

KEITH BRADFORD, et al.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
MARYLAND STATE BOARD OF EDUCATION, et al.,	*	BALTIMORE CITY
Defendants.	*	CASE NO.: 94340058 / CE189672
* * * * *		
BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY, et al.,	*	
Plaintiffs	*	
v.	*	
MARYLAND STATE BOARD OF EDUCATION, et al.,	*	
Defendants.	*	CASE NO.: 95258055 / CL20251
* * * * *		

MEMORANDUM OPINION

The Court would like to commend each of the parties for submitting superb proposed findings of fact and conclusions of law. Where appropriate, the Court has adopted and incorporated those proposed findings into its opinion.

I. BACKGROUND

On December 7, 1994, the Bradford plaintiffs filed suit against the Maryland State Board of Education, the Governor, the State Superintendent of Schools, and the State

Comptroller of the Treasury alleging that the State was failing to provide the students of the Baltimore City Public School System (“BCPSS”) with the “thorough and efficient” education guaranteed by Article VIII of Maryland’s Constitution. The Bradford plaintiffs are parents of children attending the BCPSS 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.

On September 15, 1995, the Board of School Commissioners of Baltimore City and its President, the Mayor, and the City Council of Baltimore filed suit in this Court alleging the failure of the Maryland State Board of Education to provide an adequate education for City students.¹ The suits were consolidated for trial.

On October 18, 1996, this Court entered partial summary judgment for the School Commissioners and for the Bradford plaintiffs, holding that Article VIII, Section 1, of the Maryland Constitution requires that the General Assembly provide all students in Maryland’s public schools with an education that is adequate when measured by contemporary educational standards and that the public school children in Baltimore City were receiving an inadequate education when measured by contemporary educational standards. (October 18, 1996 Order).

On November 26, 1996, the parties reached a settlement and signed a five-year Consent Decree, by which they undertook “to provide a meaningful and timely remedy . . . to meet the best interests of the schoolchildren of Baltimore City.” The Decree imposed

¹ The Governor and the Comptroller of the Treasury who were original parties, 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).

two primary obligations on the parties. First, it addressed the State's concerns with management of the Baltimore City schools by establishing 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 Fiscal Year 1998 and \$50 million in each of Fiscal Years 1999 through 2002 for operating funds, plus \$10 million annually for capital improvements. (Consent Decree P 47-48).² Since 1996, this Court has supervised this gradual, phased-in remedy.

In June 2000, the Board and the Bradford plaintiffs sought additional funding under a provision in the Decree that permitted the Board to return to Court based on an expert "interim evaluation" of the schools' progress.³ Based on the interim evaluation and other evidence submitted, this Court ruled that the constitutional violation it found in 1996 was continuing and that approximately \$2,000 to \$2,600 per pupil in additional annual operational funding was necessary to meet constitutional standards. (06/30/00 Memorandum Opinion and Order).

In response to the Court's 2000 ruling, the State enacted the Bridge to Excellence in Public Schools Act, or "Thornton" bill, in 2002, which dedicated an additional \$258.6 million in funding (approximately \$2,600 per pupil) to the Baltimore City Public School System by 2008. Funds provided under "Thornton" were not intended to offset the

² In April 1997, the General Assembly of Maryland codified the principal terms of the Decree at S.B. 795. See S.B. 795 Reg. Session (Md. 1997).

³ "For Fiscal years 2001 and 2002 the Board may request funds in amount greater than those described in paragraph 47 from the State through the currently established State budget process, if the Board presents a detailed plan showing why such funds are needed and how they would be spent. The State will use best efforts to satisfy any such request, subject to the availability of funds." (Consent Decree P 52).

increased cost of education, but were additional funds to be dedicated to the expansion of educational programs and capacity.

On May 24, 2002, the School Commissioners and the Bradford plaintiffs' filed a Joint Motion for Extension of Judicial Supervision until such time as the constitutional adequacy of the education provided by the BCPSS has been remedied. After a hearing on the issue, this Court retained jurisdiction, pursuant to Paragraph 68 of the Consent Decree, and determined that continued judicial supervision of the matter was warranted until such time as the State has complied with the Court's June 2000 Order. The court noted at that time that Thornton funding, although scheduled to result in full compliance with the June 2000 order by 2008, was uncertain. (06/25/02 Memorandum Opinion and Order).

By the spring of 2004, it became apparent to the parties, and to the court through a series of status conferences, that what progress had been made toward constitutional adequacy had been placed in severe jeopardy by a serious short-term cash-flow crisis facing BCPSS and by the school system's accumulation of a \$58 million structural deficit. On March 11, 2004, BCPSS' ongoing cash flow problem led this Court to issue an Order, which required the various governmental parties (i.e. Baltimore City, BCPSS and the State Defendants) to present their respective plans for the funding and fiscal management of BCPSS. In July 2004, the Bradford Plaintiffs filed a Motion for Declaration Ensuring Continued Progress Toward Compliance with Court Orders and Constitutional Requirements. Hearings were held over the course of four days on July 22, 23 and August 3, 4, 2004.

II. FINDINGS OF FACT

A. The Court Found In October 1996 That The Children Attending Baltimore City Public Schools Are Not Receiving A “Thorough & Efficient” Education

1. This litigation began in December 1994, when the *Bradford* plaintiffs sued the Maryland State Board of Education and the State Superintendent of Schools, alleging that the State was failing to provide the students of Baltimore City with the “thorough and efficient” education required by Article VIII of Maryland’s Constitution.

2. 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.

3. The Mayor, the City Council of Baltimore, and the Board of School Commissioners of Baltimore City and its President sued the same State defendants alleging the same constitutional violation in 1995. The two suits were consolidated.

4. The *Bradford* plaintiffs moved to certify a class of plaintiffs, all present and future students in the Baltimore City public schools who are at risk of educational failure.

5. On December 14, 1995, this Court ordered that the named plaintiffs would be permitted to pursue their claims as representative plaintiffs on behalf of the class, although a class would not be formally certified. (Stipulation and Order of Dec. 14, 1995, ¶ 1.)

6. On October 18, 1996, this Court made its first determination of constitutional inadequacy in this case, when it entered partial summary judgment for the City and for the *Bradford* plaintiffs. The Court found that undisputed evidence – such as woefully low scores on the State’s Maryland School Performance Program standards, Baltimore City’s high drop-out rate, and other objective gauges of academic performance

– demonstrated that “public school children in Baltimore City are not being provided with an education that is adequate when measured by contemporary educational standards.” (Order of Oct. 18, 1996 ¶ 2; *see also* Memorandum Opinion of June 30, 2000 at 2; Memorandum Opinion of June 25, 2002 at 2.)

B. The Consent Decree Provided For Management Changes, Limited Additional Funding, And A Provision For An Interim Court Determination Of Additional Funding Needs In 2000

7. Days before trial on the remaining issues of causation and the appropriate remedy for the constitutional violation was set to begin, the parties entered into the Consent Decree, by which they undertook “to provide a meaningful and timely remedy . . . to meet the best interests of the school children of Baltimore City.” (Consent Decree at 3.)

8. The Decree addressed the State’s concerns regarding management deficiencies in the BCPSS by reorganizing the Baltimore City school board, creating a “new Board” jointly appointed by the Governor and the Mayor from a panel proposed by the State Board of Education pursuant to specified guidelines designed to ensure that the Board had members with educational and operational expertise. (*Id.* ¶¶ 8-20; Memorandum Opinion of June 30, 2000 at 3.)

