need to address both inadequate funding and management problems. The Court set the case for trial to resolve these issues.

³ Maryland School Performance Program data is available from a variety of sources, including reports issued by the MSDE and (for Baltimore City data), by the BCPSS. In this memorandum, the citation “MSP Report” refers to the yearly reports issued by the State and local districts containing results on the MSPP standards. MSPP data for the State, for all of its districts, and for individual schools within Baltimore City and elsewhere is also available on the MSDE’s web site, at <http://www.msp.msde.state.md.us>. A convenient Executive Summary of MSPP data, which includes composite scores for the State and each district, may be found at <http://www.msde.state.md.us/MSPReportCard/1999/executive.pdf>.

II. THE CONSENT DECREE GOVERNS THE NEW BOARD'S REQUESTS FOR MORE STATE FUNDING IN FY 2001 AND 2002

Days before trial was to begin, and after protracted court-assisted negotiations, the parties reached a settlement and signed the five-year Consent Decree, which imposed two primary obligations on the parties. First, it addressed the State's concerns with management of the Baltimore City schools by setting up the "City-State Partnership" -- embodied in the New Board of School Commissioners jointly appointed by the Governor and the Mayor -- to manage the schools. Second, it provided additional funds for the schools, \$30 million in FY 1998 and \$50 million in each of FY 1999 through 2002 for operating funds, plus \$10 million annually for capital improvements. (Consent Decree ¶¶ 47-48). In April 1997, the General Assembly of Maryland codified the principal terms of the Decree at S.B. 795. *See* S.B. 795, 1997 Reg. Session (Md. 1997).

The Consent Decree, like all settlements, was a compromise. The parties knew in 1996 that \$230 million was not enough, over the five year term of the Decree, to provide an adequate education to Baltimore City's unique population of disadvantaged children. For that reason, the Consent Decree provides a mechanism for the New Board to request additional funds from the State throughout the term of the Decree. It also provides that, after June 1, 2000, if the State fails to satisfy the New Board's request for additional funds, the New Board may go back to Court for a determination of whether additional State funding is needed in order for the BCPSS to provide a constitutionally adequate education.

Thus, in any year during the Decree's five-year term (from FY 1998 through 2002), the New Board may ask the State for additional funds necessary to run the schools. If the Board presents the State with a detailed plan setting out why it needs the money and what it will be used for, the State has an obligation to use its "best efforts" to satisfy the New Board's requests for additional funds, subject only to the availability of funds. (Consent Decree ¶ 52).

For its last two years, FY 2001 and 2002, the Decree provides an additional mechanism for the New Board to ask for funds after an "interim evaluation" of the schools has occurred, and

authorizes a return to Court if the funds are not forthcoming. To implement this interim evaluation, the Decree requires the State and New Board jointly to hire an independent consultant halfway through the five-year term to assess the schools' performance and needs. (Consent Decree ¶¶ 40, 41). "[A]t a minimum," the parties agreed, the consultant must assess, among other things, the "sufficiency of additional funding provided by the State." (*Id.* ¶ 41). The parties also agreed that the consultant could make recommendations concerning "the need for funding in excess of the amounts provided herein in order for the BCPSS to provide its students with an education that is adequate when measured by contemporary educational standards." (*Id.*)

Once the independent expert has issued the interim evaluation, the Decree permits the New Board to request additional funds from the State based on the results of the evaluation. (Consent Decree ¶ 53). The independent expert's report was due on February 1, 2000. (S.B. 795, § 6).⁴ The State and New Board had until June 1, 2000 to negotiate over the request. On or after June 1, the New Board was permitted to return to Court seeking additional funds. Once the New Board returns to Court, the *Bradford* plaintiffs (and the *Vaughn G.* plaintiffs) may appear and present evidence. The Consent Decree provides that the interim evaluation shall be received into evidence at any hearing on the New Board's request for additional funds. (Consent Decree ¶ 53(A)). To attempt to make sure that any order is final before the next legislative session, the Decree requires the hearing to be held within fifteen days, and both parties agree to seek expedited review on appeal. (*Id.*).

⁴ The Consent Decree originally required the independent expert to report by April 30, 2000. (Consent Decree ¶ 40). The General Assembly moved this date up when it codified the Decree, so that it would have the opportunity to review the independent expert's report during the Spring 2000 legislative session as it was considering funding requests for FY 2001.

III. THE CONSENT DECREE'S PRE-CONDITIONS FOR RETURNING TO COURT FOR A RULING ON THE NEED FOR ADDITIONAL STATE FUNDING HAVE BEEN SATISFIED

A. The Metis Report Has Been Issued And It Confirms The Need For Substantial Additional State Funding.

The State and the New Board jointly chose and hired Metis as an expert to perform the interim evaluation required by the Consent Decree. The Metis report was issued on February 1, 2000. Metis concluded that the City-State Partnership and the additional funds provided under the Consent Decree are improving the schools, but that substantial additional funds are required in order to fund the programs necessary to provide an adequate education. The entire Metis Report is being filed herewith as an exhibit.

The Metis report identifies numerous significant improvements that have been achieved in the BCPSS under the direction of the New Board. These improvements include:

- The New Board has “played a key role in the system’s reform effort,” positively affecting not only the availability and utilization of funds, but also policy initiatives;
- The New Board has “taken meaningful and essential steps to improve BCPSS”;
- BCPSS has “made meaningful progress in improving management, including reorganizing the human resources function and overhauling the management information systems”;
- BCPSS has made “meaningful progress in implementing instructional initiatives at the elementary grade levels, recruitment and retention initiatives, and professional development initiatives”; and
- BCPSS has demonstrated mixed results in improving student achievement, but those mixed results are a “reasonable expectation at such an early stage in a multi-year reform effort”;

(Metis Report, Executive Summary, at 3).

Metis also concluded, pursuant to its mandate to assess the sufficiency of the BCPSS’ funding, that significant additional funds are needed for educational adequacy:

- “Financial resources available to BCPSS are not adequate,” with an additional \$2698 per pupil “necessary for adequacy”; and

- Certain specific strategies require additional funding for adequacy, including full-day pre-kindergarten and kindergarten for all students, middle and high school initiatives, expanding the learning opportunities available to all such students, teacher and principal recruitment, mentoring, coaching and on-going school based professional development, alternative learning settings, additional classroom technology and school facilities improvements.

(Metis Report, Executive Summary, at 29-30.)

B. The New Board Has Submitted A Remedy Plan Detailing The Need For Additional Funds To Support The Instructional Programs Required To Achieve Constitutional Adequacy.

Months before the Metis Report was issued, the New Board submitted its detailed Remedy Plan to the State, seeking an additional \$260 million annually for instructional initiatives and \$133 million annually for capital expenditures. At the State's request, the New Board also submitted a plan that identified BCPSS's most pressing immediate needs for additional instructional programs in FY 2001. Also at the State's request, the New Board limited that FY 2001 funding request to an increase of no more than \$50 million, ultimately seeking \$49.7 million in additional funding for instructional programs. The State Board's full Remedy Plan and its more limited request for FY 2001 funding are being filed herewith as exhibits.⁵

C. The New Board Has Negotiated With The State In An Attempt To Reach Agreement On Additional State Funding.

The New Board and State have negotiated over the New Board's requests for additional State funding. However, those negotiations have not been successful. Under the Consent Decree, the New Board accordingly requests that the Court declare that additional funding is required.

⁵ In this memorandum, the term "Remedy Plan" generally refers to the full remedy plan, in which the BCPSS sought additional funding of approximately \$260 million for instructional and operational programs, rather than the December 1999 plan that asked for a downpayment of \$49.7 million for the critical priorities the Board identified for FY 2001.

ARGUMENT

I. UNDER THE SAME CONTROLLING LEGAL PRINCIPLES AND CONTEMPORARY EDUCATIONAL STANDARDS PREVIOUSLY RELIED UPON BY THIS COURT, BALTIMORE CITY'S SCHOOLCHILDREN STILL ARE NOT RECEIVING A CONSTITUTIONALLY ADEQUATE EDUCATION TODAY.

As this Court recognized in 1996 during proceedings on plaintiffs' motions for partial summary judgment, an adequate education is not only of paramount importance to children and society, it is also a constitutional right of every Maryland schoolchild. That conclusion is mandated by the Maryland Court of Appeals' direction in *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 638-39, 458 A.2d 758, 780 (1983), that the right to an adequate education is guaranteed by Article VIII of the Maryland Constitution.⁶ Article VIII provides:

The General Assembly . . . shall by Law establish throughout the State a *thorough and efficient* System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Md. Const. art. VIII, § 1 (emphasis added).⁷ Consistent with *Hornbeck*, this Court previously found that "[t]he 'thorough and efficient' language of Article VIII requires that all students in

⁶ Maryland is not alone in holding that the "thorough and efficient" language in Section VIII requires the State to provide an adequate education to public schoolchildren. It is one of a growing number of states interpreting identical or similar constitutional language to find that states have an affirmative constitutional duty to provide students with a public education that is adequate to prepare them to become productive members of society. In *Abbott v. Burke*, 575 A.2d 359 (1989), for example, New Jersey's highest court held that the "thorough and efficient system" of education mandated by the New Jersey constitution (*see* N.J. Const. art. VIII, § 4) required that state to provide a substantively adequate level of education to all public school students. In the *Abbott* court's view, the "thorough and efficient" education, prescribed by New Jersey's constitution, would "equip the student to become 'a citizen and . . . a competitor in the labor market.'" 575 A.2d at 368-69. West Virginia's highest court, likewise, has defined a "thorough and efficient" system of schools as one that "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically." *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979). *See also Skeen v. State*, 505 N.W.2d 299, 302-03, 311-12 (Minn. 1993); *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997); *Board of Educ. v. Walter*, 390 N.E.2d 813, 825 (Ohio 1979).

⁷ Other constitutional provisions also support this conclusion. Article III, section 52 reaffirms the requirements of Article VIII, requiring the State to include in its budget an estimate of all appropriations "for the establishment and maintenance throughout the State of a thorough and efficient system of public schools in conformity with Article 8 of the Constitution and with the laws of the State." *Id.*, art. III, § 52(4). The General Assembly may not amend the budget, moreover, to affect "the provisions made by the laws of the State for the establishment and maintenance of a system of public schools." *Id.*, art. III, § 52(6). Article 43 of the Declaration of Rights more generally underscores

Maryland's public schools be provided with an education that is adequate when measured by contemporary educational standards" (10/18/96 Order ¶ 1). *Accord Hornbeck*, 295 Md. at 632, 458 A.2d at 776-77 (Article VIII demands the provision of an "adequate education," and "command[s]" the State to "establish such a system, effective in all school districts. . . ."); see also *id.* at 639, 458 A.2d at 780.⁸

In granting partial summary judgment to the *Bradford* plaintiffs and the City, this Court determined that the State's own educational standards, as well as other contemporary education standards, established that Baltimore City schoolchildren were not receiving a constitutionally adequate education (10/18/96 Order ¶ 2). As demonstrated below, these same objective measures establish that, despite promising incremental improvements, Baltimore City's public school students today still are receiving an education that is not constitutionally adequate.

A. Even Though Student Achievement Is Improving, Students In Baltimore City Still Are Failing To Receive An Adequate Education.

When this Court found, as a matter of law, in October 1996 that public school students in Baltimore City were receiving a constitutionally inadequate education, it did so on a record that consisted of several different types of objective evidence of student performance. The primary evidence before the Court was the BCPSS' poor performance on the MSPP standards, which

the importance of public education. It states in pertinent part that the Legislature "ought to encourage the diffusion of knowledge and virtue, *the extension of a judicious system of general education*, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People." Declaration of Rights, art. 43 (emphasis added).

⁸ The State also has repeatedly acknowledged its constitutional responsibility for education in contexts other than the courthouse. For example, the Governor's Commission on School Performance (the Sondheim Commission), whose recommendations the State later adopted in the Maryland School Performance Program, determined that "[t]he state has a constitutional responsibility for public education and it needs to carry it out." (Report of the Governor's Commission on School Performance at 24). In her deposition in 1996, State Superintendent Grasmick agreed that public education is "basically a function and responsibility of the State" and that the State "has a responsibility to establish minimum standards for student achievement." (Grasmick Dep. 201). More recently, MSDE has acknowledged that "[t]he State, not the individual city or county, has the ultimate responsibility to make sure every child receives a good education." (MSDE, "*What is Reconstitution? An Opportunity for Excellence at Your Child's School*," available at <http://www.msde.state.md.us/factsndata/recon.html>)

were adopted in 1989 based on the recommendation of the Governor's Commission on School Performance (the "Sondheim Commission") to identify the vital core of student achievements and to measure student performance by those standards. (Report of the Governor's Commission on School Funding at 2).

Other objective measures submitted to the Court also demonstrated inadequacy, including the BCPSS' performance on the Comprehensive Test of Basic Skills ("CTBS"), performance on the SATs, the schools' success in preparing students for higher education, and the like. Likewise supporting the Court's ruling was the fact that some 20% of Baltimore's schools then had been designated reconstitution-eligible, or eligible for state takeover, based on their poor performance on MSPP measures.

