

Exhibit 63, June 13, 2002 Memorandum to School Principals re: Allocations for School-Year 2002-2003; Bradford Exhibit 65, April 17, 2002 Memorandum to Area I Principals re: Projections/Budget FY 2003.)

163. This additional increase will mean that class sizes have now been increased by up to four since the 2002-03 school year. (Tr. 1296:2-5; Tr. 563:14-24; Tr. 565:7-10; Tr. 648:8-11.)

164. The following table illustrates the changes in class size from FY 2003 to FY 2005:

	FY 2003	FY 2004	FY 2005
Pre-K	1:20 w/asst.	No change	No change
K	1:25 w/asst.	No change	No change
Gr 1-3	1:18	1:20	1:22
Gr. 4-5	1:27	1:27	1:29
Gr. 6-8	1:27	1:28	1:30
Gr 9-12	1:28	1:30	1:32

(Bradford Exhibit 21, BCPSS FY 2005 Budget; Bradford Exhibits 63, 65.)

165. These planned class size increases mean that Baltimore City, despite having the highest percentage of at-risk students who could benefit from small classes, will once again have the largest average class size of comparable Maryland districts. (Tr. 1311:19-24; Bradford Exhibits 96-101.)

166. In contrast, Montgomery County has instituted a program focusing resources on high-need, low performing schools that, among other things, has sharply reduced class size in kindergarten to 15 and in grades 1-3 to 17. There has been an

encouraging increase in test scores as a result of these reductions in class size. (Bradford Exhibit 5, Ross Dec. at 13; Bradford Exhibits 17, 19, 97.)

167. BCPSS previously has indicated that the increased class sizes are averages, not caps – meaning that classes may have *more* students than the anticipated limits. (Bradford Exhibit 13; (Letter from Sally A. Robinson to Judges Garbis and Kaplan, June 1, 2004, (“Robinson Letter”).) BCPSS representatives testified, however, that the class sizes are caps, meaning that except in rare and exceptional circumstances no class will exceed the anticipated size. (Tr. 567-72; 1246:18-1247:3.)

168. The system is using its Thornton funds in part to reduce the effect of an otherwise planned class size increase, meaning that the system had planned to increase class sizes by three and it used Thornton funds to increase class sizes only by two this year. (Tr: 108:1-9.)

169. This increase in class size is particularly worrisome because one of Board’s key initiatives to improve and ultimately attain adequacy – one of the centerpieces of the Remedy Plans submitted to this Court in 2000 and 2002, for instance – was smaller class size. (Tr. 1195:7-17; Bradford Exhibit 78.)

170. Students, parents, and teachers all testified that the increases in class size will adversely affect educational opportunity. As named plaintiff Keith Bradford explained, “[d]ue to budget cuts . . . [o]vernight, [his son] Andrew’s two classes increased in size from approximately 21 students to a class size of approximately 27 students in one class and 33 students in the other.” (Bradford Exhibit 113, Bradford Dec. ¶ 5.) This class size increase led to a sharp decrease in Andrew’s grades, made it more difficult for the teachers to control the students, and caused Andrew to lose “his enthusiasm and his interest in education.” (*Id.* ¶ 6.)

171. Mr. Bradford also testified that his son Kendall experienced losses in educational opportunities due to increased class sizes. For example, Kendall failed science because his class was “too large” (over 32 students) making it a difficult

environment in which to learn. (Tr. 1264:12-1267:17). Dunbar only provided one twilight science class for the hundred plus students that failed science that semester. (*Id.*). Only after significant pressure from the parents did the administration at Dunbar add one more twilight science class (leaving 90 plus students still without recourse), explaining that there was no “money in the budget to pay a teacher.” (*Id.*).