9. The Decree also required additional management changes, including the development of a “Master Plan” approved by the State, to improve management and education in the schools. (Consent Decree ¶¶ 21-23, 29-34.)

10. Finally, the Decree provided for modest annual increased operational funding, \$30 million in FY 1998 and \$50 million annually from FY 1999 through FY 2002 for operating funds. (Consent Decree ¶¶ 47-48.)

11. In April 1997, the General Assembly of Maryland codified the principal terms of the Decree in S.B. 795. (*See* S.B. 795, 1997 Reg. Sess.)

12. The Consent Decree largely followed the State's preferred remedy of management reform, with some limited additional funding.

13. It was plain in 1996 that an additional \$230 million provided by the Consent Decree over five years was not enough to provide an adequate education to Baltimore City's population of disadvantaged children. (Memorandum Opinion of June 30, 2000 at 3.)

14. For that reason, the parties agreed to include provisions in the Decree authorizing the Board¹ to seek additional funds from the State during the term of the Decree, once the management changes and limited additional funds had begun to operate to improve the system. If the State did not cooperate to provide additional necessary funds to the BCPSS voluntarily, the Board was permitted to seek an order for such funding from the Court. (Memorandum Opinion of June 30, 2000 at 3-4; Consent Decree ¶¶ 52-53.)

**C. The Court Declared in June 2000 That Substantial
Additional Per-Pupil Funding Is Necessary For
Constitutional Adequacy**

15. In June 2000, the Board and the *Bradford* plaintiffs returned to Court, seeking additional funds as authorized by the Decree after the State failed to provide such funds voluntarily. (Memorandum Opinion of June 30, 2000 at 3-4.)

16. As required by the Consent Decree, an independent expert (Metis Associates) jointly selected by State and Board had assessed the BCPSS' performance. Metis issued a report entitled Interim Evaluation of the BCPSS: 1998-99 Master Plan Implementation and Related Issues, on February 1, 2000 ("Interim Evaluation"). (Memorandum Opinion of June 30, 2000 at 4.) The Interim Evaluation was submitted to the Court and was admitted into evidence in the June 2000 proceeding. (*Id.* at 5.)

¹ The term "Board" refers to the jointly-appointed Board of School Commissioners for Baltimore City created by the Consent Decree and S.B. 795. The term "State Board" refers to the State Board of Education.

17. The Interim Evaluation concluded that academic performance in the system was showing reasonable improvement, and that the Board had demonstrated “meaningful progress in implementing instructional initiatives at the elementary grade levels, recruitment and retention initiatives, and professional development initiatives.” (Interim Evaluation, Executive Summary, at 3.) It also concluded that management in the system was demonstrating improvement. (*Id.*)

18. The Interim Evaluation concluded, however, that substantial additional funding, of approximately \$2,700 per pupil, was necessary for the schools to achieve adequacy. (Interim Evaluation, Executive Summary, at 29-30.)

19. In its June 2000 order, the Court incorporated and relied on certain of the Interim Evaluation’s findings, conclusions, and recommendations. (Memorandum Opinion of June 30, 2000 at 15-16.)

20. Specifically, the Court concluded, as had the Interim Evaluation, that substantial additional funds were necessary for adequacy. (*Id.* at 15.)

21. The Court also adopted the Interim Evaluation’s recommendation that additional funds should be used for, among other things, “extended learning opportunities for all eligible students” (for example, summer school and extended-day programs); “middle and high school initiatives;” “strategies to improve the [BCPSS] competitive position for teacher recruitment and retention;” and additional opportunities “for teacher and principal mentoring, coaching, and on-going school-based professional development.” (Memorandum Opinion of June 30, 2000 at 16.)

22. The Court adopted as well the Interim Evaluation’s finding and recommendation that the BCPSS lacked sufficient funding for school facilities improvements. (*Id.*)

23. By June 2000, the Board also had independently developed a “Remedy Plan” entitled “Seeing Success: Baltimore City Public School System: Integrated Reform Plan” (Oct. 6, 1999) (the “2000 Remedy Plan”). (Memorandum Opinion of June 30,

2000 at 16-17.) The 2000 Remedy Plan was first sent to the State as part of the BCPSS' request for additional funding, and then submitted to the Court and admitted into evidence in the June 2000 proceeding. (*Id.* at 5.)

24. The 2000 Remedy Plan represented the judgment of the Board and the educators running the system about the kinds of programs and services necessary to educate BCPSS' at-risk student population. It estimated the additional cost of such programs at approximately \$265 million, or approximately \$2,650 per pupil at then-current enrollment levels. (Memorandum Opinion of June 30, 2000 at 16-17.)² It also sought an additional \$133 million annually for capital improvements. (*Id.* at 17.)

25. Among the necessary programs and services that the Board identified in the Remedy Plan and for which it sought additional funding through the June 2000 proceeding were several of those now at issue, including (1) 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; (2) 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; (3) hiring additional teachers to provide for *smaller class size at all levels*, system-wide pre-kindergarten, and full day kindergarten; (4) implementing a plan to increase instructional technology; (5) expanding alternative offerings for disruptive students and expanding dropout prevention programs; (6) expanding student support services by adding social workers, mental health

² At the State's request, the Board engaged in a "triage" process and also submitted a substantially narrowed plan asking for a \$49.7 million "downpayment" on the programs and services for which the system had the most immediate and critical need. (Memorandum Opinion of June 30, 2000 at 17.) That narrowed "remedy plan," entitled "Building on Success: A Remedy Plan to Address Continuing Funding Needs of The Baltimore City Public School System" (Dec. 9, 1999), was also admitted into evidence in the June 2000 proceeding. The submission of the narrowed "remedy plan" has created some confusion as to which plan was the Board's real Remedy Plan. When these findings refer to the "2000 Remedy Plan" they mean the *full* plan estimating that some \$265 million in additional funding was necessary for additional programs and services.

professional services and guidance counselors; and (7) extending the school year to allow for extended professional development and increased teacher compensation. (Bradford Exhibit 78, 2000 Remedy Plan at 1-11.)

26. Based on the Interim Evaluation, the Board's 2000 Remedy Plan, the declaration of educational expert Stephen M. Ross, Ph.D., and over 100 additional exhibits and affidavits, the Court in June 2000 reaffirmed its 1996 determination that schoolchildren in BCPSS have a constitutional right to an education that is adequate when measured by contemporary educational standards. (Memorandum Opinion of June 30, 2000, at 1, 25, 26.)

27. The Court declared that "the State of Maryland is still not providing the children of the Baltimore City Public Schools with a Constitutionally Adequate Education when measured by Contemporary Educational Standards," so the students "still are being denied their right to a 'thorough and efficient' education under Article VIII of the Maryland Constitution." (*Id.* at 25.)

28. The Court further declared that an additional \$2,000 to \$2,600 per pupil in State aid was needed to provide the children of the Baltimore City Public Schools with a constitutionally adequate education. (*Id.*)

29. In addition, the Court found the State had violated its contractual obligation to use "best efforts" to fund requests from the Board. (*Id.* at 23-24.)

30. Having declared a constitutional and contractual violation and estimated the amount of additional funding necessary for adequacy, the Court stated that it trusted that the executive and legislative branches would act to remedy the violation without the necessity for further action by plaintiffs. (*Id.* at 26.)