An examination of the BCPSS' performance since 1996 under each of these measures inescapably establishes that students in Baltimore City still are not receiving an education that is adequate in light of contemporary educational standards. Each of the relevant measures are addressed in turn below.

1. Baltimore City Remains Far From Meeting State Standards, And Far Behind The Rest Of The State, On State's Own MSPP Performance Standards.

As was true in 1996, the BCPSS in 1999 still falls far below the performance of the rest of the State on the State's MSPP Standards. The MSPP measures educational performance in four different data-based areas: (1) student scores on Maryland Student Performance Assessment Program ("MSPAP") tests, which they take in grades 3, 5, and 8; (2) student scores on Functional Tests, which are administered to high school students and are required for high school graduation; (3) student attendance rates; and (4) yearly student dropout rates in grades 9 through 12. COMAR § 13A.01.04.03. The State Board of Education has set standards in each of these data-based areas for "excellent" and "satisfactory" performance. See COMAR §13.A.01.04.04.

At the time the MSPP was created, the State Board gave schools a grace period in which to achieve the specified levels, but expected them to reach the standards by the year 2000.⁹ (1995 MSP Report at 5; Grasmick at 434). As was true in 1996, the BCPSS in 1999 remains a very long way away from meeting State minimum standards for adequate performance on each of the MSPP standards.¹⁰

a. Baltimore City's Public Schoolchildren Are Receiving An Education That Is Still Constitutionally Inadequate As Measured By Performance On The MSPAP Tests (Grades 3, 5, & 8).

A key component of the MSPP standards is the MSPAP tests administered to students in grades 3, 5, and 8. (1999 MSP Report, State and School Systems, at 6). These tests measure performance in six "core" areas: reading, mathematics, writing, language, social studies and science. COMAR § 13A.01.04.04D. In each such "core" area, the tests measure what the State Board has determined students at grades 3, 5, and 8 "should know, be able to do, and how they should act as a result of their educational experiences." (Answer ¶ 42; Gabrys at 70). A school meets the minimum standard of "satisfactory" performance if at least 70% of its student score a proficiency level of 3 or higher. COMAR §13.A.01.04.04.

The BCPSS' scores on the statewide MSPAP tests have shown a steady increase during the Consent Decree period, improving some 7 percentage points since 1996 (MSDE, Maryland Classroom, Vol. 5, No. 2, Jan. 2000), and making progress towards the City's objectives in the

⁹ All deposition testimony cited herein is referred to by the deponent's last name and a citation to the page at which the testimony appears.

¹⁰ The State argued in 1996 that its own MSPP standards were not an appropriate measure of constitutional adequacy. The Court correctly rejected that argument in granting partial summary judgment on the question of adequacy. *Hornbeck* held that, because Maryland had established "comprehensive" statewide qualitative standards governing all facets of the educational process, the State's own qualitative standards would (as long as they themselves were constitutionally adequate) serve as the principal measure for judging educational adequacy. 295 Md. At 639, 458 A.2d at 780. Reliance on the MSPP standards is all the more appropriate in 2000, the year in which the State expected the public schools to achieve compliance with these standards.

Master Plan for increasing student performance.¹¹ BCPSS now has 17% of its students performing at a satisfactory level on the MSPAP, as compared to 13.5% in 1995-96. (MSDE, Maryland Classroom, Vol. 5, No. 2, Jan. 2000; Facts About BCPSS, Annual Report, available at <http://www.bcps.k12.md.us/facts/armspp11.htm>). In both reading and math, BCPSS student scores are increasing at a slightly higher rate than the rest of the State. (CGCS at 11-13; Letter from Nancy Grasmick, State Superintendent of Schools, to Sen. Blount, Del. Hixson, Sen. Hoffman, Del. Rawlings, Feb. 24, 2000). Moreover, since the Consent Decree became effective, 3rd and 5th grade reading improved in Baltimore City at a faster rate between 1997 and 1999 than between 1994 and 1996. (CGCS at 11; Letter from Nancy Grasmick, State Superintendent of Schools, to Blount et al., Feb. 24, 2000). The number of schools that have improved is encouraging as well, with 71.1% of the schools showing improvement between 1997 and 1998. In contrast, between 1995 and 1996, only 47.2% of the schools improved. (Facts About BCPSS, Annual Report, available at www.bcps.k12.md.us/facts/arMspp11.htm)¹²

Despite improvements, the percentage of Baltimore City schoolchildren achieving “satisfactory” levels on the MSPAP tests in 1999 nonetheless remains, as it did in 1996,¹³ substantially below the scores of students statewide and even further below the State’s 70%

¹¹ As a goal for improved BCPSS student achievement, the Master Plan prescribes a minimum average increase of 9.9 scale score points for each subject area and grade for MSPAP. (Metis Report at III-11). The review undertaken by Metis, the parties’ jointly retained consultant, shows that, by the end of the 1997-1998 school year, BCPSS had made significant strides towards attaining this goal. Metis found that a large number of schools achieved the criterion for at least one grade level in each tested subject area, ranging from 45 schools for Writing to 91 schools for Science. (Metis Report at III-13). More than 30 percent of the schools with third-graders, for instance, achieved the 9.9 point criterion in math and social studies. (Metis Report at III-2). For schools with fifth-graders, in turn, 50% averaged 9.9 or greater scale score gains in science. (Metis Report at III-14).

¹² One exception was the 8th MSPAP grade scores. Middle school reforms, for this reason, are one of the areas for which the New Board seeks additional financial aid in the Remedy Plan.

¹³ At the time plaintiffs filed their summary judgment motion in 1996, the 1994-95 MSPAP data then available indicated that fewer than 20% of BCPSS 3rd and 5th graders achieved “satisfactory” scores in any subject area. Only 21.5% of 8th graders obtained satisfactory scores in language usage, and were far below 20% on all other subjects tested, with an abysmal 7.4% receiving satisfactory scores in Reading. (1995 MSP Report). At that time, based on the scores available for the two years in which the tests had been in existence, the percentage of students from Baltimore City scoring in the lowest possible level on the MSPAP was nearly twice as great as in other jurisdictions in Maryland. (State’s Admissions 14-25.)

standard for satisfactory school performance. See COMAR § 13A.01.04.04.D(1). The population of students in Baltimore City receiving satisfactory or better scores in 1999 as compared to students statewide is summarized in the table below:¹⁴

	Reading	Writing	Language Usage	Math	Science	Social Studies
Grade 3						
BCPSS	15.6	24.4	23.4	11.4	12.6	15.3
Statewide	41.2	47.1	46.8	38.9	38.7	41.5
Grade 5						
BCPSS	15.7	15.7	24.6	16.2	20.4	16.9
Statewide	41.4	38.6	51.0	46.2	51.7	43.7
Grade 8						
BCPSS	7.1	20.2	18.5	12.8	17.4	15.5
Statewide	25.3	46.0	46.1	49.0	51.0	44.2

As this chart demonstrates, only 7.1% of Baltimore City's 8th graders scored within the satisfactory range on reading tests. Likewise, only 15% of BCPSS' 3rd grade students made satisfactory scores on reading tests, and only 11.4% of them knew what the State believes 3rd graders should know about math. Furthermore, in all of the tested grades, the number of children achieving satisfactory scores in the State overall, more often than not, was *double or triple* the

¹⁴ This information comes from the MSPP website, available at <http://www.msp.msde.state.md.us>.

BCPSS' results.¹⁵ Moreover, the BCPSS' composite score for all the MSPAP tests was 17, while the Statewide composite score was 43.8. (Maryland School Performance Report 1999, Executive Summary, available at <http://www.state.md.us/MSPReportCard/1999/executive.pdf>). State-wide results, moreover, understate the gap between the BCPSS and the rest of Maryland's school districts because the state-wide results include the Baltimore City's scores.

b. Baltimore City's Students Are Receiving An Education That Still Is Constitutionally Inadequate As Measured By Performance On The Maryland Functional Tests.

The second component of the MSPP standard is the Maryland Functional Tests, which measure basic competencies in reading, mathematics, writing, and citizenship. COMAR § 13A.03.01.03C(2). Originally, these tests were formulated to measure adequate performance at the high school level, but the MSDE has recognized in recent years that the tests are insufficiently demanding to assess necessary high school competencies. Dr. Grasmick, for instance, testified during prior proceedings that the Functional Tests are insufficient preparation for students to enter higher education or employment. (Grasmick at 137). As a consequence, the MSDE has recently established a new, more demanding, high school testing program that involves "challenging end-of-course assessments." (*Every Child Achieving: A Plan for Meeting the Needs of the Individual Learner, Maryland's PreK-12 Academic Intervention Initiative* (adopted by State Board, Oct. 27, 1999) at 3). Originally, the State Board planned to require students to pass these new high school tests as a requirement of high school graduation. Because the Governor failed to fund the type of academic interventions that MSDE believed were necessary to give students a fair chance to prepare for and pass the tests, however, the tests are

¹⁵ The highest performing district in the State, Kent County, is close to reaching the State's satisfactory standards, with a 60% composite score on the MSPAP tests. (MSDE News Release, Dec. 1, 1999, "*Baltimore City MSPAP Scores Improve for Third Straight Year*"). This report can be obtained at the following website: <http://www.msde.state.md.us/pressreleases/1999/December/1999-1201a.html> Kent County's score is more than three times the BCPSS' score of 17%.

currently used for informational purposes only. (MSDE, Press Release, *State Moves Ahead with Assessments*, May 24, 2000, available at <http://www.msde.state.md.us/pressreleases/2000/May/2000-05246.html>).

The functional tests are still required for high school graduation. COMAR § 13A.03.01.03C(2)(b)-(e). Now, however, they are administered initially to students in or before grade 8. COMAR § 13A.03.01.03C(2)(b)-(d).¹⁶

Consistent with the relatively low level of performance these functional tests demand, MSPP standards require a high passage rate. For a school to attain a “satisfactory” level of performance, the following percentages of high school students must have passed the four tests at the end of 9th or 10th grade “as appropriate”: (1) Reading 95%; (2) Mathematics 80%; (3) Writing 90%; and (4) Citizenship 97%, which students are not required to meet until grade 11. COMAR § 13A.01.04.04A; (1999 MSPP, “*Definitions: Performance Standards*”, available at <http://www.msp.msde.state.md.us/supporting/standards/asp>). In addition, at least 90% of students must pass all four tests by the end of 11th grade. (*Id.*) Also consistent with the relatively low level of performance required, Superintendent Grasmick testified in 1996 that the State Board expected students to be meeting the Functional Tests standards at that time, rather than in 2000. (Grasmick at 391-92).

As in 1996,¹⁷ the BCPSS still does not meet the lenient standards of the Functional Tests today. In 1999, the statewide performance level in both grades 9 and 11 is satisfactory on every Functional Test measure but one, 11th grade citizenship. (1999 MSP Report, State and School Systems, at 14). In sharp contrast, BCPSS’ 1999 11th grade scores meet satisfactory standards in

¹⁶ The citizenship test “may be administered to grade 7 students but not later than to grade 10 students.” COMAR § 13A.03.01.03C(2)(e).

¹⁷ In 1996, the 1994-95 data indicated that 75.9% of BCPSS students had passed all by the end of 11th grade. At that time, Baltimore City was the *only* district in Maryland that did not meet the State standard. (State’s Admission 32.) The 1994-95 data available indicated that BCPSS 9th graders failed to meet satisfactory standards in every category. (State’s Admissions 41, 44-45, and Answer ¶ 57.)

only *one category*, 11th grade reading. The following table demonstrates that Baltimore City's 9th graders performance on the 1999 Functional Tests is similarly deficient.¹⁸

	Reading	Math	Writing
Grade 9			
"Satisfactory"	95	80	90
BCPSS	89.1	54.9	71.6
State	97.0	85.3	92.0

These results are particularly disturbing when assessed in light of the State's own determination that the Functional Tests are not rigorous enough to measure adequate high school performance. Reinforcing the conclusion that Baltimore City's students are not receiving an adequate education by this measure of performance, only a very limited number of such students even remain in high school until 11th grade to take these undemanding tests, owing to the high dropout rate among this population of students. (*See, infra*, § I.A.1.d.).

Also reinforcing that conclusion, Baltimore City's scores, in fact, have declined in recent years. In 1998, scores at grade 11 *declined* in *all four* assessed areas statewide. (BCPSS, *State of the Schools Report* 1998-99, Section 2, "Summary of the Baltimore City Public School System Student Performance"; *see also* Baltimore City Public School System, *State of the Schools Report* 1998-99, Section 5, Table 5.1, Maryland Functional Tests, 1997-1998). Not coincidentally, high school reform is one of the areas for which the BCPSS seeks additional funding in the Remedy Plan, and it is one of the areas in which Metis and Dr. Grasmick have both suggested more concentrated efforts. (Remedy Plan at 7-9; Metis at Executive Summary-3; Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Clarence Blount, et al. at 2, Feb. 24, 2000).

¹⁸ This information comes from Baltimore City Public School System, *Maryland School Performance Program*, 1999, "Baltimore City 1998-1999," at 10-14.