172. Expert testimony demonstrates that the increase in class sizes will adversely affect educational opportunity for all BCPSS’ students. Educational expert Steven Ross concluded that that larger class sizes “can only work in the direction of increasing teaching demands and reducing the potential to raise student achievement,” and he notes that research demonstrates that smaller class sizes are particularly important in high-need districts like Baltimore City. (Bradford Exhibit 5, Ross Dec. at 16.) Increases in class size, according to Dr. Ross, “creates a less attractive situation for a teacher to stay in Baltimore” and “creates additional demands.” (Tr. 451:2-4.) Dr. Ross points to the research demonstrating that larger class sizes disproportionately affect disadvantaged children. (Tr. 453:2-5, 15-18.)

173. Dr. Ross also raises serious question about the validity of the argument raised by the BCPSS in some court submissions that modest class size increases will not cause “significant liabilities.” He concludes, to the contrary, that “there are logical and scientific reasons to believe that ‘liabilities’ occur with *any* increase in enrollment.” (Bradford Exhibit 5, Ross Dec. at 12.) As Dr. Ross explains, “[a]ny increase in class size will be harmful, particularly in a district that serves many at risk students.” (Tr. 450:7-13.) In Dr. Ross’ opinion, “[e]very kid you add in a disadvantaged urban setting is increasing the demand on that teacher, decreasing the attractiveness of teaching in that district, [and] making it harder to be successful.” (Tr. 455:8-13.) Ultimately, in Dr. Ross’ opinion, given BCPSS’ low 2004 scores, particularly the high percentage of students performing only at the “basic” level, there is an increased likelihood that larger classes will include more than a handful of students who need special attention to move

beyond the basic level. (Tr. 450-460; *see also id.* at 612:15-23; 613:25-614:24 (Dr. McLaughlin recognizing the burden on regular education teachers if there are not enough assistants trained in special education in large classrooms with students that have IEPs).)

174. The staffing cuts and increased class size also will diminish achievement outcomes for students receiving special education services. (Tr. 498-500; Tr. 603-607, 610-614, 622-623; Tr. 1466.)

175. Witnesses from the BCPSS conceded that, as educators, if the funds were available, their preference would be to reduce, rather than increase, class sizes. (Tr. 648:12-14.)

2. Teacher Reduction and Attrition and Reduction in Teacher-Mentor Program Have Reduced Educational Opportunity

176. The proposed reduction in the actual number and quality of teachers through layoffs and attrition, as well as the elimination or reduction of academic coaches and mentors that help less experienced teachers learn to teach, likely will, as Dr. Ross opines, also have an adverse impact on educational quality. (Tr. 469:17-471:12; Bradford Exhibit 5, Ross Dec. at 15-16.)

177. In order to increase class sizes for school year 2004-05, the system has reduced its teaching force by 250 teachers. (Tr. 1305:12-16).

178. A number of part-time teacher mentors, retired teachers whose function was to mentor and help train new teachers, were also laid off. (Tr. 1303:25-1304:2.) About 100 academic coaches, who also helped train teachers and provided professional development opportunities, were laid off at the beginning of the 2003-04 school year. (Tr. 1298:4-18.)

179. As educational expert Dr. Ross notes, “teacher effectiveness is by far the most important extrinsic determinant of student success” (Bradford Exhibit 5, Ross Dec.

at 15), and a policy that leads to experienced teachers leaving and provides fewer resources to assist new teachers is unwise.

180. BCPSS representative Bill Boden testified that the attrition and retirements are more likely to apply to experienced teachers than brand-new teachers. (Tr. 364-65.)

181. Dr. Ross testified that there is “very clear evidence” showing “that veteran teachers have significantly higher effectiveness scores” and that “[e]ffectiveness scores mean how much you bring your class of students up on the standardized tests than beginning teachers.” (Tr. 470:6-14.)

182. It is unclear from the evidence whether the BCPSS will have sufficient teachers focusing in certain hard-to-hire specialties after the reduction/attrition to fully staff classes in those subject matter areas. (Bradford Exhibit 11, Letter from Valerie V. Cloutier to Hon. Joseph H.H. Kaplan, *et al.*, June 14, 2004, at 2; Tr. 1306.)