31. The State initially appealed the Court's June 2000 declaration, as contemplated and authorized by the Consent Decree. (Consent Decree ¶ 53.)

32. The State later withdrew its appeal. The June 2000 order is now final and binding on the State, therefore. (Tr. 1562:24-1563:7.)

33. In Response to the June 2000 Declaration, The State Provided For Substantial Increases In Additional Per-Pupil Funding For the BCPSS, To Be Fully Phased-In By FY 2008

1. The Thornton Commission Found That Funding Increases Even More Substantial Than The Court's Order Were Necessary

34. In response to the June 2000 declaration, the State enacted the Bridge to Excellence in Education Act, largely adopting the recommendations of the Commission on Education Finance, Equity, and Excellence, commonly known as the "Thornton Commission." (Tr. 1425:11-20, 1425:24-1426:8.)

35. The State directed the Thornton Commission to assess the amount of additional funding that all schools in Maryland, including the BCPSS, needed to meet state adequacy standards. (Bradford Exhibit 72, Commission on Education Finance, Equity, and Excellence, Final Report, Jan. 2002 ("Thornton Commission Report"), at ix, xiii; Tr. 1425:11-20, 1425:24-1426:8; State Exhibit 2, Rohrer Aff. ¶¶ 6, 11.)

36. The Commission issued its report in January 2002. The Commission found a substantial gap between the resources currently available to school systems in Maryland and the resources necessary for educational adequacy. (Bradford Exhibit 72, Thornton Commission Report, at x-xi.)

37. The Commission relied on expert studies, following accepted school finance adequacy assessment models, to determine how much additional funding was necessary to enable students to meet state standards. (Bradford Exhibit 72, Thornton Commission Report, at x-xii; Tr. 1425:11-1426:8, 1575:15-1576:1; State Exhibit 2, Rohrer Aff. ¶¶ 7-10.)

38. The Commission found that substantial additional resources in addition to then- current funding were necessary to educate students who live in poverty, to enable those students to meet state standards and receive an adequate education. (Bradford

Exhibit 72, Thornton Commission Report, at xiii-xiv, 53-56; Tr. 1426:9-18, 1491:5-14, 1540:12-:18, 1575:18-22; State Exhibit 2, Rohrer Aff. ¶¶ 10, 12.)

39. The Commission also found that substantial additional resources over current funding are necessary to educate students who have special educational needs, to enable those students to meet state standards and receive an adequate education.

(Bradford Exhibit 72, Thornton Commission Report, at xiii-xiv, 53-56; Tr. 1426:9-18, 1491:5-14, 1540:12-18, 1575:18-22; State Exhibit 2, Rohrer Aff. ¶¶ 10, 12.)

40. Consistent with the Court’s June 2000 ruling and its own determination that students who live in poverty or face similar disadvantages cost more to educate, the Commission found that Baltimore City’s “adequacy gap” – the difference between current funding and the funds necessary to provide an adequate education – was the highest in the State.

41. The Commission cited evidence demonstrating that Baltimore City needed an additional \$2,938 to \$4,250 per pupil to achieve educational adequacy. (Bradford Exhibit 72, Thornton Commission Report, at 27, 28, 33; Bradford Exhibit 128, Woolums Dec. ¶ 17.)

2. The General Assembly Adopted The Thornton Commission’s Findings In The Bridge to Excellence Act, S.B. 856

42. In May 2002, the State enacted a bill that substantially incorporated the Thornton Commission’s recommendations, the “Bridge to Excellence in Public Schools Act,” S.B. 856. (State Exhibit 2, Rohrer Aff. ¶ 4.) S.B. 856 phases in a new statewide funding system that will result in \$1.3 billion in additional annual State funding for all counties over a six-year period from FY 2003 through FY 2008.

43. In enacting S.B. 856, the State also recognized a substantial “adequacy gap” for Baltimore City, of \$3,380 per pupil. (Bradford Exhibit 64, Dept. of Legis. Services, S.B. 856 Fiscal Note, Revised May 10, 2002, at Ex. 1; State Exhibit 2, Rohrer

Aff. ¶ 11 (cited State-determined adequacy gap of \$3,400-\$3,500); Bradford Exhibit 128, Woolums Dec. ¶ 17.)

44. If all of the increases projected by S.B. 856 had been fully funded Baltimore City was predicted to receive increases in State aid (over previously anticipated APEX increases and other funding streams) of approximately \$18.7 million in FY 2003, \$28.1 in FY 2004, \$68.9 million in FY 2005, \$125.5 million in FY 2006, \$187.6 million in FY 2007, and \$258.6 million in FY 2008. (Bradford Exhibit 64, Dept. of Legis. Services, S.B. 856 Fiscal Note, Revised May 10, 2002, at Ex. 8.) As part of the phase-in of this new formula, S.B. 856 also phased out the funding provided by the Consent Decree and other funding for the Baltimore City-State partnership starting in FY 2004.

45. Local funding is also a substantial part of S.B. 856's formula for adequacy. The Act anticipated that local jurisdictions would contribute to the cost of adequacy. (Bradford Exhibit 64, Dept. of Legis. Services, S.B. 856 Fiscal Note, Revised May 10, 2002, at 17-18 and Exhibit 10.)

46. All Maryland's districts will eventually receive substantial increases under S.B. 856, even those that the Thornton Commission found already have the funds necessary for adequacy. For instance, the Thornton Commission and the State found that Montgomery County and Howard County had no "adequacy gaps" between current and needed funding – i.e., they had enough money to educate their students. (*Id.* at Ex. 1.) Montgomery County will eventually receive additional funding of approximately \$274.2 million under S.B. 856, however, and Howard County will receive approximately \$117 million. (*Id.* at Ex. 8.)

47. Districts with the greatest demonstrated need do not receive a faster phase-in of the increased funding provided under Thornton. To the contrary, portions of S.B. 856 were "front-loaded" so that richer districts with fewer needs received greater

increases in the earlier years. Baltimore City's first "big contribution" from Thornton, therefore, begins this year. (Tr. 1571:1-15; Bradford Exhibit 128, Woolums Dec. ¶ 13.)

48. S.B. 856 directed a further adequacy analysis to be done at the end of the funding phase in, by 2012. (Bradford Exhibit 72, Dept. of Legis. Servs., S.B. 856 Fiscal Note, at 8.)

D. State Resources Available To The BCPSS Continue To Be Far Too Low To Permit The BCPSS To Educate Its At-Risk Student Population Adequately

1. Full Thornton Funding (At Least) Is Necessary For Students To Meet State Standards and To Attain Constitutional Adequacy

49. The Thornton Commission, the State Superintendent of Schools, the Department of Legislative Services, and others repeatedly have confirmed that at least full funding under the S.B. 856 is necessary to enable students to meet state standards for adequacy. (Bradford Exhibit 64, Dept. of Legis. Servs., S.B. 856 Fiscal Note, Revised May 10, 2002, at 10; Bradford Exhibit 72, Thornton Commission report, at 5; Bradford Exhibit 70, Memorandum from Nancy Grasmick re Update on the Thornton Commission Recommendations; Tr. 1575:15-1576:1; Bradford Exhibit 55, MSDE Fact Sheet, at 1; Bradford Exhibit 56, Dept. of Legis. Servs., 90-Day Report, Apr. 11, 2003, at L-1; Bradford Exhibit 62, Dept. of Legis. Servs., Major Issues Renew, at 1-6; Bradford Exhibit 46, Dept. of Legis. Servs., The Commission on Education Finance, Equity, and Excellence and the Bridge to Excellence Act., Oct. 22, 2003, at 5-10.