**c. Baltimore City's Schoolchildren Are Still
Receiving A Constitutionally Inadequate
Education As Measured By Student Attendance.**

Attendance is the third component of the MSPP standards for school performance. (1999 MSPP "*Definitions: Performance Standards*," available at <http://www.msp.msde.state.md.us>); COMAR § 13A.01.04.04.B. The State has recognized that attendance is an important aspect of a student's education, and that excessive absenteeism makes it more difficult to educate those students who do attend. (See Grasmick at 609-10). As a result, the State has established a satisfactory level of attendance of 94% for all grades. (See 1999 MSPP "*Definitions: Performance Standards*," available at <http://www.msp.msde.state.md.us>); COMAR § 13A.01.04.04.B.

In 1999, as in 1996, BCPSS demonstrated the worst rate of absenteeism of all Maryland's school districts. (2000 Maryland Kids Count Fact Book, Advocates for Children & Youth, Inc. at 42; 1999 MSP Report, State and School Systems, at 21-81). In 1999, the BCPSS reported the following rates of attendance:¹⁹

	BCPSS	State
Elementary	94.1	95.3
Middle School	87.5	93.4
High School	77.3	90.7

This data establishes that only Baltimore City's elementary schools have achieved the State's requirements for a satisfactory level of attendance. That fact does not eliminate serious concern because the data also shows that Baltimore City middle school attendance begins to decline significantly and that, by the high school level, Baltimore City's students average 17% more

¹⁹ This information is from BCPSS, *Maryland School Performance Program Report 1999*, at 10-14.

absenteeism than the States standard allows, and 13% more than the State average. A satisfactory level of attendance at the elementary school level has little meaning if students do not continue to attend school consistently in and progress through later grades.

The data becomes even more disturbing when examined over time: ²⁰

BCPSS Attendance Rates Over Time

	1993	1994	1995	1996	1997	1998
Grades 1-6	91.9	93.6	92.5	92.1	93.3	93.6
Grades 7-12	80.6	82.7	80.7	80.1	81.5	81.8

These figures demonstrate that *at no time* between 1993 and 1998 was Baltimore City able to achieve an overall level of satisfactory attendance. In fact, there is no evidence of consistent progress toward this standard; the rates have both increased and decreased in the 5-year period represented here.

d. An Unacceptable Rate of BCPSS Students Are Dropping Out

The final component of the MSPP standard is the percentage of students dropping out of school (*see* 1999 MSPP “*Definitions: Performance Standards*,” available at <http://www.msp.msde.state.md.us>). COMAR § 13A.01.04.04C. The State recognizes that an important measure of an adequate education system is its ability to encourage and enable students to stay in school through graduation. (*See* Grasmick at 718-19). The Board has established a “satisfactory” dropout rate of no greater than 3% per year. COMAR § 13A.01.04.04C.

As the following chart shows,²¹ Baltimore City's dropout rate has improved over time:

²⁰ This information is from BCPSS *State of the Schools Report* 1998-99, Section 2, “Summary of the Baltimore City Public School System Student Performance.”

BCPSS: Percentage of Students Dropping Out, 1993-99

1993	1994	1995	1996	1997	1998	1999
18.53	15.19	14.23	13.78	13.49	10.22	10.85

Nonetheless, in 1999, as in 1996, the BCPSS still lags woefully behind the rest of the State on this measure of student performance. In 1999, the statewide dropout rate was 4.16%. Baltimore City's dropout rate was 10.85%, more than two and a half times higher than that number and more than triple the State standard. (See BCPSS, *Maryland School Performance Program Report*, 1999, at 10-14). Dr. Grasmick has conceded that dropout rates like these indicate that schools are not providing an adequate education for their students. (Grasmick at 726-27).

Because these rates are calculated annually, they compound over the four years that a class of students moves from grade 9 to grade 12. (Answer ¶ 66). For example, if a school district met the State's standard of a 3% dropout rate over a 4-year period, then approximately 11.5% of students in that district would have dropped out between the beginning of grade 9 and the end of grade 12. (State's Admission 58). As a consequence, a school system's "holding power" -- derived from calculating graduates as a percentage of the 9th grade enrollment in the earlier four years -- is a particularly important figure.

By 1998 Baltimore City's holding power was only 35.7%. (MSDE, 1998-99 Fact Book, at 12). The statewide figure, in contrast, was 71.4% (*Id.*). Children who do not complete high school cannot possibly receive an adequate education under any reasonable contemporary educational standard.

²¹ This information comes from Maryland School Performance Program, 1999, "Baltimore City 1998-1999," at 10-14.

2. Almost Half The BCPSS' Schools Have Now Been Designated "Reconstitution Eligible"

The reconstitution process is the State's mechanism for policing and enforcing MSPP standards. The State may designate a school as "reconstitution eligible" when the school is performing so poorly by MSPP standards that it essentially is deemed to be in need of immediate intervention. Schools may be reconstitution eligible if they are performing far below MSPP standards and if their performance is declining. COMAR § 13A.01.04.07A(1). Once a school is designated reconstitution-eligible, it receives special assistance and attention both from the State and the local school system. (MSDE, *"School Reconstitution: Questions and Answers,"* available at <http://www.msde.state.md.us/Fact%20Sheets/fact5.html>). If the school fails to show improvement, then it actually may be "reconstituted," that is, turned over to the State or a private contractor to run. See COMAR § 13A.01.04.07. Actual reconstitution occurs only when a school "has shown a pattern or failure to educate its students over a number of years." (MSDE, Fact Sheet 5, *"School Reconstitution: State Intervention Procedures for Schools Not Progressing Toward State Standards"*, available at <http://www.msde.state.md.us/Fact%20Sheets/fact5.html>.)

Schools that have been deemed reconstitution eligible are disproportionately located in Baltimore City. In 1996, there were 42 reconstitution eligible schools in Maryland, of which 40 were in Baltimore City, a figure constituting over 20% of Baltimore City's schools. (Trader at 149; The State's Response to *Bradford* Plaintiff's Second Set of Interrogatories to Each of the Defendants, Response to Interrogatory No. 2). As of January 2000, there are 96 reconstitution-eligible schools in the State. Of those 96 schools, 83 schools are in Baltimore City. (MSDE Fact Sheet 5, *"School Reconstitution: State Intervention Procedures for Schools Not Progressing Toward State Standards,"* revised January 2000, available at <http://www.msde.state.md.us/Fact%20Sheets/fact5.html>). This number represents almost one-half of Baltimore's 182 schools.

In February 2000, for the first time since it began identifying reconstitution-eligible schools in 1994, the State Board voted fully to reconstitute three elementary

schools, each of which was in Baltimore City, and “each of which was not making substantial improvement toward meeting state standards.”²² (MSDE Bulletin, February 3, 2000, Vol. 11, No. 2, “State to Reconstitute 3 Baltimore City Schools,” *available at* <http://www.msde.state.md.us/MSDEBulletins/2000/02-03.html>). Superintendent Grasmick explained that “[s]chool performance at all three schools has remained static or declined since the schools were classified as eligible for reconstitution, and that state intervention is now necessary if we are to raise the performance of these schools to the standards we expect them to achieve.” (*Id.*). In fact, no more than 10% of the students in these three schools met the State’s satisfactory standards in all MSPAP areas in any year since MSPAP testing began in 1993. Instead, the percent most often ranged from 3.5% to 6.6%. (MSDE News Release, “State Board of Education to Reconstitute 3 Baltimore City Schools: *New Management Companies Will Be in Place July 1*,” Feb. 1, 2000, *available at* <http://www.msde.state.md.us/pressreleases/2000-0201a.html>). The State’s decision to reconstitute these schools, as was its designation of 83 Baltimore City schools as reconstitution-eligible, reflects the inadequate education that the students there receive.

As the State’s representatives testified in 1996, the number of BCPSS schools that were then reconstitution-eligible (approximately 20%) indicated a systemic problem. Among other such representatives, Superintendent Grasmick acknowledged:

We have had a very significant discussion with the State Board about when you have 35 schools in a system, recommended [for] reconstitution eligible status, what is that telling you about a school system and the need for systemic reform.

(Grasmick at 183; *see also* Trader at 157-58). It necessarily follows that the 83 BCPSS schools designated as reconstitution-eligible today constitutes compelling evidence that Baltimore City’s schoolchildren are not receiving an adequate education.

²² In the previous year, fifteen of the reconstitution-eligible schools had declined in overall performance. (BCPSS *State of the Schools Report* 1998-99; Section 2, “Summary of the Baltimore City Public School System Student Performance”).

3. The BCPSS Still Is Performing Poorly On Other Objective Measures.

The BCPSS likewise continues to demonstrate inadequate performance on other objective measures of student performance. These measures include, among others, student performance on the CTBS, the SAT, and preparation for higher education. COMAR § 13A.01.04.03. By each of these measures, the education being provided to Baltimore City students still is indisputably inadequate.

a. The BCPSS Still Is Performing Poorly On The Comprehensive Test Of Basic Skills (CTBS).

Baltimore City administers the CTBS to elementary and middle schoolchildren in the areas of reading, language, mathematics, language mechanics and mathematics computation. (See, e.g., Baltimore City Public School System, *Maryland School Performance Program Report*, 1999, at 14, “Baltimore City 1998-1999”). Baltimore City’s most recent CTBS scores have provided good news for the district, and indicated that the improvements the schools have begun making since the Consent Decree have had results. After the 1999 administration of the exam, the parties’ jointly retained consultant, Metis, found significant improvement in reading at grades three and four, and in mathematics at grade five. (Metis Report at III-33).

The BCPSS continued this trend, when, in May of 2000, it reported the largest increases in the CTBS since the test was first administered, with improvement “in nearly every one of the city’s 122 elementary schools, in nearly all grades, in both math and reading.” (*Standardized Test Scores in Elementary Reading, Math Move Closer to National Average*, BCPSS Press Release, May 16, 2000; Liz Bowie, *City Pupils’ Test Scores Surge*, Baltimore Sun, May 17, 2000). New Board member Sam Stringfield, who is also a nationally recognized scholar and researcher in the area of effective education for at-risk students (and was an expert for the *Bradford* plaintiffs in the 1996 summary judgment proceeding) described the improvements as “the kind that professional educators hope to see once in a lifetime.” (*Standardized Test Scores in Elementary Reading, Math Move Closer to National Average*, BCPSS Press Release, May 16,

2000. Mayor O'Malley similarly stated that, "in nine years of serving in city government this is the most fantastic news we have heard about our school system." (*City Pupil's Test Scores Surge*, Baltimore Sun, May 17, 2000).

Baltimore City's performance on this measure of educational achievement, however, is still far from satisfactory, and remains far below both Maryland and national averages. (*Id.*). On the 1999 CTBS exams, for example, Baltimore City's 4th graders scored in the 34th percentile nationally in reading comprehension, and the 24th percentile in mathematics. (1999 MSP Report, State and School Systems, at 14). This result represented a slight improvement over these 4th graders' reading comprehension performance in 1997, when they scored in the 33rd percentile. (*Id.*) At the same time, however, these students declined from the 1997 mathematics score, which ranked in the 26th percentile. (*Id.*).

The following table provides the currently available scores, and indicates the percentage of Baltimore City students scoring at or above grade level (defined as the 50th percentile or above nationally) on the CTBS:²³

	1st Grade	2nd Grade	3rd Grade	4th Grade	5th Grade
Math					
1998	30.3	23.7	22.7	18.0	15.3
1999	28.8	26.0	21.7	18.3	16.7
2000	40.5	32.6	31.5	24.5	28.3

²³ This information is from "City Pupil's Test Scores Surge," Baltimore Sun, May 17, 2000, available at <http://www.sunspot.net/co.../story?section=cover&pagename=story&storyid=11503402178>.

Reading Comprehension					
1998	29.4	24.2	28.1	21.9	17.7
1999	38.9	29.2	27.3	23.5	17.2
2000	48.4	34.6	37.1	23.1	34.5

While significant improvements have obviously been made, the scores still establish that approximately two-thirds of the BCPSS' schoolchildren tested are not performing at grade level, and that these children are falling further and further behind the national average.

b. The BCPSS Still is Performing Poorly on SAT Scores.

Students who wish to attend college generally must take the SAT. The SAT tests both math and verbal skills, with a 200 points minimum score and an 800 points maximum score possible in each subject. (Answer ¶ 73). A student's score on the SAT is a crucial factor in determining whether that student will be admitted to college. (*Id.*).

In 1996, when the Court determined as a matter of law that Baltimore City's students were receiving a constitutionally inadequate education, the City's mean total SAT score was 723, which was 186 points below the State average of 909 and 187 points below the national average of 910. (*Id.*). By 1998, the gap between mean total SAT scores for Baltimore City, and Maryland and the rest of the nation had grown. Baltimore City's mean total score was 815, which is almost 200 points below the State average of 1014, and more than 200 points below the national average of 1017. (BCPSS, *State of the Schools Report 1998-99*, Section 7, Table 7.1, 1998 Mean SAT Scores by School 1995 to 1998; CGCS at 14-15).²⁴ By this measure of school performance, more work plainly needs to be done to attain educational adequacy.