183. The State has repeatedly pointed out the importance of continuing to attract and retain qualified teachers and providing sound mentoring programs for them to continued progress for the BCPSS. (Bradford Exhibit 57, Letter from Nancy S. Grasmick, *et al.*, to Hon. Thomas V. Miller, Jr. *et al.*, March 2003, at 6; Bradford Exhibit 30, Letter from Nancy Grasmick to the Hon. Thomas V. Miller, *et al.*, March 31, 2004, at 9; *id.* at 10; *id.* at 11; *id.* at 13.)

184. The loss of experienced teachers and the loss of mentoring resources already has, and will continue to, contribute to the substantial decline in morale throughout the system. As Dr. Ross explained, teacher disenfranchisement or lack of morale is one of the top two factors “in impeding reform” because “[i]t is the teachers who are the ones in the classroom interacting with the kids. If the teachers don’t want to do the reform, don’t embrace it, feel disenfranchise[d], it is not going to happen.” (Tr. 494:7-21.)

185. Steve Buettner, a former principal who decided to take a job in Baltimore County, submitted a declaration, in which he describes the impact of the budget cuts on morale: “the budget cuts are bad enough, but the level of morale was absolutely morose. School staff cannot take these constant budget issues. It is one thing to lose a guidance counselor, secretary, and custodian, but it truly another blow to the children of this City to make their teachers feel they can lose their jobs at any time.” (Bradford Exhibit 113, Buettner Dec. at 3.)

186. As described by Justine Jenkins in one of the student petitions submitted to the Court by the Algebra Project, “we lost some of the best teachers because of the crisis.” (Bradford Exhibit 126; Tr. 509:11-18.) Chelsea Carson likewise described the lack of “qualified teachers” in the petition she submitted. (*Id.*; Tr. 510:1-5.)

187. A declaration submitted by Kathy Bacon, a teacher at Pimlico Middle School, emphasizes the important role that mentors play to young teachers. (Bradford Exhibit 113.) As Ms. Bacon explains, “when [my mentor] was laid off I was at a loss” and without mentors “I suspect that new teachers will be left to their own devices, causing them to make a large number of avoidable mistakes.” (*Id.* at 3-4.)

188. Sheila Eller, a retired speech pathologist who served as a teacher-mentor, also submitted a declaration, in which she describes the impact of the elimination of mentors: “The budget cuts and subsequent dismissal of part-time mentors had a tremendous impact on Pimlico. For instance, teacher-administration communication suffered, after school workshops were no longer available and general teaching instruction was no longer available for novice teachers. Without teacher mentors . . . new teachers were without basic school supplies as many mentors supplied, out of their own pocket, money, chalk, pencils and paper for students.” (Bradford Exhibit 113, Eller Dec. ¶ 6).

189. Niki Moghbeli, a former BCPSS teacher, likewise submitted a declaration highlighting the valuable role of mentors, particularly for new teachers. As a “brand new

teacher, the guidance I received from [my mentor] became an invaluable resource that improved my teaching skills and helped me provide quality lessons to my students.” (Bradford Exhibit 113, Moghbeli Dec. ¶ 5; *see also id.* ¶ 10 (“[t]he mentor system was my most valuable tool”).) After her mentor was laid off, Niki explains that, “both my teaching ability and my students’ educational experience suffered. I lacked guidance in providing properly prepared materials and lessons for my students. Additionally, I could no longer provide my students with adequate school supplies – I could not even supply every student with a pencil based on the amount of supplies the school afforded me. [My mentor], however, had many outside contacts, such as her church, that donated paper, pencils and crayons to my students.” (*Id.* ¶ 9.)

190. Sarah Reckhow, another new BCPSS teacher, also found her mentor to be a very valuable resource, but like others, had to survive without a mentor during the 2003-2004 school year. (Bradford Exhibit 113, Reckhow Dec. ¶ 2 (noting that “[t]he first year of teaching is incredibly challenging” and that she has “no doubt that the presence of mentors for first year teachers is an important way to improve the level of instruction for students in Baltimore City.”).)