50. As Department of Legislative Services director John Rohrer explained, "the [Thornton] Act bases State education funding on the concept of 'adequacy' – an empirical estimate of the amount of funding that schools and school systems require in order to obtain the resources they need to reasonably expect that students can meet the State's academic performance standards." (State Exhibit 2, Rohrer Aff. ¶ 6).

51. Indeed, the State Superintendent has confirmed that full funding under S.B. 856 is necessary to permit students to achieve the “thorough and efficient” education required under Article VIII of Maryland’s Constitution. In a resolution she submitted to the State Board of Education to adopt (and that was adopted), the State Superintendent urged the State Board to push for full Thornton funding because such funding would enable Maryland to achieve a “thorough and efficient system of free public schools.” (Bradford Exhibit 70, at Ex. IV.)

52. Moreover, there is evidence that state standards now in effect are different, and higher, than the standards in effect when the Thornton Commission in 2001-02 estimated the amount necessary for students to meet state standards. (Bradford Exhibit 128, Woolums Dec. ¶ 18.)

53. The Thornton Commission, for instance, assessed amounts necessary for high school students to pass the then-current “functional tests.” (Tr. 1576:20-1577:4, 1578:5-8.) Now, the State requires high school students to pass “High School Assessment” tests for graduation. (Tr. 1576:20-1577:4; Bradford Exhibit 128, Woolums Dec. ¶ 18.) The HSA tests are required for graduation, and are substantially more difficult than the functional tests. (Tr. 1576:25-1577:12.)

54. Similarly, standards imposed by the federal No Child Left Behind act are now in place, requiring, among other things, *all* students to achieve satisfactory achievement on state tests. (Bradford Exhibit 128, Woolums Dec. ¶ 18.)

55. These increases in standards, not considered by the Thornton Commission, mean that it is likely that the Thornton Commission’s estimates were too low. (Bradford Exhibit 47, Dept. of Legis. Servs., Office of Policy Analysis, Comparison of Bridge to Excellence and No Child Left Behind Legislation at 8, Bradford Exhibit 128, Woolums Dec. ¶ 18.)

56. The State Superintendent testified, moreover, that the needs of children in poverty have increased since the Thornton recommendations were issued. (Tr. 1540:24-1541:14.)

**2. This Court Already Has Determined, Correctly,
That Full Thornton Funding Will Not Occur, If
At All, Until FY 2008**

57. Since S.B. 856 was enacted, the BCPSS has received the following annual increases in Thornton funding: \$18.5 million in FY 2003, \$16.5 million in FY 2004, and \$53.5 million in FY 2005. (Tr. 1572:2-4.; *see also* Bradford Exhibit 6, DLS Charts, at unnumbered page 18 (showing \$48.7 million in increased Thornton finding in FY 2005; Bradford Exhibit 21, BCPSS Budget for FY 2005, at 31 (same).) These increases already are substantially less than the increases projected when Thornton was enacted. (*See supra* paragraph 43; Bradford Exhibit 64, Dep’t of Legislative Servs., S.B. 856 Fiscal Note, Revised May 10, 2002, at Ex. 8.)

58. This year, the BCPSS received approximately \$53.5 million in additional Thornton money. (Tr. 1571:22-23; Bradford Exhibit 6, DLS Charts, at unnumbered page 18 (showing \$48.7 million in increased Thornton finding in FY 2005; Bradford Exhibit 21, BCPSS Budget for FY 2005, at 31 (same).) Because the funding stream was “front-loaded” to benefit richer counties, that amount represents BCPSS’ first substantial Thornton contribution. (Tr. 1571:10-15.)

59. Accordingly, at least \$225 million in additional funding to the BCPSS remains to be phased in under S.B. 856. (Tr. 1431:25-1432:2, 1576:13-19; State Exhibit 2.)

60. In June 2002, the Court entered an order extending the Consent Decree’s initial five-year term and its own jurisdiction over the case. (Memorandum Opinion of June 25, 2002 at 5.) The Decree provided for such an extension for “good cause.” (Consent Decree ¶ 68.)

61. In its June 2002 Order extending the Consent Decree and judicial supervision over the remedy phase of this matter, this Court determined that even “arguable” compliance with the June 2000 Order would not occur unless and until the Bridge to Excellence in Public Schools Act is fully funded, which is not scheduled to occur until FY 2008. (Memorandum Opinion of June 25, 2002 at 5.)

62. The Court also concluded that full funding of the Act was uncertain. (*Id.*)

63. By that order, the Court extended its jurisdiction to supervise the remedy “phase-in” provided by the Thornton bill, to ensure continued progress towards that remedy.

64. Testimony by State witnesses confirms that both of the Court’s determinations in 2002 – that full compliance will not occur until, at the earliest, FY 2008, and that full funding is uncertain – remain valid today. In his affidavit, John Rohrer, the Coordinator of Fiscal and Policy Analysis for the State Department of Legislative Services, estimates that state education aid to BCPSS, including the increases mandated by the Bridge to Excellence in Public Schools Act, “will essentially eliminate the adequacy gap,” but states that that elimination will not occur until FY 2008. (State Exhibit 2, Rohrer Aff. ¶ 11.)

65. State Superintendent Grasmick also acknowledged in her testimony that full Thornton funding will not occur until FY 2008, and further acknowledged that the General Assembly may, in its discretion, delay or reduce the planned funding increases to BCPSS under the act. (Tr. 1576:1-4; 1587:4-6; *see also* Bradford Exhibit 128, Woolums Dec. ¶¶ 19-23; Bradford Exhibit 1, July

14, 2004 Memorandum of Bill Ratchford, former director of the State Department of Fiscal Services (“Ratchford Mem.”) at 1.)³

**3. State and BCPSS Witnesses Repeatedly
Confirmed That The BCPSS Continues To Need
Substantial Additional Resources**

66. Witnesses from the State and BPCSS uniformly recognized that, as of August 2004, the BCPSS continues to need substantial additional resources to educate its at-risk student population. (Tr. 647:21-648:2; Tr. 648:12-14; Tr. 711:15-20.)

67. State Superintendent Nancy Grasmick testified that BCPSS needs additional resources to meet state standards. (Tr. 1576:13-19). Indeed, Dr. Grasmick testified that adequate funding was an essential part of any remedy for the BCPSS. (Tr. 1574:21-15786:4.) In fact, Superintendent Grasmick admitted that Baltimore City needs \$225 million for adequacy as defined by the Thornton Commission. (Tr. :1576:13-19.)

68. BCPSS Chief Executive Officer Bonnie Copeland testified that the BCPSS needs substantial additional resources to provide an adequate education. (Tr. 1283:10-1285:7).

69. Dr. Copeland noted, for instance, that the BCPSS does not have enough resources to focus on three areas that are critical to ensuring an adequate education: providing the best and most talented teachers in the classroom; providing the best and most talented leaders at the principal and administrative level; providing the support services necessary to allow at-risk students to learn. (Tr. 1283:1-1285:7).