²⁴ Between 1996 and 1998, the SAT was "recentered" to raise the average total score to 1000. This adjustment accounts for most of the changes in BCPSS students' SAT scores between 1996 and 1998.

c. The BCPSS Is Not Adequately Preparing Its Students For Higher Education.

The State recognizes that one of the functions of an adequate school system is to prepare students for higher education. (Answer ¶ 71; Grasmick at 709-10). In 1995, only 32.2% of the students who graduated from Baltimore City high schools had completed the minimum course requirements qualifying them for admission to the University of Maryland System. (State's Admission 63-64). In 1998, this number had risen to 40.7%, and it was 44.3% in 1999. (BCPSS, *State of the Schools Report* 1998-99, Section 2, "Baltimore City 1997-1998"; BCPSS, *Maryland School Performance Program Report*, 1999 at 12, "Maryland State 1998-1999"). Statewide averages are much higher. In 1995, for example, 53.4% of students statewide had completed these requirements, and by 1999 the number had risen to 58.3%. (State's Admissions 63-64; 1999 MSP Report, State and School Systems, at 13).

The low rate at which the BCPSS prepares graduating students for college is particularly troubling in light of BCPSS' high dropout rate and low retention rate, discussed, *supra*, in Section I.A.1.c. For example, the 1998 holding-power figure is 39.7%. Thus, assuming a class of 600 started in 1994, and 39.7% of them or 238 remained to graduate, only 40.7% of the 238 member graduating class, or 97 students, would be prepared to enter college. Of the class that entered in 9th grade in 1998, the BCPSS, therefore, prepared only 16% of the students for college.

B. The State, In Fact, Has Acknowledged That Baltimore City Schools Have Failed To Provide An Adequate Education By Every Available Measure, And That Additional Resources Are Required To Bridge The Gap In School Performance.

Four years after this Court first found educational inadequacy as a matter of law, the students in the BCPSS are undeniably continuing to perform poorly on the MSPP standards, despite encouraging improvements. Dr. Grasmick has agreed with Metis "that, under the leadership of the New Board of School Commissioners and with the support of the City-State

Partnership, the BCPSS reform effort is headed in the right direction.” (Letter from Nancy Grasmick, State Superintendent of Schools, to Sen. Blount, et al., Feb. 24, 2000).

At the current rate of improvement, however, it still will be many years before the BCPSS comes close to closing the gap with other Maryland school districts, and longer yet before the BCPSS satisfies the State’s own standards for educational adequacy. The parties’ joint expert, the Council of the Great City Schools, concluded after examining the data: “[T]he results suggest that it may take nearly twenty years -- at the current pace -- to close the remaining achievement gaps between Baltimore City and the rest of Maryland, much less to meet the academic standards that the State has set for everyone.” (CGCS at 15).²⁵

Despite improvements, the BCPSS likewise still is not adequately educating students under every other contemporary educational standard discussed above. When evaluated together, the results under these standards establish that Baltimore City’s schools still are not providing the “thorough and efficient” education guaranteed by Maryland’s Constitution.

The State itself admitted four years ago that similarly deficient scores meant that Baltimore City was failing to provide an adequate education to “at risk” students. (*See* Grasmick at 805). As testified to by Mark Moody, the State’s Assistant Superintendent and its designee on the subject of MSPAP, Baltimore City’s schools “are demonstrating less than adequate delivery of educational services to the students” because these schools are performing well below State standards. (Moody 7/15/96 at 6; *see also* Grasmick at 23-26).

Since the Consent Decree was instituted, the State also has admitted that the commitment of additional resources is required to provide Baltimore City’s students with an adequate education. As Dr. Grasmick observed in commenting on Baltimore City’s increase in per-pupil spending since the Consent Decree:

²⁵ The conclusion of the Council of the Great City Schools is consistent with the conclusion reached by plaintiffs’ expert in the 1996 proceeding. In 1996, Dr. Samuel Stringfield (who is now a member of the New Board) testified then that given the BCPSS’ performance on the MSPAP measures, it will be “quite a few decades” before it meets the State’s “satisfactory” level of performance. (Stringfield at 40-41).

The increased funding provided to Baltimore City schools by the Maryland Partnership is another step toward establishing a level playing field for all Maryland students. For too long, Baltimore City students have received not only inadequate funding and resources, but an inadequate education as well.

(MSDE News Release, Partnership with State Boosts City's Per Pupil Spending, Apr. 17, 2000).

In light of the undisputed facts regarding the poor state of education in Baltimore City, it is time the State made good on its promise that “[n]o child should have to attend a failing school by accident of where he or she lives.” (Nancy S. Grasmick, State Superintendent of Schools, quoted in MSDE Bulletin, February 3, 2000, Vol. 11. No. 2, “State to Reconstitute 3 Baltimore City Schools,” available at <http://www.msde.state.md.us/MSDEBulletins/200/02-03.html>).

II. SUBSTANTIAL ADDITIONAL STATE FUNDING IS NECESSARY TO PROVIDE BCPSS STUDENTS WITH A CONSTITUTIONALLY ADEQUATE EDUCATION

The overwhelming weight of evidence demonstrates that, in order to provide its students with the “thorough and efficient education” guaranteed by Article VIII of Maryland’s Constitution, the BCPSS must receive additional funding of approximately \$260 million annually, plus the approximately \$600 million that is necessary to address the deficiencies in the BCPSS’ long-neglected physical facilities, paid over a reasonable period of time. Any analysis of the cost of providing a constitutionally adequate education in Baltimore City must start from one fundamental and undisputed principle: additional resources are necessary to educate students who live in poverty or otherwise are “at risk” of educational failure. A substantial majority of the BCPSS’ students, far more than in any other district in Maryland, live in poverty or otherwise are at risk. Providing these students with an adequate education means providing the BCPSS with sufficient resources to address their unique needs.

In light of the BCPSS’ disproportionate population of disadvantaged students, it is not surprising that *every* analysis of how much it will cost to provide an adequate education in the BCPSS demonstrates that the BCPSS needs substantial additional funds. Below, the New Board and the *Bradford* plaintiffs describe each of these various calculations of adequate funding, which include the New Board’s detailed remedy plan; the analysis performed by the Council of

the Great City Schools at the request of the parties' joint expert, Metis;²⁶ and the amount that the State itself has calculated is necessary to provide the independent contractor running the three reconstituted schools in Baltimore City to educate students in those schools.

Without exception, these calculations demonstrate that the BCPSS cannot adequately educate its students unless it receives additional funding of approximately \$260 million on an annual basis. The fact that *all* of these analyses reach similar results, and recommend additional funding within the same range, is compelling because the various analyses employ markedly different methods and come from several different sources. Collectively, these analyses plainly support a judicial declaration that education in the BCPSS will remain constitutionally inadequate unless the State acts to secure substantial additional funding for Baltimore City's schools.

A. The BCPSS' Disproportionate Number Of "At-Risk" Students Requires Additional Resources.

1. It Costs More To Educate At-Risk Students.

Baltimore City has a disproportionate number of students "at risk," and for that reason requires additional resources to provide these students with an adequate education. The State has defined students who are "at risk" as those who "face significant obstacles to achieving academic success." (MSDE, *Keeping You Current on Education Reform in Maryland*, MSDE Bulletin, Vol. 10, No. 10, May 18, 1999). Such obstacles may include living in poverty, attending schools with a high percentage of students who live in poverty, insufficient family support, or other economic or social factors. (*Id.*; Maryland's Challenge: A Report of the Commission for Students At Risk at 5; *see also* Stringfield at 32-33; Slavin at 30). The State has recognized that poverty is "the greatest obstacle to participation and academic success in school." (Report of the Governor's Commission on School Funding at 10).

²⁶ The report of the Council of the Great City Schools was included in the Metis report as Appendix A to that report. In this memorandum, that report is cited as "CGCS at ____." It can be found along with the remainder of the Metis report at Tab F in the Appendix of Primary Exhibits filed along with this motion.

All other things being equal, a student's performance is likely to be lower if she comes from a poor family or if a large share of her classmates come from poor families. Poor students are at risk of educational failure for a variety of reasons. Often, their homes or communities lack the resources to prepare them academically or they may have health or nutrition problems that make it more difficult for them to achieve. Children living below the poverty level are more likely than children who are not poor to have learning disabilities and developmental delays. (See, e.g., General Accounting Office, Report to Congressional Requestors, *School Finance: State and Federal Efforts to Target Poor Students*, at 34 (Jan. 1998); J.S. Coleman, E.Q. Campbell, C.J. Hobson, J. McPartland, A.M. Mead, F.D. Weinfeld, *Equality of Educational Opportunity* (1966)). As a result, studies show a strong correlation between high poverty and low test scores. (See Citizens' Commission on Civil Rights, *Title I in Midstream: The Fight to Improve Schools for Poor Kids*, at 7 (Summer 1999) (citing Michael J. Puma et al., *Prospects: Final Report on Student Outcomes*, at 12 (Washington D.C., Abt Associates, Inc., 1997)).

The State has correctly and unambiguously refused to relax performance standards for students living in poverty or those who are otherwise "at risk" of educational failure. (See Report of the Governor's Commission on School Performance at 11 ("it would be self-defeating" for Maryland to set different expectations for its "vital core" of achievements for students from "different backgrounds")). Dr. Grasmick has explained that modifying the standard "would communicate a belief system that only some children are capable of achieving a high standard of performance, [w]hen our philosophy is all children should be given the tools to achieve that high level of performance." (Grasmick at 119).

In order for poor students to meet the State's high performance standards, however, additional resources must be devoted to their education. As the State itself has recognized, it simply costs more to educate at risk students. In February 2000, Dr. Grasmick explained that, although the amount of additional funding needed to educate Baltimore's children is "subject to debate," there is no question that "the high concentrations of poverty and high percentages of

special needs in Baltimore City place a heavier burden on the schools and justify calls for increased resources.” (Letter from Nancy Grasmick, State Superintendent of Schools, to Blount, et al., Feb. 24, 2000, at 4).²⁷ See also Report of the Governor’s Commission on School Funding (Jan. 1994) at 8 (“the state must devote additional resources to children with special needs so that they can progress and learn equally rigorous content”).

Educational research also indisputably confirms that additional resources are necessary to educate at-risk students. If performance declines as poverty increases, then a district with a high proportion of children who live in poverty will need more money to achieve the same results as a low poverty district. (See General Accounting Office, Report to Congressional Requestors, *School Finance: State and Federal Efforts to Target Poor Students*, at 34 (Jan. 1998); William D. Duncombe & John M. Yinger, *Performance Standards and Educational Cost Indexes*, in National Research Council, *Equity and Adequacy in Education Finance: Issues and Perspectives* (eds. Helen F. Ladd, Rosemary Chalk, and Janet S. Hansen 1999) (surveying research)). As one author explained:

Existing cost studies all demonstrate that a harsher educational environment, as characterized by high rates of poverty and single-parent families, for example, results in a higher cost to obtain any given performance level. Just as the harsh weather “environment” in Minnesota ensures that people who live there must pay more during the winter time than do people in San Diego to maintain their houses at a comfortable temperature, the harsh educational “environment” in some school districts, particularly big cities, ensures that those districts must pay more than other districts, sometimes much more, to obtain the same educational performance from their students.

William D. Duncombe & John M. Yinger, *supra*, at 268.²⁸

²⁷ This February 2000 statement echoed Dr. Grasmick’s statement in her deposition in 1996, before the Consent Decree was entered, that “additional resources . . . need to be committed” to provide an education to Baltimore City’s “at risk students that is adequate in comparison to that provided to non-at risk students.” (Grasmick at 806).

²⁸ The New Board and *Bradford* plaintiffs may supplement this memorandum with expert affidavit[s] confirming that additional resources are necessary to educate students who live in poverty or are otherwise at risk.

The New Jersey Supreme Court in *Abbott* reached the same conclusion in construing the education clause in that state's constitution, which is identical in all material respects to Article VIII of the Maryland Constitution. To meet constitutional requirements, the *Abbott* court concluded that "poorer disadvantaged students" must be provided with additional resources sufficient "to enable them to compete with relatively advantaged students":

A thorough and efficient education requires such a level of education as will enable all students to function as citizens and workers in the same society, and that necessarily means that in *poorer urban districts something more must be added* to the regular education in order to achieve the command of the Constitution.

575 A.2d at 403 (emphasis added).

2. The BCPSS Has A Disproportionate Number Of At-Risk Students.

A substantial majority of BCPSS students indisputably are "at risk". Almost 70% of the students who attend BCPSS live in poverty, as measured by their eligibility for free and reduced lunches, the traditional measure of poverty among educators.²⁹ (See 1999 MSP Report, at 21). When Baltimore City is excluded from the mix, poor students constitute only 25% of the population in the rest of the State's schools. (*Id.*; CGCS at 7). For its part, BCPSS enrolls 72,916 children who are eligible for free and reduced price children, or almost a third of the *total* poor children in the entire State. (1999 MSP Report, State and School Systems, at 11, 21). As the parties' joint expert, the Council of the Great City Schools, explained: "[P]overty is concentrated in the Baltimore City schools at about twice the rate of any other school system in the State." (CGCS at 7).