191. The impact of the high level of vacancies for special education teachers (115 vacancies) and the lack of certified special educators is exacerbated by BCPSS’ cust in support staff and professional development opportunities. (Ross, Tr. 494-499; McLaughlin, Tr. 615-617; Grasmick, Tr. 1460-1462; Amos Tr. 780-786, 883-890, 908-913.)

3. Elimination of Systemic Summer School for Struggling Elementary and Middle School Students Has Reduced Educational Opportunity

192. The BCPSS purports to save approximately \$10 million for FY 2005 by eliminating systemic summer school offerings for elementary and middle school students who are struggling academically and who have been retained in a grade. (Tr. 105:13 –

106:1; 1204:22-25; Tr. 521:13-17 (Chinnea – budget allocation for summer school in 2003 was between \$11 and \$14 million); Tr. 523:10-13 (2003 summer program was a systemic program).)

193. That represents an additional reduction from summer school offerings from 2002-03. For the 2002-03 school year, the system had budgeted \$17 million to summer school. (Bradford Exhibit 45, BCPSS, An Evaluation of Summer School 2003: Phase I, Nov. 21, 2003, at 17.)

194. Previously, the system offered systemic summer school to all elementary school children who performed poorly on the Comprehensive Test of Basic Skills and who were at risk of being retained a grade. In 2002, 43,257 students were eligible for this summer school program, and approximately 30,600 attended. In 2003, similarly, 39,541 students were eligible, and 18,965 attended. (Bradford Exhibit 45, BCPSS, An Evaluation of Summer School 2003: Phase I, Nov. 21, 2003, Executive Summary; Bradford Exhibit 67, BCPSS, An Evaluation of Summer School 2002: Phase I, August 2002 at 22.)

195. Retained students from grades K-8 in need of summer school programs are no longer given the opportunity to make up that grade over the summer. (Tr. 1300:24-1301:3; Tr. 529:17-25.) As student Malika Howell said, “[m]y little sister can’t go to summer school and she is going to have to repeat the first grade.” (Bradford Exhibit 126; Tr. 509:1-10.)

196. There is no plan in place for a systemic summer school program for 2005 either. (Tr. 655:24-656:8.)

197. Systemic summer school provided a substantial benefit to students who attended. Testimony and evidence from the BCPSS and the State, as well as educational experts, uniformly so indicates.

198. As the BCPSS noted in its June 1 submission to the Court and in the draft “intervention plan” submitted as an exhibit, students “lose approximately 2.6 months” of

grade level equivalency over the summer, and “[s]ummer learning loss contributes to the achievement gap in reading performance between lower income and higher income children and youth.” (Bradford Exhibit 13, Robinson Letter, Attachment 1, Slide 1, quoting the Johns Hopkins University’s Center for Summer Learning; Tr. 645:14-646:1; Tr. 714:12-19; BCPSS Exhibit 11.)

199. The system’s own evaluations describe the benefits to students attending systemic summer school. as detailed in the BCPSS Remedy Plan for FY 2003 “BCPSS decided on summer school as one intervention, based on positive results from its own pilot research conducted in 1999 and the success of The Summer 2000 program.” (Bradford Exhibit 78, The Remedy Plan.) (Bradford Exhibits 45, 67.)

200. Increased summer school offerings over the past few years have been credited with helping city schools improve their performance by the independent evaluators required by the Consent Decree and S.B. 795. (*See, e.g.*, Interim Evaluation, Executive Summary, at 3, 29-30 (noting that summer school “helped to increase achievement for a majority of students who participated”).) as detailed in the BCPSS Remedy Plan for FY 2003 “BCPSS decided on summer school as one intervention, based on positive results from its own pilot research conducted in 1999 and the success of The Summer 2000 program.” (Bradford Exhibit 78, The Remedy Plan.)