70. Chief Academic Officer Linda Chinnea testified that BCPSS needs more money to provide a constitutionally adequate education to its students. (Tr. 711:15-20; Tr. 734:16-23.) As Ms. Chinnea explained, “[i]f I had the money, it would be my, my hope that the system would have a full program of interventions, where summer school

³ The Governor, however, has *no* discretion to reduce Thornton funding. He must include full Thornton funding in the budget submitted to the General Assembly. (Tr. 1427:13-18; Bradford Exhibit 128, Wolums Dec. ¶ 20.)

would be included, along with during the year interventions. (Tr. 647:21-648:2; Tr. 648:12-14 (if had money, would reduce class sizes).)

71. Officer for Student Support Services Gayle Amos testified that BCPSS needs more money to provide students with the services necessary for adequacy. Ms. Amos stated: “[i]f I had more money, the first thing I would do would be to give it to capital improvement and improve the schools. The second thing would be to make sure we did have qualified teachers and qualified leaders in the schools by having programs dedicated to that.” (Tr. 934:18-935:2.)

72. Declarations and petitions submitted by hundreds of parents, students, teachers, and principals demonstrate that the BCPSS needs more money to provide students with services necessary for adequacy. (Tr. 504-511; Bradford Exhibit 113; Bradford Exhibit 126.)

4. The Final Evaluation And BCPSS’ Most Recent Remedy Plan Confirms That The BCPSS Needs Substantial Additional Resources

73. In addition to the Interim Evaluation submitted into evidence in the June 2000 proceeding, the Consent Decree also called for a Final Evaluation by an independent expert to be appointed jointly by the State and BCPSS. (Consent Decree ¶ 40.)

74. That expert, Westat, submitted its Report on the Final Evaluation of the City-State Partnership on December 3, 2001 (“Final Evaluation”). The Westat Report was submitted to the Court and admitted into evidence in the June 2002 proceedings in which the Court considered whether to extend the Consent Decree as Bradford Exhibit 76.

75. Based on its extensive inspection and evaluation of the schools, the Final Evaluation concluded generally that the system is “tremendously improved” under the Consent Decree. (Final Evaluation at vi). It noted, however, that the “task of

reengineering the school system and establishing it as a system that effectively serves the children of Baltimore is far from complete.” (*Id.* at xxiii).

76. In the area of instructional reforms, the Final Evaluation concluded that BCPSS has “accelerated its rate of progress at the elementary grades where the vast majority of resources have been targeted,” and in many areas the rate of progress in Baltimore’s schools has exceeded the progress of the State overall. (*Id.* at vi, 345). The Final Evaluation attributed the improvement in student achievement in considerable degree to the Board’s targeted and effective application of the additional funds provided under the Consent Decree. “[W]here the monies have been spent,” the Final Evaluation concluded, progress has been made, but that “where monies have been more scarce, such as at the high school level, less progress is seen.” (*Id.* at 320).

77. The Final Evaluation also found that substantial additional funding is necessary for the BCPSS. (*Id.* at xiii, 338, 347).

78. In the same time period, the BCPSS completed an updated Remedy Plan. (Bradford Exhibit 78, The Baltimore City Remedy Plan for FY 2003, Aug. 31, 2001 (the “2001 Remedy Plan”).) The 2001 Remedy Plan, like the earlier 2000 Remedy Plan on which the Court in part based its June 2000 declaration, reflected the BCPSS’ assessment of the additional programs and services necessary to provide an adequate education, and also reflected estimates of the costs of such programs and services.

79. The updated 2001 Remedy Plan called for approximately \$435 million in additional operational funding. (*Id.*, cover letter.) The Plan requested additional funding for a number of initiatives, many of which are among the programs and services recently reduced to deal with the budget crisis. The initiative included additional efforts to recruit and retain quality teachers; the implementation of whole-school reform models, like Achievement First, in elementary schools; *expansion of class size reductions to grades beyond 1-3 in elementary schools*; provision of a variety of academic interventions to improve achievement, such as *expanded summer school* and extended day programs and

increased interventions during the school year; adding “reading coaches” and extensive, focused interventions for students performing below grade level; providing mathematics intervention programs; expanding the gifted and talented program; expanding fine arts, music, foreign language, and physical education programs; *reducing class size in middle schools*; providing additional focus on middle schools; creating smaller “academy” schools in middle and high schools; expanding access to *summer school* for middle school students; and expanding professional development for teachers, along with a number of other initiatives. (*Id.*, *passim*.)

5. The State Has Not Yet Complied With The June 2000 Declaration

80. As of FY 2005, the State has not yet come close to complying with the Court’s June 2000 direction that an additional \$2,000 to \$2,600 per pupil be provided to the BCPSS.

81. In June 2000, this Court ruled that substantial additional state funds were necessary *on top of funding already in the budget for FY 2001 and FY 2002*. The Court stated: “[A]dditional funds provided for the Baltimore City public schools in the State budget *for Fiscal Year 2001* fall far short of [constitutional] levels and will not enable the New Baltimore City Board of School Commissioners to provide the City’s schoolchildren with a Constitutionally Adequate Education when measured by Contemporary Educational Standards *during Fiscal Years 2001 and 2002*. . . . the Baltimore City public schools need additional funding of approximately \$2,000 to \$2,600 per pupil for educational operating expenses *for Fiscal Years 2001 and 2002*.” (Memorandum Opinion of June 30, 2000 at 25-26 (emphasis added).)

82. State education aid to the Baltimore City Public Schools has *not* been increased by \$2,000 to \$2,600 per pupil since FY 2001 and 2002. Accepting the figures provided by the State in the Attachments to the Declaration of Stephen

A. Brooks, in FY 2005 such funding will have increased by only \$1,650 per pupil over FY 2001 and by only \$1,353 since FY 2002. (State Exhibit 1, Declaration of Stephen A. Brooks, Attachment A; Bradford Exhibit 128, Woolums Dec. ¶ 8.)

83. Moreover, the foregoing figures significantly overstate the real increase in state support for education in Baltimore City since this Court's June 2000 declaration, because they include mandated increases in pre-existing state aid formulas and other funding streams that BCPSS would have received even if the Bridge to Excellence in Public Schools Act had never been enacted. (Bradford Exhibit 1, Ratchford Mem.; Bradford Exhibit 128, Woolums Dec. ¶ 12.)

84. Even using the FY 2000 for measuring increases, the State still did not comply with its constitutional obligations and substantially underfunded the BCPSS for a number of years after this Court's declaration. (Tr. 1534:5-1537:2, 1563:8-16.)

85. The State, through the sworn testimony of Dr. Nancy Grasmick, State Superintendent of Education, admits that it has not complied with the June 30 Order. (Tr. 1433:10-1434:3).

86. At an absolute minimum (assuming the low-end increase of \$2,000 per pupil per year) and using FY 2000 as the base year, the State underfunded BCPSS in the amount of \$439.35 million for fiscal years 2001, 2002, 2003 and 2004.

87. At a potential maximum (assuming the high-end increase of \$2,600 per pupil per year) and using FY 2001 as the base year, the State underfunded BCPSS in the amount of \$834.68 million for fiscal years 2001, 2002, 2003 and 2004.

88. The proper measure of increased funding is the amount of increase per pupil over pre-existing funding streams, which is the way that the State

Department of Legislative Services described and estimated the fiscal impact of the Bridge to Excellence in Public Schools legislation. (Bradford Exhibit 64, Dep't of Legislative Services, S.B. 856, Fiscal Note (Revised); Bradford Exhibit 128, Woolums Dec. ¶ 12.)