²⁹ The State has recognized that eligibility for free and reduced price school meals is one of the best indicators of students at risk of performing poorly in school. (Governor's Commission on School Funding at 4). Eligibility for free or reduced price school meals is determined by household income, with students being eligible for free meals if their income does not exceed 130% of the federal poverty level and for reduced price meals if their income does not exceed 185% of the federal poverty level. (Task Force on Education, Funding Equity, Accountability, and Partnerships, Preliminary Report, at 49-50 (Jan. 1998)). There is "a strong direct relationship between the performance of schools and the percentage of school populations approved for free and reduced price lunch Schools with high proportions of students living in or near poverty have poor performance regardless of the school system in which they are located." (Governor's Commission on School Funding at 4).

BCPSS also has numerous schools in which there is a very high concentration of poor children. *Ninety-eight percent* (equaling 177 schools) of the 182 schools in the BCPSS have 30% or more students eligible for free or reduced price meals, and 87% (157 schools) have 45% or more poor children. Almost 30% (equaling 52 schools) in the BCPSS serve populations in which 90% or more of the children are eligible for free and reduced price lunches. (See 1999 MSP Report, Baltimore City (school level data on poverty); MSDE, 1998-99 Fact Book, at 5 (total number of schools)). Only three other schools in the entire state serve student populations in which 90% or more of the children live in poverty. (See Exhibit A attached hereto for a set of charts setting out free and reduced price lunch information for all of Maryland's districts).

Poverty at this level of concentration affects everyone. According to Superintendent Grasmick, when a large portion of the students in a given school live in poverty, the problems schools must confront are compounded. (Grasmick at 643-45). When the concentration of students living in poverty approaches half the population -- 40 to 50% of students -- it triggers the need for a school-wide approach to addressing the problems poverty brings. (*Id.* at 648-49). As Dr. Grasmick's testimony confirms, the school system-wide poverty level of nearly 70% dramatically underscores the magnitude of poverty as a problem for BCPSS.

In addition to living in poverty, a substantial number of Baltimore City students are also "at risk," or have special needs, in a variety of other ways. For example, a high degree of student mobility -- the number of students who enter and withdraw from school -- also is indicative of poverty or less stable families. (Grasmick at 599-601). In 1998-99, Baltimore City experienced withdrawal rates of 20.1% in elementary school, 26.1% in middle school, and 29.1% in high schools. (1999 MSP Report, State and School Systems, at 21). In contrast, the state as a whole had withdrawal rates of 11.4%, 11.2% , and 13.9% for these respective grade levels. (*Id.* at 11).

Pregnancy also places students at risk of educational failure. (See Palmer at 34; Carter at 144-46). Baltimore City's rate of births to teenagers is more than twice the rate of the remainder of the state. (Advocates for Children & Youth, Inc., *2000 Maryland Kids Count FactBook*, at 42,

& "Birth to Teens" Errata (in 1998, Baltimore City reported 90.4 births per 1000 to girls ages 15-19, while remainder of state had 42.8 births per 1000)).

Compounding the challenges BCPSS faces as of January 2000, the school system enrolled about one-sixth of the State's special education students. About 15.4% of all students enrolled in BCPSS received special education services, compared with 11.4% of all students elsewhere in Maryland. (CGCS at 7; *see also* 1999 MSP Report, State and School Systems, at 21, 11). Moreover, "urban schools tend to enroll students with more severe and costly disabilities, while suburbs often have greater percentages of students with lower-cost learning disabilities or attention deficit disorders." (CGCS, at 8). For instance, about 48% of BCPSS' special education students are taught in separate classes (defined as receiving special education services outside the regular classroom for more than 60% of the school day); only 25% of special education students statewide receive such services. (MSDE, 1998-99 Fact Book, at 28-29).³⁰

3. BCPSS' Unique Student Population Requires Additional Resources For Adequacy.

The additional amounts that the BCPSS received through the Consent Decree gave it the means to start improving the education provided to its at-risk student population, and the management changes and instructional reforms that the New Board has instituted clearly are beginning to have a promising impact. The Decree did not provide enough funding, however, to address the special needs of Baltimore City's disproportionately large at-risk student population. Before the Decree, the BCPSS' per pupil spending was \$465 less than the statewide average of \$6,338. (Selected Financial Data - Maryland Public Schools - 1994-95 - Part 3 - Analysis of Costs, Table 2). Now, the BCPSS spends \$103 *more* than the statewide average of \$6,821.

³⁰ Students also are "at risk" when they attend schools with a large proportion of inexperienced teachers. (MSDE, *Keeping You Current on Education Reform in Maryland*, MSDE Bulletin, Vol. 10, No. 10, May 18, 1999; Task Force on Education, Funding Equity, Accountability, and Partnerships, Preliminary Report, at 49 (Jan. 1998)). MSDE has recognized that the teaching force in the BCPSS is "increasingly inexperienced and untrained," because the system has undergone a "continuing struggle to attract and keep quality teachers at a time of severe teacher shortages." (Letter from Nancy Grasmick, State Superintendent of Schools, to Chairman Rawlings, Mar. 1, 2000).

(Selected Financial Data - Maryland Public Schools - 1997-98 - Part 3 - Analysis of Costs, Table 2).

This funding means that the BCPSS' per-pupil spending is now less than 2% greater than the statewide average -- that the BCPSS has, essentially, come into parity with the average spending of the remainder of Maryland's school districts. Article VIII, however, does not require parity, it requires adequacy. As *Hornbeck* recognized, it makes no difference whether one Maryland school district has available to it more funds than another district, so long as each such district is able to provide an education that is adequate by contemporary educational standards. 295 Md. at 637, 458 A.2d at 779. Baltimore has far more poor students than the statewide average, and funding *adequacy* for those students requires substantial additional state funds.

B. The New Board's Remedy Plan Documents The Need For Substantially Increased Funding.

The New Board's Remedy Plan confirms the need for substantially increased funding, of approximately \$2662 per FTE pupil or \$260 million annually. In the Remedy Plan, the New Board assessed the types of services and programs that the New Board considers necessary adequately to educate BCPSS students, and then determined the further costs of providing such programs, in addition to funding already available to the system.

1. The Remedy Plan Is Predicated On A Thorough Assessment Of Baltimore City's Additional Needs.

The BCPSS spent a great deal of time and effort, beginning in the summer of 1999 and continuing through the early part of 2000, developing a detailed plan and seeking support for its enactment from virtually every level of State government. In undertaking these measures, the New Board satisfied the mechanism that the Consent Decree provides for the BCPSS to request funds in amounts greater than those described in paragraph 47 (i. e., \$30 million in fiscal year 1998, and \$50 million dollars in each of fiscal years 1999-2002). As required by Paragraph 52 of the Consent Decree, the New Board accompanied its request for additional funds with a detailed plan showing why such funds are needed and how they would be spent.

This work began on June 13, 1999, when a group consisting of high level representatives of the BCPSS and the *Bradford* plaintiffs convened to develop a plan to provide a level of funding adequate to assure that Baltimore City's schoolchildren receive the thorough and efficient education guaranteed by the State's Constitution. (Affidavit of New Board Chairman, J. Tyson Tildon, ¶ 3). Beginning in June 1999, a New Board consultant also met with representatives of various educational organizations and foundations to solicit input into a comprehensive remedy plan to support the appropriation of additional State funding. Subsequently, the working group spent several months researching, developing, and refining this plan. (Tildon Aff. ¶ 9).

The Remedy Plan was completed on October 6, 1999. It consisted of two documents entitled (1) Building on Success: A Remedy Plan to Address Continuing Funding Needs of the Baltimore City Public School System, and (2) Seeing Success: Baltimore Public School System Integrated Reform Plan. The second of these documents set forth specific programs and services needed to provide for educational adequacy, and estimated that these programs would cost approximately \$260 million in additional funds per year. The first document asked the State to make a down payment of \$49.7 million towards the necessary amount for fiscal year 2001. (When this memorandum refers to the "Remedy Plan," the reference is to the full plan, seeking approximately \$260 million dollars, unless the context and reference make clear that the "down payment" plan is intended).³¹

The Integrated Reform Plan, which demonstrates that an additional \$260 million in instructional funds and \$133 million for capital improvements are necessary annually to support educational adequacy, is designed to rectify the various deficiencies that have held down

³¹ While this plan was being developed, the BCPSS contacted various State government officials, including Senator Barbara Hoffman, Chair of the Senate Budget and Taxation Committee, Senator Clarence Blount, Chair of the Senate Economic and Environmental Affairs Committee, Delegate Howard P. Rawlings, Chair of the House Appropriations Committee, Dr. Nancy Grasmick, State Superintendent of Schools and Kathleen Kennedy Townsend, Lieutenant Governor. Each of these State officials was advised of the Board's intent to develop such a plan in order to obtain greater amounts of funding from the State. (Tildon Aff. ¶¶ 5-7). On October 28, 1999, Board representatives presented the completed plans to Major Riddick, the Governor's Chief of Staff. (Tildon Aff. ¶ 13).

Baltimore City's student achievement prior to the enactment to the Consent Decree. The Reform Plan initiatives were derived from the professional judgment of the BCPSS Board, BCPSS' academic officers, management personnel, and stakeholders, all of whom who participated in its drafting. (See Affidavit of Elizabeth Morgan, Chief Academic Officer for BCPSS'). This working group also examined the professional educational literature to identify effective research-based reforms that should be implemented. Each of these reform initiatives is supported by empirical research containing evidence of the success achieved by similar programs, a description of each specific program or service, and the calculations or assumptions from which the request for additional funding were derived.

**2. The Process By Which The Board Adopted The
Remedy Plan Conforms To An Accepted Model Of
Determining Adequacy.**

When it adopted the Remedy Plan, the New Board conformed to one of the generally accepted models among experts in the field for deriving the cost of an adequate education. This model, called the "educator judgment," "professional judgment," or "market basket" approach, involves calculating the cost of providing an adequate education for students based on a consensus among educators about the appropriate educational services that should be provided in a given set of circumstances. The approach relies on educational research and the professional judgment of educators and others to construct the "market basket" of services and programs that would constitute an appropriate educational program, taking into account the special needs of students and other circumstances existing within a given school district. Panels of educators and other stakeholders are convened and research in the area is reviewed to identify the appropriate components of the system. After the components of such a system are identified, costs are calculated and then summed up to determine the total cost of an adequate system. See James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, in National Research Council, *Equity and Adequacy in Education Finance: Issues and Perspectives* (eds. Helen F. Ladd, Rosemary Chalk,

and Janet S. Hansen 1999) (same); *Campbell Co. School District v. State*, 907 P.2d 1238 (Wy. 1995). This accepted approach is precisely the one the New Board employed in the Remedy Plan.³²

3. The Initiatives In The Remedy Plan Are Appropriate Components Of An Adequate Education.

A variety of evidence necessitates the conclusion that the educational components formulated by the Remedy Plan's drafters are required to provide an adequate education to children in the BCPSS. Perhaps most importantly, all of the Remedy Plan initiatives are closely aligned with both the BCPSS Master Plan, which was approved by the State Board of Education in July, 1998, as well as the statewide initiatives contained in the Fiscal Year 2001 Budget Proposal of MSDE. (MSDE Report to Senate Budget & Finance Committee at 7; Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Hoffman and Delegate Rawlings, Aug. 3, 1998; Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Blount, et al., Feb. 24, 2000, at 4). The Remedy Plan initiatives include:

- Increasing instructional time by extending the school day, providing for summer school programs, and providing intensive individualized tutorials for all children performing below grade level;
- Expanding the instructional curriculum by implementing art, music and physical education in all elementary schools, enriching gifted and talented programs, and by offering foreign language classes in all schools;
- Hiring additional teachers to provide for system-wide pre-kindergarten, full day kindergarten and smaller class size at all levels;
- Implementing a plan to increase instructional technology;
- Expanding alternative offerings for disruptive students and expanding dropout prevention programs;
- Expanding student support services by adding social workers, mental health professional services and guidance counselors; and

³² The New Board and the *Bradford* plaintiffs may supplement this memorandum with expert affidavit[s] that confirm that the New Board conformed to the educator judgment model when it derived the Remedy Plan.

- Extending the school year to allow for extended professional development and increased teacher compensation.

These initiatives are unquestionably designed to provide a level of education common to all successful school systems, and to provide the supplemental preventative and remedial services that at-risk student populations require.³³

In addition, the parties' joint expert, Metis, recognized that the Remedy Plan initiatives would be valuable additions to the BCPSS' educational programs, and recommended that the New Board receive additional funding for these types of programs. (Metis, Executive Summary-30 & -15-16 (recommending increased funding for full-day pre-kindergarten and kindergarten; middle and high school initiatives; extended learning opportunities for all students; strategies to improve the BCPSS' competitive position for teacher recruitment and retention; additional opportunities for professional development; technology in the classroom; and smaller classes)). The Council of Great City Schools likewise recommended using increased funding for providing full service pre-school programs; expanding summer school and extended day programs; reducing class sizes; raising average teacher salaries; providing extensive professional development; providing technology in classrooms, and providing teachers with training on their use; and the like. (CGCS at 19).³⁴

Metis, indeed, has found that, to the extent that the BCPSS already has been able to implement Remedy Plan initiatives for some students with Consent Decree funds, those students clearly have benefited from the initiatives. For example, the BCPSS instituted a new elementary school curriculum framework based on state standards for each subject area. (Metis at II-7). Elementary schools have implemented the Houghton-Mifflin, Open Court, or Direct Instruction

³³ The affidavits of Dr. Elizabeth Morgan, Chief Academic Officer for the BCPSS, and Gayle V. Amos, Special Education and Support Services Officer, describe the Remedy Plan initiatives, the research supporting them, and the necessary costs to implement them, both in FY 2001 and on an ongoing basis.