201. Representatives of the BCPSS testified that systemic summer school benefited students and was a “successful” program, and that elimination of summer school diminished opportunities for students. (Tr. 545:13-546:4; Tr. 645:21-646:1; Tr. 713:9-16; Tr. 1245: 16-21.)

202. System officials also testified that if the money was available, their preference would be a continuation of a systemic summer program, along with a full program of intervention during the school year. (Tr. 647:21-648:2; Tr. 1288: 4-9.)

203. The State, similarly, has conceded that systemic summer school provided a substantial benefit to students who attended. In her 2003 report to the General

Assembly, similarly, the State Superintendent noted that summer school was “critical to BCPSS students.” (Bradford Exhibit 57, Letter from Nancy S. Grasmick, *et al.* to Hon. Thomas V. Miller, Jr., *et al.*, at 10). Superintendent Grasmick testified that the ideal program would combine interventions during the school year with a systemic summer school system. (Tr. 1544:17-1545:25.)

204. Expert testimony demonstrates that the elimination of systemic summer school reduces educational opportunities for students. Educational expert Steven Ross confirms that elimination of a systemic summer school program for struggling elementary and middle school programs will adversely affect educational opportunities. (Bradford Exhibit 5, Ross Dec. at 3-10.) As Dr. Ross testified, “[e]limination of a systemic summer school program is moving in the wrong direction. It is detrimental to the children of Baltimore. It would be detrimental to the children at risk in any environment.” (Tr. 457:21-25.)

205. Dr. Ross bases this conclusion on research that shows that “[s]ummer school is one area that has a positive effect on disadvantaged students.” (Tr. 458:1-7.) Dr. Ross also points to research showing that “during the summer, at risk kids lose about three months relative to where they were before [the] recess started” compared to “[m]iddle class kids or less disadvantaged kids only lose one month.” (Tr. 458:18-22.)

206. In place of this systemic summer program, this summer BCPSS is offering (1) a patchwork of community-based programs to significantly fewer students, approximately 7,000; (2) a “summer learning challenge” developed by the mayor, in which students are expected to solve a daily math problem and read 30 minutes a day; and (3) a draft plan for targeted student interventions to take place in 2005. (Bradford Exhibit 13, Robinson Letter at 3-4; BCPSS Exhibit 11; Tr. 528-40.)

207. These programs do not provide an acceptable substitute for a systemic summer school program designed to provide academic help to struggling students and to prevent the inevitable summer learning loss that occurs when students are not in school.

208. The community-based summer programs serve substantially fewer students than the systemic summer school program – approximately 7,000, as compared to 18,965 last year and 30,600 the year before. (Tr. 1300:20-23; BCPSS Exhibit 7, BCPSS Exhs. 25, 34.)

209. The community-based programs, moreover, are largely continuations of supplemental programs also offered last year. (Tr. 650:1-7; Bradford 124, 125.)

210. They do not offer students the opportunity to avoid repeating a grade. (Tr. 529.)

211. The community-based programs are ad hoc, developed by individual community groups and schools, without either the systemic, unified curriculum or the formal evaluative component that both Dr. Ross and the BCPSS recognized are important. (Tr. 457-67; Bradford Exh. 5) As Chief Academic Officer Linda Chinnea testified, there is no “formal evaluation” planned for the 2004 summer school program like the “evaluation of the [2003] systemic summer school program.” (Tr. 540:3-17; *compare* Tr. 646:15-647:11 (noting importance of evaluative and systemic components for effective programs).)

212. Educational expert Stephen Ross opined that this patchwork of community-based programs, although they appear well-intentioned and may be individually valuable to a limited population of students, are not a sufficient substitute for a systemic program designed to stem the inevitable summer learning loss. (Bradford Exhibit 5, Ross Dec. at 6; Tr. 457-67.)

213. Similarly, Dr. Ross observed that programs like the Mayor’s Summer Learning Challenge, although well intentioned, are not a “substitute for a research-based, well-designed, well-implemented program that gets kids learning during the summer.” (Tr. 463:19-22.)