89. This Court also intended the increased funding required under its June 2000 declaration to be provided on top of pre-existing mandated increases, as demonstrated by the fact that the Court declared that BCPSS needed an additional \$2,000 to \$2,600 per pupil in both FY 2001 and FY 2002, even though state aid to BCPSS was scheduled to increase by nearly \$400 per pupil between those two years. (Memorandum Opinion of June 30, 2000 at 25-26; Bradford Exhibit 1, Ratchford Mem. at 3 (total state aid of \$5,807 in FY 2001, \$6,197 in FY 2002).)

90. When pre-existing planned increases in state education aid are factored out, the increase in state education aid to BCPSS in FY 2005 as a result of the Bridge to Excellence in Public Schools Act amounts to just over \$500 per pupil. (Bradford Exhibit 1, Ratchford Mem.; Bradford Exhibit 128, Woolums Dec. ¶ 14.)

91. According to an analysis prepared by Bill Ratchford, the former director of the State's Department of Fiscal Services, from data prepared by the State Department of Legislative Services in July 2004, the increase in total state education funding per pupil to BCPSS over the amount anticipated under prior law will not exceed \$2,000 per pupil until FY 2008, and then only if the Bridge to Excellence in Public Schools Act is fully funded. (Bradford Exhibit 1, Ratchford Mem. at 3.)

92. The cost of education has increased substantially in the four years since this Court issued its June 2000 declaration and, at a minimum, the funding increases called for in that declaration should be adjusted to reflect that increased

cost. One reasonable measure of this cost increase is the rise in teachers' salaries, because professional salaries account for more than three quarters of the total cost of education in BCPSS and most other school districts. (Tr. 51:16-52:2; Bradford Exhibit 128, Woolums Dec. ¶ 15.)

93. Average teacher salaries in both BCPSS and across the state of Maryland have increased by more than fifteen percent over the past four years. (Bradford Exhibits 119, MSDE, Analysis of Professional Salaries, 1999-2000 and 2003-2004.

94. The higher "contemporary education standards" that have been adopted since 2000, discussed *supra* in paragraphs 51 through 54, against which educational adequacy in the BCPSS must be measured, also increased the cost of an adequate education. (Bradford Exhibit 47, Dept of Legislative Services, Office of Policy Analysis, Comparison of Bridge to Excellence and No Child Left Behind Legislation at 8, Bradford Exhibit 128; Woolums Dec. ¶ 18.)

E. Student Scores And Other Objective Indicators From The BCPSS Remain Far Below State Standards And Far Below State Averages

95. Almost eight years have passed since the Court first found a constitutional violation in September 1996, and four years have passed since the June 2000 declaration.

96. There are students now about to enter high school who were first graders in 1996, and who thus have at least spent eight years in an unconstitutional and inadequate system.

97. Named plaintiff Keith Bradford, for instance, brought this suit when his son Brandon was in third grade and his sons Kendall and Adrian were in pre-school. Brandon graduated from high school this year, never having attended a constitutionally adequate system. Kendall is starting high school, and Adrian is starting middle school. (Tr. 1249:12-23.)

98. Student scores and other objective evidence continue to demonstrate, as they did in 1996 and 2000, that the BCPSS students are performing at levels far below state standards, and far below state averages, although there have been some improvements in recent years.

1. Maryland School Assessment Scores Are Far Below Standards and State Averages

99. In 2003, Maryland replaced the Maryland School Performance Assessment Program (“MSPAP”) tests with the Maryland School Assessment (“MSA”) tests, pursuant to the federal No Child Left Behind law. That law requires each state to require schools to make “Adequate Yearly Progress” towards a specified level of performance on a statewide test.

100. In Maryland, all students must be “proficient” in the subject matters tested by the MSA by 2014. Students who show a “basic” performance for reading are “unable to adequately read or comprehend grade appropriate literature and informational passages.” Those with “basic” performance in mathematics “demonstrate only partial mastery of the skills and concepts defined in the Maryland Mathematics Content Standards.”

101. In Baltimore City, 2003 scores on the MSA showed that a majority of students (from 45% to 65%, depending on grade level) were functioning only at a “basic” – i.e., unsatisfactory – level in reading and from 58% to 89% (again, depending on grade level) of students were functioning only at a “basic” level in mathematics. (Bradford Exhibit 117; BCPSS Exhibit 37.)

102. In Baltimore City, therefore, nearly two-thirds of the City’s tenth-grade students (65%) *do not “adequately read or comprehend” grade level reading material.*

103. There are similar gaps between the BCPSS performance and state requirements, and state averages, at every grade level and on every test. (Bradford Exhibit 117.)

104. The gap between the City and the State average increases as the children get older. (Bradford Exhibit 117.)

105. Baltimore City's 2004 achievement scores indicate that the majority of students are functioning at "basic" - that is, inadequate - levels in reading and mathematics. (Bradford Exhibit 5.) Approximately 50-65% of Baltimore City children scored at a basic level in reading and 60-80% scored at a basic level in math. (Tr. 451:18-452:19; Bradford Exhibit 117.)

106. The 2004 achievement scores reported on the Maryland State Department of Education website indicate a wide gap between Baltimore City special education students and their counterparts in Montgomery County. (BCPSS Exhibit 37, Data from 2004 Maryland Report Card-Achievement Gap on 2004 MSA Administration.). Specifically, the scores shows 53.2% of special education students in Montgomery County at the proficient level compared to the only 28% of Baltimore City special education students who scored at the proficient level. (*Id.*)

107. These scores also show that special education students in Montgomery County reached close to the same level of proficiency as the *regular* education students in Baltimore City. (Tr. 813-818.)

2. The State Superintendent Has Placed The Entire System in Corrective Action Based On Those Scores

108. Based on the BCPSS' performance on the MSA tests last year, the State Board of Education placed the entire school system in "corrective action," pursuant to the requirements of the No Child Left Behind act, and directed it to perform a number of specified actions designed to enhance performance. (Bradford Exhibit 30, Letter from Nancy Grasmick to the Hon. Thomas V. Miller, *et al.*, March 31, 2004, at 9-10, Tr. 1462:21- 1463:5.) A system in "corrective action" is one which has demonstrated "consistent academic failure." (20 U.S.C. § 6316(b)(7).)

109. Even though MSA results demonstrated some encouraging improvement in 2004, approximately 96 of the approximately 180 schools in Baltimore City remain on various levels of the State's "watch list" for required improvement. (Tr. 1457:15–1458:6; Bradford Exh. 103.) Schools identified for improvement are those that have failed for two consecutive years to meet adequate yearly progress goals under the No Child Left Behind act. (20 U.S.C. § 6316(b)(1)(A).)

3. High School Assessment Scores Are Far Below Standards and State Averages

110. The BCPSS' performance on the High School Assessment tests also demonstrates a substantial failure to meet state standards. On these new "high-stakes" tests that will be required for high-school graduation, Baltimore City students performed well below the rest of the state in 2002 and 2003. (Bradford Exhibits 117, 30 and 57.)

111. For instance, only 20.7% of Baltimore City students passed the Algebra exam compared to the more than 50% who passed throughout the State. Likewise, in 2003, only 26% of Baltimore City students passed the Biology exam compared to the State passing average of over 54%. (Bradford Exhibit 117.)