³⁴ The New Board and the *Bradford* plaintiffs may supplement this memorandum with an expert affidavit confirming that the programs and initiatives listed in the Remedy Plan are of the type that have been demonstrated to be helpful in providing an adequate education to at risk students.

program to teach children language arts and reading. (Metis at II-8). Direct Instruction, a very structured process to teach children to read, was used primarily in reconstitution - eligible schools. (Metis at II-8). Metis found that, on average, scores of students in Direct Instruction schools improved faster than those for students in non-Direct Instruction schools. (Metis at III-40).

The New Board has already implemented several after-school and summer school programs to increase instructional time, using results from the CTBS assessments to identify students functioning below their grade level to participate in after-school and summer programs. (Metis at II-14).³⁵ Summer school, Metis concluded, “helped to increase achievement for a majority of students who participated.” (Metis, Executive Summary-16). For instance, the Parks & People Foundation through the SuperKids Camp provided services for 1,800 BCPSS rising third-graders. (Metis at IV-26; Selected Summer Highlights). An external evaluation by the University of Maryland, Baltimore County, reported that students who participated in SuperKids camp showed gains equivalent, on average, to two months of reading achievement. (Metis at IV-26, citing *SuperKids Camp 1998, Final Report*, prepared for Parks & People Foundation by Joy Gorham Hervey, March 1999).

Achievement gains at Mount Royal Elementary-Middle School also are illustrative of the impact extended instruction time can have. At Mount Royal, students are tutored before and after school, on Saturdays, and in summer programs. In 1999, this Title I school, serving 867 students, posted the highest fifth-grade math scores and gained more than 15 points on its MSPAP composite score, improving to 42.2%, since 1993. (MSDE, Maryland Classroom, Vol. 5, No. 2, Jan. 2000).

The State, likewise, has recognized that the types of programs contained in the Remedy Plan are appropriate vehicles for the achievement of educational adequacy in the BCPSS and (at

³⁵ Metis concluded that these programs served only a fraction of the total student population in need of increased instructional time. Some 55,894 students were performing under grade level, and the supplemental programs served only 9,500 of them. (Metis at IV-25).

least for the “downpayment” amounts the Board requested for FY 2001), MSDE has supported additional funding for these programs. In a report to the Senate Budget & Finance Committee submitted earlier this year, MSDE stated that “the requests for additional funding in the BCPSS Remedy Plan are reasonable and can be expected to positively affect student achievement.” (MSDE Report to Budget & Finance at 7). The State Board endorsed the FY 2001 Remedy Plan as “an important and strategic response to the ongoing needs of the BCPSS.” (Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Blount, et al., Feb. 24, 2000, at 5). And the MSDE agreed with Metis that “increased funding for certain specific strategies in the Master Plan is warranted.” (Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Blount, et al., Feb. 24, 2000).

Many of the Remedy Plan programs also are consistent with Statewide initiatives MSDE proposed in its FY 2001 budget or has otherwise endorsed. (MSDE Report to Budget & Finance Committee at 7). The State Board’s academic intervention initiative, which addresses the types of programs that MSDE deems appropriate for educating at-risk children, correlates directly with the types of programs that the New Board has proposed in the Remedy Plan. (*See Every Child Achieving: A Plan for Meeting the Needs of the Individual Learner, Maryland’s PreK-12 Academic Intervention Initiative* (adopted by the State Board on Oct. 27, 1999)). The State noted, for instance, that among the most successful programs for at-risk children are “prekindergarten programs for at-risk 3 and 4 year olds, full day kindergarten, class size reduction in reading and mathematics in the primary grades, and the use of technology to assist learning activities” -- all programs included in the BCPSS’ Remedy Plan. (*Id.* at 103). The MSDE also endorsed increased instructional time, in the form of extended day programs, Saturday programs, and summer school programs (*id.* at 24-25), as well as individualized tutoring by both professionals and peers for students having difficulty (*id.* at 31, 107). With respect to individualized tutoring, the MSDE explained: “Perhaps the most direct and certain translation of dollars into achievement gains is the provision of one-on-one tutoring for students

having serious difficulties in school.” (*Id.* at 32 (quoting Slavin, et al., 1991)). Consistent with the State’s own views about the efficacy of such initiatives, the Remedy Plan seeks \$21 million for individualized tutoring for students behind grade level. (Remedy Plan at 1).

Other programs for which the New Board seeks funding in the Remedy Plan that MSDE has endorsed include increased professional development, teacher mentoring, and teacher recruiting (*compare* Remedy Plan at 9-13 with *Every Child Achieving* at 35-62);³⁶ increased technology in schools to ensure that students have access to modern computer technology and the Internet and that teachers are properly trained to use this technology (*compare* Remedy Plan at 9 with *Every Child Achieving* at 30, 104 and *State of Innovation: The Maryland Plan for Technology in Education 1999-2003*); and increased access to social workers, psychological services, and guidance counselors in schools (*Every Child Achieving* at 29, 100; MSDE, *Fact Sheet 8: Schools for Success/Goals 2000: Maryland’s Plan for School Improvement*, available at <http://www.msde.state.ed.us/Fact%20Sheets/fact8.html>).

It is also significant that the New Jersey Supreme Court, in interpreting a “thorough and efficient” clause identical to that in Maryland’s Constitution, also found that a program of services much like those in the Remedy Plan was necessary to provide an adequate education to students in New Jersey’s poorer urban districts. The Court employed an expert in the field, Allan Odden, to determine the menu of programs and services necessary adequately to educate students in the state’s poor urban districts and to determine the costs of such programs and services. *Abbott v. Burke*, 710 A.2d 450 (N.J. 1998). Among the programs necessary for poor children identified by Dr. Odden and the *Abbott* court were full-day kindergarten, pre-kindergarten programs, whole school reform models, and other supplemental programs similar to those outlined in the New Board’s Remedy Plan. *Id.* at 461-64, 467-69, 510-11, 513-14. The Court endorsed smaller class size, more tutors for at-risk students, increased professional development

³⁶ Indeed, Dr. Grasmick praised the structure for teacher salary increases proposed in the New Board’s downpayment plan for FY 2001 as “a structure and plan that can promote success.” (Letter from Nancy Grasmick, State Superintendent of Schools, to Senator Blount, et al., at 2, Feb. 24, 2000).

to ensure that teachers are given the support and training they need to educate at-risk students, improved access to technology, access to social services within schools, alternative education programs for disruptive students, and improved facilities. *Id.* at 513-14, 525-26.³⁷

4. The Remedy Plan Demonstrates The BCPSS' Substantial Additional Need.

All of these factors demonstrate that the New Board's Remedy Plan documents the programs and services that are necessary for the BCPSS to approach educational adequacy. The Plan also documents the substantial costs of such an adequate education, approximately \$260 million per year in additional funds for instructional and operational programs, annually.

C. The Expert Jointly Hired By The State And New Board Also Confirms The Need For Substantially Increased Funding.

The Council of the Great City Schools ("CGCS"), the expert entity retained by Metis to determine adequacy, also confirmed the need to substantially increase funding by approximately \$2,698 per pupil or approximately \$277 million annually. The State and New Board jointly retained Metis, jointly developed Metis' scope of work, and jointly paid Metis, all as required by the Consent Decree. (Consent Decree ¶¶ 40, 41). In the Decree, the parties agreed that the interim evaluator would assess the "sufficiency of additional funding provided by the State" and could make recommendations concerning "the need for funding in excess of the amounts provided herein in order for the BCPSS to provide its students with an education that is adequate when measured by contemporary educational standards." (*Id.*). Accordingly, the RFP issued by the State and New Board asked Metis to determine whether the funds available to the BCPSS, including the additional funds provided under the Consent Decree, were sufficient to enable students to meet the State's MSPP standards. (Metis at IV-1).

³⁷ See also Citizen's Commission on Civil Rights, *Title I in Midstream: The Fight to Improve Schools for Poor Kids*, at 7 (Summer 1999) ("Without adequate funding, schools cannot provide such vital services as preschool programs, early reading programs, reduced class size, counseling, parental involvement programs, and professional development").

To determine how much an adequate education would cost in Baltimore, Metis employed an expert consulting group that specializes in school funding analyses, the Council of the Great City Schools. With the consent of the committee of stakeholders supervising the evaluation (which included representatives of the MSDE), the CGCS undertook to analyze how much money was necessary for the BCPSS to meet the State's standards for adequate school performance. (Metis App. L).

The CGCS found that the BCPSS does *not* currently have sufficient funds to provide an adequate education to its students. (Metis, Executive Summary-3; IV-14). According to the CGCS, "*Baltimore cannot meet or even come close to meeting the State's standards with its current resources.* Nor can it accelerate its academic gains much more without substantial new investments in the children attending the Baltimore City Public Schools." (CGCS at 20 (emphasis added)).

The CGCS used one of the commonly accepted methods of determining how much it will cost to produce specified student outputs, such as satisfactory scores on measures like Maryland's MSPP. This method, sometimes called the "successful schools" method, looks at other school districts in the State that are meeting the state standards, or coming close to meeting them. The method assumes that what those districts are spending is adequate, and uses that number as a benchmark. This approach then adjusts for differences in local circumstances, such as the presence of a disproportionate number of poor students. See David H. Monk & Jennifer King Rice, *Modern Education Productivity Research: Emerging Implications for the Financing of Education*, in National Center For Education Statistics, *Selected Papers in School Finance 1997-99* (William J. Fowler, Jr., ed. 1999).

As mandated by this methodology, the CGCS first determined the average per pupil spending of districts in Maryland that were closest to satisfactory on State MSPP standards. It used those districts' average spending, \$7,684 per student,³⁸ as a benchmark. It then adjusted

³⁸ The CGCS used 1998-99 estimated spending data provided to it by the MSDE. (CGCS at 18 n.1).

this amount (using a set of “weights” for students with special needs that is confirmed by research in the field) to account for Baltimore City’s disproportionate number of poor and otherwise disadvantaged students. (CGCS at 18-19).

The CGCS used a “weight” of 1.2 for poor students, assuming that it costs 20% more to educate a student who lives in poverty. As the CGCS noted, weights similar to these have been used by the General Accounting Office, Report to Congressional Requestors, *School Finance: State and Federal Efforts to Target Poor Students*, at 34-35 (Jan. 1998). School finance researchers have used similar weighting factors to account for students with special needs. (See Kern Alexander, *Testimony Concerning Federal Funding of Elementary and Secondary School*, presented before the Subcommittee on Elementary, Secondary, and Vocational Education, Committee on Education and Labor, U.S. House of Representatives, Nov. 7, 1991). In fact, the figure the CGCS used for poor students, 1.2, is lower than that used by the GAO (1.6) and other experts. (GAO, *supra*, at 34 & 35 n.46 (noting that school finance experts estimated that the additional cost for educating poor students ranges from 20 to 100 percent above the average per pupil cost, equivalent to poor student rates ranging from 1.2 to 2.0); see also Alexander, *supra* (counting a student living in poverty as 1.5)).³⁹

The CGCS concluded that, in light of Baltimore City’s disproportionate number of poor students and students who were otherwise at risk, a total per pupil expenditure of \$10,274 was necessary for the BCPSS to gain parity with the districts that are closest to meeting State standards for adequate school performance. Assuming a current level of spending at \$7,576 (based on the MSDE’s 1998-99 estimates), this calculation amounts to an extra \$2,698 per pupil or approximately \$277 million annually. (CGCS at 19).⁴⁰ Metis adopted and incorporated this

³⁹ If the CGCS had used a higher weight for poor students, such as the 1.6 used by the GAO or the 1.5 employed by Alexander, its conclusion about the extra funds needed to bring the BCPSS into adequacy would have been much larger.

⁴⁰ Moreover, the CGCS noted that it would take “several years” of adequate funding before student performance in all grades would approach the achievement levels of the State’s better performing districts. (CGCS at 20).

finding, recommending that the BCPSS “seek increased funding to bring BCPSS up to the level of adequacy identified by the Council of the Great City Schools.” (Metis, Executive Summary-29).⁴¹

D. The Need For Substantially Increased Funding Is Also Confirmed By The State’s Plan Of Operation For The Three Reconstituted Schools In Baltimore City.

As noted earlier, the State Board of Education voted this past February to reconstitute -- *i.e.*, to take over control of -- three Baltimore City elementary schools, Montebello Elementary (School #044), Gilmor Elementary (School #107), and Furman Templeton Elementary (School #125). The State Board issued a request for proposals seeking a private contractor to operate and manage the three reconstituted schools. The State Board eventually selected Edison Schools, Inc. (“Edison”) to run the schools. (*See* Affidavit of Howard T. Linaberg ¶ 2).