214. Finally, the system’s draft “intervention plan,” although it contains some promising indications of additional systemic focus on children who need help in reading

and math, does not substitute for a systemic summer school program. As Dr. Ross noted, the system's draft plan is "pretty thin;" appears to be just "a list of objectives" and lacks a "rigorous evaluation component." (Tr. 466:12-467:12.)

4. Adding A Fee To Summer School for High School Students Has Reduced Educational Opportunity

215. The 2004 summer program for high school children who need credits to graduate also has been scaled back significantly as a result of the budget cuts.

216. The high-school summer program is a credit replacement program. It permits high school students who have failed classes for which they need credits to graduate to earn those credits during the summer. Students may take two classes during the summer program. (Tr. 531, 668; Bradford Exhibits 45, 67, 102.)

217. In the summer of 2002, the summer school program for high school students was free. In 2003, students were charged \$75 total to attend. In 2004, high school students were charged \$150 per course or, if a student takes the maximum two courses, \$300. (Tr. 522; Tr. 531:14-21; 673:22-674:25; 669:22-670:4.)

218. The system does provide a "waiver" program. There is evidence that students did not learn of the waiver (or, indeed, of their eligibility for summer school) until very shortly before summer school was to start, and there is also evidence that the administration of the waiver program was confused and did not provide students with appropriate opportunities to obtain waivers. (*See* Bradford Exh. 113, Foy Dec. at 2-3.)

219. Of the 2,646 students enrolled in the high school summer courses this summer, only 1,000 waiver applications were submitted. 800 waivers – representing about a third of the students attending – were granted. (Tr. 537:4-11; Tr. 670:25-671:4.) Most of the waivers granted were partial, not full, waivers. (Tr. 126:22-127:7.)

220. There was a substantial drop in the number of high school students that attended the 2004 summer program compared to both the 2002 program, which was free, and the 2003 program, in which students were charged only \$75. (Tr. 673:22-674:25.)

221. The BCPSS' summer school reports reflect that in 2002, 6,489 attended at the high school level and that in 2003, 4,086 high school students attended summer school. (Bradford Exhibit 67, BCPSS, An Evaluation of Summer School 2002; Phase I at 28, table 11; Bradford Exhibit 45, BCPSS, An Evaluation of Summer School 2003: Phase I at 42, table 12.) In 2004, only 2,646 attended. (Tr. 673:22-674:25.)

222. Educational expert Dr. Steven Ross testified, "[t]he high school students having the strongest need for summer school experiences are also those least likely to have financial resources" so the fee "will serve as a barrier or deterrent for many students in need." (Bradford Exhibit 5, Ross Dec. at 8; Tr. 464: 15-19 ("the students most likely to need the summer school program are the least likely to have \$150").)

5. Elimination of Elementary-School Guidance Counselors, Attendance Monitors, and Other Support Personnel Has Reduced Educational Opportunity

223. The BCPSS also decreased costs by eliminating guidance counselors and other essential staff, including employees charged with monitoring attendance and addressing student attendance problems. (Bradford Exhibit 21, BCPSS Fiscal Year 2005 Proposed Operating Budget at 77, 83; Tr. 109:9-17; Tr. 520:6-9; Tr. 940; Tr. 1091:12-1096:1)

224. Ms. Amos testified that 24 guidance counselors for elementary schools were eliminated leaving no guidance counselors to serve elementary age students, and that the guidance counselor to student ratio for middle and high school is 1:100. (Tr. 774-76; 945-46.)

225. At-risk students, in both elementary and high school, benefit from guidance counselors. (Tr. 914; 940; 943-45.) This is because BCPSS, in Ms. Amos' opinion, has to consider more than the academic side of the equation for at risk kids, "[y]ou have to consider the whole child, and support programs should be an integral part of a child's instruction, instructional program." (Tr. 943.) Irma Johnson submitted a declaration in which she describes the vital role that guidance counselors play in a system with high at-risk population. Bradford Exhibit 113, Johnson Dec. at 2 ("I was perplexed when it was announced that all elementary school counselors in BCPSS were going to be removed as of January 2, 2004. This service is vital to student living in low social economic areas!!")