112. Superintendent Grasmick expressed extreme concern over the low percentage of students in Baltimore City passing the high school assessment. At some schools, she noted, only .7 percent students taking the exams passed. (Tr. 1459:11-1460:16.) Of the 300 students at Douglass who took the Algebra I exam, only 2 passed, and of the 275 students that took English I, only 7 passed. (*Id.*).

4. Dropout Rates and Graduation Rates Continue To Be Unacceptable

113. Baltimore City's dropout rate still substantially exceeds the state satisfactory standard (3%), and still hovers close to 11% (down from almost 14% in 1997). (Bradford Exhibit 117.)

114. BCPSS representative Gayle Amos testified that BCPSS' dropout rate is not only the highest in the state, but is increasing (Tr. 989:6-12) and that the system needs substantial additional funds for dropout prevention programs. (Tr. 989:10-992:1.)

115. The BCPSS rate of graduation is only 54.18%, meaning that slightly more than half the students graduate. (Bradford Exhibit 117.) Statewide, the graduation rate is 85%. (*Id.*)

5. Attendance Rates Continue To Be Unacceptable

116. Attendance rates are also low and absenteeism is a large issue for BPCSS, another objective indicator of continuing inadequacy. (Tr. 914; 940; 943-45.) As Gayle Amos explained, under No Child Left Behind, the attendance rate in Maryland must be 96% to make AYP (adequate yearly progress.) In 2003, however, the high school attendance rate was 80% and in 2004 it was 88%. (Tr. 938:15-940:20.) On any given day in 2003, therefore, one out of five students was not in class.

6. Suspensions and Expulsions Are The Highest In The State

117. The BCPSS' suspension and expulsion rate is the highest in the State generally, and the highest even at the elementary school level. (Tr. 864:9-870:13; *see also* Tr. at 992:2-13 (BPCSS leads the state in long-term suspensions and expulsions).)

7. Expert Testimony Demonstrated, and The State And BCPSS Both Concede, That These Scores Indicate An Inadequate Level Of Educational Services

118. Educational expert Steven Ross concluded: "By any measure, a system demonstrating those outcomes has not achieved acceptable educational goals either locally or nationally." (Bradford Exhibit 5, Ross Dec. at 5.)

119. As Dr. Ross explained at the hearing, "Baltimore ranks last in Maryland" with approximately 50-65% of the children scoring at a basic level in reading and 60-

80% scoring at a basic level in math. (Tr. 451:18-452:19.) “Basic,” as Dr. Ross explained, “means inadequate,” and students performing at the “basic” level need extra help to succeed. (Tr. 452:4-8, 452:16-19.)

120. The State has repeatedly acknowledged the continuing gap between Baltimore City and the rest of the state on these objective indicators of educational quality. (*See, e.g.*, Bradford Exhibit 30, Letter from Nancy Grasmick to the Hon. Thomas V. Miller, *et al.*, March 31, 2004, at 9; Bradford Exhibit 57, Letter from Nancy S. Grasmick, *et al.* to Hon. Thomas V. Miller, Jr., *et al.*, March 2003, at 4.)

121. BCPSS representatives also concluded that BCPSS achievement levels are unacceptable. (Tr. 917:17-921:17; 956:15-958:1; 961:19-962:6; 1335:2-11.)

**8. The BCPSS’ Student Population Contains
Substantial Numbers of Students Who Live In
Poverty And Have Other Needs That Require
Increased Educational Focus And Resources**

122. The BCPSS student population has a high percentage of students eligible for free and reduced lunches, which is the common measure of at risk or disadvantaged students. In 2003, 83% of Baltimore City’s elementary students lived in poverty by this measure. (Bradford Exhibit 5, Ross Dec. at 3; Tr. 451:10-17 (“free and reduced price lunch, meaning these are disadvantaged students that need financial help”).) As Dr. Grasmick explained, Baltimore City has “the largest percentage” of economically disadvantaged students in the State. (Tr. 1386: 16-1387:3; 1491:17-24.)

123. As Dr. Ross opines, it is “harder to teach these [disadvantaged] kids.” (Tr. 451:15-16.)

124. Dr. Copeland testified that Baltimore City has the highest poverty level in the state and the BCPSS has a significant number of children at risk of educational failure. (Tr. 1303: 3-8.)

125. Among Maryland's jurisdictions, Baltimore City ranks last in wealth per pupil. (State Exhibit 2, Rohrer Aff. ¶ 5.)

F. The Budget Deficit And The Measures Taken To Address It

1. The Deficit and the BCPSS' Corrective Measures

126. Starting in FY 2002, the BCPSS began to engage in deficit spending. By the end of FY 2002, the cumulative deficit reached \$21 million. It grew to \$52 million at the end of FY 2003, and reached \$58 million by FY 2004. (Bradford Exhibit 24, Draft Financial Recovery Plan, May 30, 2004, at 9.)

127. In April 2004, the accumulated deficit led to a serious cash flow crisis, raising the possibility that the BCPSS would be unable to meet its short-term financial obligations. (Bradford Exhibit 15, Draft Financial Recovery Plan.)

128. Initially, the Governor proposed a plan, to be effectuated by act of the General Assembly, which would have advanced additional State monies to the BCPSS and, in return, established substantial additional State control over the system.

129. As an alternative to the State's plan, the City provided a short-term loan of \$42 million from its rainy day fund. (Bradford Exhibit 15, Draft Financial Recovery Plan.)

130. As a condition of receiving this loan, under a Memorandum of Understanding signed by BCPSS and City, the BCPSS was required to repay \$34 million in August 2004, and to repay the remaining \$8 million, plus interest, in FY 2006. (BCPSS Exhibit 23, MOU ¶ 3; Bradford Exhibit 24, Draft Financial Recovery Plan at 14; Tr. 1314-15.)

131. On August 1, 2004, the BCPSS repaid \$34 million of the loan from the City as promised. (Tr. 1114, 1314.)

132. As a further condition of receiving the short-term loan from the City, the BCPSS also agreed, in the MOU, to retire the accumulated \$58 million deficit by June 30, 2006. (BCPSS Exhibit 23, MOU ¶ 3; Bradford Exhibit 24, Draft Financial Recovery Plan at 14 Tr. 1314-15.)

133. A state statute passed this legislative session, S.B. 894, also purports to require the BCPSS to retire its accumulated deficit within two years.

134. Consistent with these requirements, the BCPSS has determined to institute cost savings sufficient to retire 60% of the deficit (\$35 million) in FY 2005 and 40% (\$23 million) in FY 2006. (Tr. 1314-15, 1204.)

135. The BCPSS has also determined to institute cost savings sufficient to create \$10 million surplus in FY 2005 and a \$10 million surplus in FY 2006 as a reserve against unanticipated expenses. (Bradford Exhibit 24 Draft Financial Recovery Plan at 14; Bradford Exhibit 21, BCPSS FY 2005 Budget.)

136. It appears that the BCPSS currently is operating within its means. (Bradford Exhibit 24, Draft Financial Recovery Plan at 11-12.) The BCPSS finished FY 2004 with a balanced budget for the first time in several years. (Tr. 1218.)

2. City and State Oversight Responsibility of the BCPSS Requires Them To Bear Some Responsibility For The Budget Issues

137. The City and State, as well as the BCPSS, bear some responsibility for the BCPSS management and the budget crisis facing the BCPSS.