The State’s decision to take over these three schools is not only evidence of continued inadequacy; it is also evidence of the substantially greater amounts required to provide an adequate education, because the State is providing Edison with significantly greater resources to operate the three schools than are available to other BCPSS schools to educate their students.⁴²

Pursuant to its contract, Edison will receive \$7,462 per pupil in each of the three reconstituted schools. This figure was derived by taking the “[t]otal expenditures reported by the Baltimore City Public School System for FY 1999 (net of food service, community services, capital outlay, adult education, equipment, and transfers) divided by equated average daily membership enrollment.” (Contract for the Operation and Management of Schools Under State Reconstitution in Baltimore City (“Edison Contract”), Attachment II, n.1). In other words,

⁴¹ The New Board and *Bradford* plaintiffs may supplement this memorandum with expert affidavit[s] confirming that the CGCS employed a reasonable methodology, generally accepted by school finance experts, to calculate adequate funding.

⁴² By paying Edison more than other BCPSS schools receive, the MSDE appears to be violating a provision of the reconstitution regulations designed to ensure cost neutrality for the resident school system in which the reconstituted schools are located. *See* COMAR 13.A.01.04.08.B.5.

Edison will receive, for each pupil enrolled in the three reconstituted schools, a payment roughly equivalent to the amount the BCPSS spends on a district wide basis, per pupil, to operate the schools.

But in any school system a significant portion of the total operating costs is spent outside the school, to fund central office operations and other functions.⁴³ The CGCS expert report on the funding of Baltimore City schools determined that the BCPSS operates relatively efficiently, with a higher percentage of funds devoted to instructional expenditures (74.1%) and a lower percentage devoted to centralized and community leadership (2.9%) than the national average. (CGCS at 16). Nevertheless, expenditures outside the school are significant. Funds actually utilized in the operation of an individual school are far lower than the BCPSS' total per pupil operating expenses. A comparison of the funds provided to Edison with the actual current costs of operating the three reconstituted schools is quite revealing.

Based on the BCPSS' FY 2000 budget allocations, the total projected school costs for the BCPSS' operation of Montebello, Gilmor, and Furman Templeton Elementary Schools is \$7,237,750, or \$5,040.22 for each of the 1,436 FTE students enrolled in those schools. By contrast, at \$7,462 per FTE pupil, Edison will receive \$10,715,432 to run the three schools. This difference works out to nearly \$3,500,000, or \$2,421.78 per pupil. (See Linaberg Aff. ¶¶ 7-8 & Exh. 1). If State funding for all of Baltimore City's public schools was increased by this same \$2,421.78 per pupil figure, State support for the BCPSS would increase by \$236,498,926.⁴⁴

⁴³ Edison will not bear most of these costs. Pursuant to the contract BCPSS is obliged to provide most of these centralized functions for Edison, including facilities and equipment, capital repairs and improvements, food services and health services. (Linaberg Aff. ¶ 4).

⁴⁴ In fact, the disparity in funding for the Edison schools versus the BCPSS may be even greater. Plaintiffs understand that the MSDE intends to count pre-K and kindergarten students as full students for purposes of compensating Edison, not as 0.5 FTE students as they are currently counted. (Linaberg Aff. ¶ 9). If Edison receives a full \$7,462 for each pre-K and kindergarten student, then the total funding difference for the three schools increases to \$4,686,526, or \$2,932.74 per pupil (based on total pupil count). If State support to the BCPSS were increased by this amount, it would yield an additional \$302,298,041 to improve the schools.

The Edison contract was the product of an arms-length negotiation between the MSDE and a private contractor. It provides a reasonable basis for determining the real cost to purchase educational services in the open market.⁴⁵ The additional \$2,421.78 per pupil that the State agreed to pay Edison thus provides strong confirmation of the additional level of funding required by BCPSS to attain adequacy.

E. Reports On The Physical State Of BCPSS' Facilities Also Confirm The Need For Substantially Increased Funding For Capital Expenses And To Update The Schools' Capacity For Technology.

The report of an independent consultant on the state of BCPSS' physical facilities demonstrates that, in addition to additional amounts for instructional costs, the BCPSS needs \$606 million (paid out over a reasonable amount of time) to salvage its deteriorating physical facilities. The State Board recognizes that a physical environment conducive to teaching and learning is an important component of an adequate education. COMAR § 13A.03.01.02C(14)-(15). Dr. Grasmick has explained that a "decently maintained physical facility for each of the schools so that children can learn in a clean and relatively attractive environment" is part of an adequate education. (Grasmick at 728-29).

Case law also confirms that adequate physical facilities, including physical facilities that are equipped to permit students access to computers and the Internet, are essential to a "thorough and efficient" education. The Supreme Court of New Jersey has determined that "the condition of school facilities has always been of constitutional import." *Abbott v. Burke*, 693 A.2d 417, 437 (N.J. 1997). "Deteriorating physical facilities relate to the State's educational obligation, and [the court] continually ha[s] noted that adequate physical facilities are an essential component of that constitutional mandate." *Id.*

⁴⁵ In fact, it is quite possible or even likely that Edison accepted less than fair market value for the contract, or that it intends to supplement state funding with additional resources of its own, because of Edison's desire to expand its market as a private manager of public schools.

The physical state of the schools likewise was a major factor in the Ohio Supreme Court's decision that Ohio's school-funding scheme violated the Ohio Constitution's requirement of a "thorough and efficient system of common schools." See *DeRolph v. State*, 78 Ohio St. 3d 193, 212, 677 N.E.2d 733 (1997). In addition to egregious health and safety violations, including poor heating and cooling systems, the Ohio Supreme Court observed:

None of the appellant school districts is financially able to keep up with the technological training needs of the students in the districts. The districts lack sufficient computers, computer labs, hands-on computer training, software and related supplies to properly serve the students' needs. In this regard, it does not appear likely that the children in the appellant school districts will be able to compete in the job market against those students with sufficient technological training.

Id. at 209; see also *Abbott*, 693 A.2d 417, 438 ("Most schools in the special needs districts . . . are physically incapable of handling new technology").

A recent report by 3D/International ("3D/I") on the state of the facilities in the BCPSS has revealed the inadequacies of these facilities. (See Affidavit of Darlene Abney, Acting Business Services Officer (describing 3D/I report)). According to the report, "BCPS buildings are rapidly deteriorating." (*Comprehensive Facilities Assessments*, Final Report For Baltimore City Public Schools, Feb 9, 1998, 3D/International, Summary Report, at Section 3, Capital Budget Recommendations, at 1). "Major areas of concern" articulated in the report included "obsolete and deteriorating heating ventilating and air condition (HVAC) systems; outdated electrical systems; worn roofs and windows; cracks in the building structures; battered doors and walls; worn pavement and play surfaces; water infiltration." (*Id.*; Abney Aff. ¶ 5). Over half of the schools surveyed were determined to be in "critical" or "poor" condition. (*Comprehensive Facilities Assessment*, Summary Report, at Section 6, BCPS Building System Condition Ranking Process, "Building Systems Condition Breakdown").

The 3D/I report concluded that the cost of remedying deficiencies for the 176 schools surveyed totaled \$606,650,883, which did *not* include the cost of correcting "many civil and structural deficiencies requiring detailed testing and investigation." (*Id.*). In addition, the report

concluded that the current level of funding is insufficient to “reverse the rapid deterioration of the BCPS,” and fails to “correct the rapid deterioration of schools.” (*Id.*, Summary Report, at Executive Summary, at 1). The report further determined that the amount of capital funding that BCPSS requested for FY 2001 (\$40 million) “is not an acceptable option” in light of the seriously substandard condition of the facilities. (*Id.*, Summary Report, at Section 3, Capital Budget Recommendations, at 1). 3D/I recommended additional capital funding of \$188.9 million in year one, \$137.9 million in year two, and \$88 million in each of the following eight years. (*Id.*; Abney Aff. ¶ 7).

Moreover, the BCPSS is woefully behind other school districts in providing its students with access to technology in their classrooms, both in terms of the numbers of computers available to children and in terms of the access to the Internet and other modern technology available in classrooms and schools. The Maryland Plan for Technology in Education has established a goal that “[e]very learner has access to and use of technology in classrooms and schools.” (Dec. 1998, Maryland Business Roundtable for Education, Committee on Technology in Education, *State of Innovation: The Maryland Plan for Technology in Education 1999-2003*, at 2). By 2003, the State hopes to ensure that “every [Maryland] learner . . . will have access to information and communications resources in all instructional areas of school buildings.” (*Id.* at 6). The State explained:

All Maryland students, regardless of learning styles, abilities, achievement levels or economic status, need a reasonable amount of time working with a sufficiently powerful computer if technology is to significantly improve their academic performance. They need to be connected through technology, with their peer and teachers in the local school environment in order to collaborate, share resources and exchange information.

Further, in order for Maryland’s students to fully participate in today’s world economy, they must be able to utilize vast resources of the global telecommunications network. Networks should be developed to allow access and interaction from all locations within school buildings and local systems as well as throughout the state.

(*Id.* at 11).

In order to “ensure access for all learners,” Maryland has a state-wide target of a student to high-capacity computer ratio of 5:1 by 2003. (*Id.* at 7). The BCPSS is woefully behind the rest of the State in starting to meet these state-wide goals. The BCPSS has a ratio of 14:1 in its elementary schools, and 8:1 in its secondary schools. The BCPSS system-wide average is 11:1 while the statewide average is 8:1. (March 28, 2000 Memo From Michael Pitroff to Fred Cusimano, BCPSS Technology Summary, at 1).

Only 50% of Baltimore City’s schools have at least one computer available for student use, compared to the State average of 68%, and the State target of 100%. This statistic means that in *one half* of City schools there is not even *one* computer available to students. The teachers fare no better. Only 47% of City schools have at least one computer available for teacher use, compared to the State average of 70% and the State target of 100%. (*Id.*)

Another State goal is “[h]igh-speed internet access from every instructional area of each school.” (Dec. 1998, Maryland Business Roundtable for Education, Committee on Technology in Education, *State of Innovation: The Maryland Plan for Technology in Education 1999-2003*, at 7). Again, the BCPSS lags far behind in reaching this goal: only 22% of BCPSS classrooms have internet access, compared to the State average of 58%. (March 28, 2000 Memo From Michael Pitroff to Fred Cusimano, BCPSS Technology Summary, at 2). Moreover, only 41% of BCPSS schools even have TV reception, compared to the State average of 68% and the State target of 100%. (*Id.*).

Metis, the independent consultant jointly hired by BCPSS and the State, has acknowledged the fundamental inadequacies in the BCPSS’ facilities. Metis, after reviewing the 3D/I report, noted that current capital requests “represent[] only a fraction of the overall need.” (Metis, at Executive Summary-9). Metis recommended seeking increased funding fully to implement needed capital improvements, which it thought were “essential in light of the Master Plan strategies that are relying upon adequate facilities, i.e., technology updates, reduced size classes, summer school programs.” (*Id.*).

The State itself has agreed with these conclusions. In February 2000, Dr. Grasmick wrote: "There is no question that many of the schools in Baltimore City require significant upgrade of their physical plant." (Letter from Nancy Grasmick, State Superintendent of Schools, to Hon. Clarence W. Blount, et al., Feb. 24, 2000, at 4).⁴⁶

III. STATE FUNDING OF \$49.7 MILLION IN FISCAL YEAR 2001 IS NECESSARY BOTH TO MOVE TOWARD CONSTITUTIONAL ADEQUACY AND TO FULFILL THE STATE'S OBLIGATIONS UNDER THE CONSENT DECREE

In addition to declaring that approximately \$260 million in annual State funding is necessary for the BCPSS to provide a constitutionally adequate education, the New Board requests this Court to declare that State funding of \$49.7 million is necessary in FY 2001, as requested in the New Board's detailed *Building on Success* Remedy Plan. There are two independent bases for this declaration.

First, providing the \$49.7 million in FY 2001 is an essential "down payment" toward providing the foundation for constitutional adequacy. The \$49.7 million request was carefully tailored to meet only the System's most urgent education reform priorities. It constitutes the *minimum* amount needed to begin driving these reforms meaningfully toward the constitutionally adequate standard, and is therefore plainly required by the Maryland Constitution.

Second, the Consent Decree obligates the State to meet the New Board's request for \$49.7 million in additional funding for FY 2001. The State agreed in the Consent Decree to use its "best efforts" -- subject only to "availability of funds" -- to satisfy any request by the New Board for additional funding for Fiscal Years 1999 through 2002, so long as "the Board presents a detailed plan showing how such funds are needed and how they would be spent." (Consent Decree ¶ 52). The *Building on Success* Remedy Plan is indisputably the type of detailed and

⁴⁶ Dr. Grasmick noted that the State would be "tentative" about requests for capital until BCPSS completed a comprehensive review of facilities to address declining enrollment. (*Id.*). 3D/I is currently performing such a comprehensive review, and issued an Interim Report on March 3, 2000. (3D/International, *Comprehensive Facility Utilization Study, Interim Report* (Mar. 3, 2000)).

specific plan envisioned by the Consent Decree, and the State indisputably did not use its “best efforts” to fund the plan. The Consent Decree thus constitutes a second, independent basis for the Court to declare that the State is obligated to fund the \$49.7 million request.