138. Under S.B. 795 and the Consent Decree, the City Council reviews and approves the BCPSS' budget on an annual basis and could and should have been aware of the mounting deficit and the system's fiscal woes. Indeed, audits and assessments of the budget issues were performed in 2003.

139. The State similarly has substantial oversight responsibility under the City-State Partnership, the Consent Decree, and S.B. 795.

140. For instance, the Board is jointly appointed by Governor and Mayor, from a slate of candidates recommended by the State Board. (Tr. 1532.)

141. The State has other involvements with the system as well, including technical assistance, review and approval of the Master Plan, the ability with withhold money, oversight liason counsel, and actia; numerous site visits to schools. (Tr. 1439-1442, 1479.)

142. Moreover, the State Superintendent is required by the Decree and S.B. 795 to submit an annual report to the legislature each year on the progress of the BCPSS. (Tr. 1441.) The Superintendent's 2003 report specifically informed the General Assembly of the deficit problem as it then existed, describing a lack of fiscal controls and a FY 2002 deficit, and projecting an additional \$31.2 million deficit in FY 2003. (Bradford Exhibit 57, Letter from Nancy Grasmick to the Hon. Thomas V. Miller, *et al.*, at 10, Tr. 1501-02.)

143. The three-person audit panel found that "City and State officials should have known" about challenges faced on the budget as early as 2000, and "failed to intervene and aggressively work to assist BCPSS with the deficit identified at that time." (State Exhibit 11, at 8.)

**G. The Measures Taken To Address The Budget Deficit
Have Reduced Educational Opportunity in the BCPSS
And Slowed Progress Toward Constitutional Adequacy**

144. In order to address the fiscal issues, repay the City, retire the accumulated deficit and accumulate a substantial rainy-day fund over two years, the BCPSS has instituted a number of cost savings measures that will reduce educational opportunities offered to Baltimore City's students and slow progress towards constitutional adequacy.

145. The BCPSS' total budget next year is approximately \$963 million. (Tr. 73:24-74:1.) That represents an increase of approximately \$63 million from last year's budget of approximately \$900 million. (Tr. 74:4-11.)

146. To address the deficit, BCPSS has instituted some \$45 million in reductions. The determination to retire 60% of the \$58 million deficit in FY 2005 requires the system to institute \$35 million in reductions to outlays for education in FY 2005. (Tr. 1244:4-7.) The determination to institute a \$10 million “rainy day fund” in FY 2005 requires the system to institute an additional \$10 million in reductions to outlays for education in FY 2005. (Tr. 1204:3-1205:2.)

147. In order to accomplish this approximately \$45 million in reductions to outlays for FY 2005 the BCPSS instituted a number of cuts to educational programs and services, all of which are described more specifically below.

148. As Dr. Copeland conceded, the BCPSS made choices to cut educational services in order to quickly reduce the deficit and build up a reserve fund. (Tr. 1244:16-1446:3.)

149. For example, it achieved approximately \$10 million in savings by eliminating systemic summer school for children in grades K-8 and by requiring high school students to pay \$150 a course for summer school offerings; it achieved approximately \$12.5 million in savings by eliminating some 250 teaching positions and increasing class sizes by 2 students; and it achieved approximately \$ 24 in savings by reducing administrative and part time staff by some 1,000 employees, including among many others guidance counselors in elementary schools, attendance officers, and academic coaches and teacher mentors. (Tr. 255: 9-18; 1298:4-15, 1303:9-1304:7.)

150. The reductions in educational outlays, including decisions to eliminate systemic summer school for at-risk children in elementary and middle school, to increase class sizes, to eliminate guidance counselors and other specialists, to reduce the availability of mentor teachers and academic coaches, to encourage the retirement/attrition of experienced teachers and principals, and others – all without any adequate assurance that funds or focus shifted to other programs will compensate for such reductions in services to children – will immediately and adversely affect the quality

of education being provided to children in Baltimore City, as more specifically described below. (Ross, Tr. 450:6-451:9; 457:14-25; 468:4-7; McLaughlin, Tr. 612:3-20; 617:8-20; 622:8-623:20, Chinnea, Tr. 647-48; 713-15; Amos, Tr. 942:24-943:9; 993:11-994:10.)

151. The programmatic and staffing cuts initiated by the BCPSS negatively impact the educational opportunities for all students enrolled in the BCPSS, many of whom are economically and socially disadvantaged and thus “at risk.” For at risk students who receive special education services the negative impact of the programmatic and staffing cuts is magnified by the presence of a disability that interferes with the student’s ability to achieve. (Tr. 498.)

152. The reductions in educational outlays also created significant morale issues both within the system and among the parents and students it served. (Tr. 494-97; Tr. 504-511; Bradford Exh. 113, Buettner Dec. at 3, Eller Dec. ¶¶ 7, 9, Harrison Dec. ¶ 9.)

153. Notwithstanding a budget increase of approximately \$63 million, including approximately \$50 million in increased Thornton funding from the State, spending on academic programs is at best flat this fiscal year. (Tr. 121:19–123:1.)

154. Instead of being used to provide increased educational opportunities to Baltimore’s student population, much of the new Thornton money provided to the BCPSS this year is being used simply to ameliorate the effect of the proposed budget cuts. (Tr. 1215:22-1217:1.)

155. There are also a number of initiatives required by the State as a part of the system’s status in “corrective action” and as requirements to improve the master plan, including middle and high school reform, etc. (Tr. 1458:12-1459:7; Bradford Exhibit 12.) Although all of these initiatives require expenditures, no additional money has been provided. As a consequence, the system must institute these required actions within the

confines of its current budget and the reductions to that budget necessitated by the determination to eliminate the deficit over two years and build up a reserve fund.

156. BCPSS witnesses all recognized that the reduction in educational opportunities is a necessary result of the choices made this year to reduce the deficit, uniformly indicating that the choices made to eliminate programs and increase class sizes were “difficult” ones and testifying that if the funds were available their preferences as educators would be to continue the programs and reduce class sizes. (Tr. 647-48; Tr. 1282:2- 1285:7.)

157. The City’s sole witness, similarly, conceded that the Financial Recovery Plan as suggested by the City and the Fiscal Operating Committee did not take into account classroom impacts, and agreed that a plan that does not take into account educational needs is “misguided.” (Tr. 1173-74; Bradford Exhibit 24, Draft Financial Recovery Plan at 9.)

158. The State has said that to assume no educational impact from the cuts would be “naïve.” (Bradford Exhibit 30, Letter from Nancy Grasmick to the Hon. Thomas V. Miller, *et al.*, March 31, 2004, at 9.)

159. General and special education are intricately linked. Students with disabilities cannot be successful without a successful general education system. (Grasmick, Tr. 1450-1451, 1466, 1477, 1517-1518; McLaughlin, Tr. 641-642.)

1. The Increase In Class Sizes Has Reduced Educational Opportunity

160. The BCPSS has achieved a savings of approximately \$12.5 million by reducing teaching staff by approximately 250 and, as a result, increasing class sizes by 2.

161. The system is raising class size by two students for the 2004-2005 school year. (Tr. 106:2-4; 563:9-13; 1204:20-21.)

162. The increase in class size for 2004-05 builds on earlier increases to class size that were implemented in the 2003-04 school year. (Tr.1245: 25-1246:4; Bradford