A. Funding The \$49.7 Million Request For FY 2001 Is Required As A “Down Payment” Toward Constitutional Adequacy.

As demonstrated above in Part II of this memorandum, numerous independent sources compel the conclusion that approximately \$260 million in additional annual funding is necessary for BCPSS to provide a constitutionally adequate “thorough and efficient” education to its students. In response to the strong suggestions of numerous State officials, the New Board “applied a pragmatic lens to the funding picture and identified the ten most critical priorities for funding in FY 2001.” (Morgan Aff. ¶ 4; *see also* Tildon Aff. ¶¶ 13-15). The New Board thereby greatly reduced its request for FY 2001 to \$49.7 million. This request was the result of a comprehensive, educationally sound analysis by the New Board (in conjunction with expert consultants and key stakeholders) of the ten most critical educational priorities, and the minimum amount required to fund these priorities. (Tildon Aff. ¶¶ 3-4, 8-18; Morgan Aff. ¶¶ 5-14). Given that approximately \$260 million in State funding is required to reach the level of constitutional adequacy, the State is, *a fortiori*, constitutionally required to meet the greatly scaled down request of \$49.7 million as a “down payment” for real progress toward that goal.

B. The Consent Decree Obligates The State To Fund The \$49.7 Million Request For FY 2001 Because It Could Have Met This Request Using Its “Best Efforts”.

The New Board formally requested \$49.7 million for additional FY 2001 operating expenses on December 9, 1999, when it issued its *Building on Success* Remedy Plan. On that date, BCPSS CEO Dr. Robert Booker, Chairman J. Tyson Tildon and other New Board representatives met with Fred Puddeste, Secretary of the Maryland State Department of Budget

Management, to present the Remedy Plan and request that the \$49.7 million funding request be included in the FY 2001 budget. (Tildon Aff. ¶ 21).⁴⁷

From December 1999 through March 2000, Dr. Booker, Chairman Tildon, and other New Board representatives diligently lobbied the State (including meetings with the Governor and numerous key officials of both the Executive and Legislative branches) in an effort to achieve full funding for the \$49.7 Remedy Plan. (*Id.* ¶¶ 21-38). Through this effort, the New Board secured the support for full funding from, among others, the Baltimore City delegation to the State Senate, Mayor Martin O'Malley, and Superintendent Nancy Grasmick. (*Id.* ¶¶ 24, 31-33). Despite all of the New Board's lobbying efforts, and despite the widespread support for the Remedy Plan discussed above, the Governor ultimately requested in his supplemental budget, and the Legislature approved, only \$8 million targeted specifically to fund the Remedy Plan. (*Id.* ¶ 39).

Pursuant to the Consent Decree, the State was required to use its "best efforts" -- subject only to "availability of funds" -- to meet any request by the New Board for additional funding, provided that the request constituted "a detailed plan showing how such funds are needed and how they would be spent." (Consent Decree ¶ 52). There can be no serious dispute that the *Building on Success* Remedy Plan document was just such a detailed, specific request, and indeed, the State has never attempted to dispute that the Remedy Plan meets this condition of the Consent Decree. The Remedy Plan (which was drafted with the assistance and guidance of Superintendent Grasmick's Special Assistant, John Sarbanes) sets forth in detail the ten most critical educational priorities, the rationale for each priority, the funding sought for each priority, and the linkages between each priority and the BCPSS Master Plan as well as the MSDE Initiatives for FY 2001. (Remedy Plan; Morgan Aff. ¶¶ 5-14). In short, the Remedy Plan, if anything, was more detailed and specific than the Consent Decree required.

⁴⁷ As noted above, the New Board earlier had presented the complete \$260 million Remedy Plan to a number of State officials, including the Governor's Chief of Staff.

Despite being provided with the \$49.7 million Remedy Plan in early December, 1999, the State failed even to approach meeting the funding request, awarding BCPSS only \$8 million in funds targeted directly to the Remedy Plan. Dr. Booker, Dr. Tildon, and other New Board members met with Fred Puddester, Secretary of the Department of Budget and Management, on April 24, 2000 in an effort to obtain full funding of the Remedy Plan. (Tildon Aff. ¶ 41). Subsequent to that meeting, Secretary Puddester sent the New Board a revised listing of educational initiatives allegedly aligned with the Remedy Plan and the corresponding funding for BCPSS. The total funding under this listing was \$27.4 million. (*Id.* ¶ 42). On May 22, 2000, the New Board met with Major Riddick, the Governor's Chief of Staff; T. Eloise Foster, the new Secretary for the Department of Budget and Management; and Mary Ellen Barbera, Counsel to the Governor, to negotiate for full funding of the Remedy Plan. At this meeting Mr. Riddick stated that the Governor would agree to fund an additional \$3 million to support after school programs and an additional \$3 million to be obtained from State agency budgets. Thus, even assuming that all additional funding recently offered by the State should be counted under the Consent Decree as funding for the Remedy Plan – an assumption the plaintiffs dispute – the total amount would only be \$33.4 million.

In a year in which the State enjoys nearly a billion-dollar budget surplus (not including millions of dollars in tobacco settlement money), the State cannot seriously claim unavailability of funds as an excuse for not fully funding the Remedy Plan. It is therefore beyond dispute that the State has not lived up to its agreement – embodied in this Court's Consent Decree – to use its “best efforts” to fund the New Board's detailed, specific request for \$49.7 million in FY 2001. The New Board respectfully requests this Court to declare that the Consent Decree, in addition to the Maryland Constitution, requires the State to fully fund this request in FY 2001, by deficiency appropriation if necessary.

CONCLUSION

For the foregoing reasons, the New Baltimore City Board of School Commissioners and the *Bradford* plaintiffs request that this Court issue an order containing the following findings and declarations:

1. Although the management changes and new funding brought about by the Consent Decree have resulted in improvements to both the management and instructional programs of the Baltimore City public schools, the public schoolchildren in Baltimore City still are not being provided with an education that is adequate when measured by contemporary educational standards. They still are being denied their right to a “thorough and efficient” education under Article VIII of the Maryland Constitution.

2. Additional funding is required to enable the Baltimore City public schools to provide an adequate education measured by contemporary educational standards. The amount of additional funding required cannot be determined with absolute precision. The Court determines, however, that the Baltimore City public schools need additional funding of approximately \$260 million for educational operating expenses each school year, as well as approximately \$600 million in additional capital funding over a reasonable period of time to correct serious deficiencies in the school system’s facilities, based on: (a) the findings of the independent evaluator jointly hired by the Maryland State Board of Education and the New Baltimore City Board of School Commissioners; (b) the comprehensive Remedy Plan developed by the New Board; and (c) all of the other evidence presented by the parties.

3. The additional funds provided for the Baltimore City public schools in the State budget for Fiscal Year 2001 fall far short of these levels and will not enable the New Baltimore City Board of School Commissioners to provide the City’s schoolchildren with a constitutionally adequate education during the next school year. The level of new operating funds provided by the State budget also falls substantially short of the \$49.7 million sought by the New Board as an initial first step in implementing its comprehensive remedy plan. Given the substantial budget surplus and new sources of revenue available this year, the Court concludes that the State has not

complied with its obligation under paragraph 52 of the Consent Decree to use its “best efforts” to satisfy the New Board’s request. The State should make up the difference through deficiency appropriation during the next session of the Legislature.

4. Having determined and declared that the State is not fulfilling its obligations under Article VIII of the Maryland Constitution, as well as under the Consent Decree, the Court trusts that the State will act to bring itself into compliance with its constitutional obligations, as well as its contractual obligations under the Consent Decree, within a reasonable period of time. If, after

a reasonable period of time has elapsed, the State has not brought itself into compliance, then the Court may entertain motions for such other and further relief as may be appropriate.

Respectfully submitted,

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Dated: June 9, 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2000, a copy of the New Board of School Commissioners and the Bradford Plaintiffs' Joint Memorandum in Support of the New Board's Petition for Further Relief Pursuant to the Consent Decree, along with the Primary Exhibits attached thereto was sent via hand delivery to:

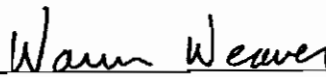
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Warren N. Weaver

**Number of Students Living In Or Near Poverty
By School District
1998 - 1999**

	Number of students approved for free or reduced price meals	Number of students approved for free or reduced price meals in schools with 30% or more poor children	Number of students approved for free or reduced price meals in schools with 45% or more poor children	Number of students approved for free or reduced price meals in schools with 90% or more poor children
Allegany	5,168	4,727	3,572	46
Anne Arundel	12,149	5,583	2,925	-
Baltimore City	72,916	72,407	64,192	21,399
Baltimore County	28,826	18,044	12,225	-
Calvert	2,116	42	-	-
Caroline	2,461	2,461	1,257	-
Carroll	2,516	41	-	-
Cecil	3,553	1,333	208	-
Charles	4,939	1,820	857	-
Dorchester	2,318	2,122	1,440	-
Frederick	5,103	1,369	545	-
Garrett	2,256	2,256	1,586	-
Harford	6,553	3,149	1,537	-
Howard	4,327	941	403	-
Kent	1,081	988	373	-
Montgomery	28,773	15,403	8,524	473
Prince George's	51,089	41,591	31,712	621
Queen Anne's	1,240	376	-	-
St. Mary's	3,251	1,488	364	-
Somerset	1,723	1,723	1,355	-
Talbot	1,270	526	-	-
Washington	5,274	3,042	1,291	-
Wicomico	5,356	3,930	1,859	-
Worcester	2,364	1,927	548	-
State Total	256,622	187,089	136,773	22,539

Source: MSDE Bulletin: 1999 Report Card, December 1, 1999.

**Number of Schools With Children Living In Or Near Poverty
By School District
1998 - 1999**

	Total number of public schools	Number of schools with students approved for free or reduced price meals	Number of schools with 30% or more students approved for free or reduced price meals	Number of schools with 45% or more students approved for free or reduced price meals	Number of schools with 90% or more students approved for free or reduced price meals
Allegany	26	26	23	17	1
Anne Arundel	118	116	28	14	-
Baltimore City	182	181	177	157	52
Baltimore County	168	163	66	40	-
Calvert	23	20	1	-	-
Caroline	10	9	9	4	-
Carroll	38	36	1	-	-
Cecil	30	29	9	2	-
Charles	33	32	9	5	-
Dorchester	14	12	9	5	-
Frederick	54	53	10	3	-
Garrett	17	16	14	9	-
Harford	53	53	11	5	-
Howard	65	66	5	2	-
Kent	8	8	7	3	-
Montgomery	188	186	58	28	1
Prince George's	187	185	128	89	1
Queen Anne's	13	13	3	-	-
St. Mary's	27	23	7	2	-
Somerset	11	11	9	7	-
Talbot	9	9	3	-	-
Washington	45	45	17	8	-
Wicomico	22	21	15	7	-
Worcester	14	13	10	3	-
State Total	1,355	1,326	629	410	55

Sources: MSDE Bulletin: 1999 Report Card, December 1, 1999.
MSDE, The Fact Book 1998-99: A Statistical Handbook.



**Percent of Students Living In Or Near Poverty
By School District
1998 - 1999**

	% of students approved for free or reduced price meals	% of students approved for free or reduced price meals in schools with 30% or more poor children	% of students approved for free or reduced price meals in schools with 45% or more poor children	% of students approved for free or reduced price meals in schools with 90% or more poor children
Allegany	47.1%	43.1%	32.5%	0.4%
Anne Arundel	16.4%	7.5%	3.9%	-
Baltimore City	68.4%	68.0%	60.3%	20.1%
Baltimore County	27.2%	17.0%	11.5%	-
Calvert	13.9%	0.3%	-	-
Caroline	43.3%	43.3%	22.1%	-
Carroll	9.2%	0.2%	-	-
Cecil	22.9%	8.6%	1.3%	-
Charles	22.2%	7.3%	3.8%	-
Dorchester	45.1%	41.3%	28.0%	-
Frederick	14.4%	3.9%	1.5%	-
Garrett	44.4%	44.4%	31.2%	-
Harford	16.8%	8.1%	4.0%	-
Howard	10.3%	2.2%	1.0%	-
Kent	37.4%	34.2%	12.9%	-
Montgomery	22.5%	12.0%	6.7%	0.4%
Prince George's	39.2%	31.9%	24.3%	0.5%
Queen Anne's	18.0%	5.5%	-	-
St. Mary's	22.1%	10.1%	2.5%	-
Somerset	55.4%	55.3%	43.5%	-
Talbot	27.7%	11.5%	-	-
Washington	26.2%	15.1%	6.4%	-
Wicomico	37.4%	27.4%	13.0%	-
Worcester	34.2%	27.9%	7.9%	-
State Total	30.5%	22.2%	16.3%	2.7%

Source: MSDE Bulletin; 1999 Report Card, December 1, 1999.