226. Ms. Amos testified that the best model in her opinion would be to have guidance counselors and outside mental health services in place for the kids because "a lot of the guidance counselors don't do wraparound services, and our students come to school with family issues and issues that don't just end at 3 o'clock or 2:35, that they do need support in the community. A lot of them come from drug-infested areas. We have a lot of grandparents raising students. A lot of our attendance problems are due to, when we investigate, parents or grandparents not being able to get the kids to attend school, and for truancy, Juvenile Services doesn't really -- they are overwhelmed, so they don't really handle it very well. So a lot of mental health providers follow through outside of school. They visit the home. They work with the family and they do other things besides the guidance program. (Tr. 943-946.)

227. Dr. Ross has opined that such cuts will have an adverse educational impact. (Bradford Exhibit 5, Ross Dec. at 14-15.) As Dr. Ross notes, "[a]t risk kids, disadvantaged kids and schools need guidance counselors . . . in a very serious way in terms of helping" because "[t]here are more behavior problems, more suspensions, more referrals." (Tr. 468:4-7.) Thus, in Dr. Ross' opinion, "it is negative to eliminate some of the guidance counselor positions." (Tr. 468:18-19.) Special Education expert Dr.

McLaughlin also explained that the lack of guidance counselors and mentors affects teacher attrition. (Tr. 616.)

228. Students also testified to adverse effects from the loss of guidance counselors. Chantel Morant, a student representing an advocacy and tutoring group, the Algebra Project, explained that the loss of a guidance counselor at a crucial time in a student's academic career, for example, in the 11th grade when SAT exams and college recommendations need to be completed, can have a devastating impact. (Tr. 507:14-508:4.) Likewise, in one of the petitions submitted to the Court by the Algebra Project, Jaree Colbert explained that, "I lost my guidance counselor, leaving me to talk to a stranger about my personal life." (Bradford Exhibit 126; Tr. 509:19-25.)

229. The system also has eliminated most of the central office staff that address and track attendance issues, adding those duties to the workloads of employees in the area offices. Moreover, many of the attendance clerks in the area offices (who make phone calls to parents about truancy) were part-time staff and also were let go. The system also has eliminated "truancy courts" from a number of schools. (Tr. 1091:12-1096:1.)

230. Similarly, the loss of employees charged with monitoring attendance will have an adverse educational impact, particularly given the system's substantial problems with attendance and truancy described above.

6. Failure to Expand Existing Programs Will Reduce Educational Opportunity

231. In addition to these cuts and others, there are a number of areas in which the BCPSS has decided not to implement planned expansions in services designed to help educate at-risk students.

232. The February 2004 revised Master Plan currently on file indicates that the BCPSS intends not to implement previously planned expansions in music and arts and physical education programs, in gifted and talented programs, in pre-Kindergarten

programs, in technology models to early learning environments, in providing bilingual translators for parents with difficulty speaking English, and the like. (Bradford Exhibit 38, Revised Master Plan, at 173, 175, 187, 203, 236, 238.)

**H. There Are A Number Of Ways To Infuse Extra Cash
For Education Into The BCPSS For This Academic
Year**

233. The evidence demonstrated that there are a number of ways that the BCPSS could ensure that at least an additional \$30 to \$35 million is spent on improving educational opportunity for children this year.

234. The BCPSS and the State Superintendent could request a deficiency appropriation from the General Assembly.

235. Indeed, the most recent revision to the Financial Recovery Plan, submitted by Chief Executive Officer to the Board based on a report from the Financial Operating Committee, dated July 20, 2004, recites that the BCPSS intends to seek a deficiency appropriation for at least the approximately \$10 million that a geographic cost of education index would have yielded to Baltimore City if that adjustment had been included in the state budget for FY 2005.⁴

236. The City could arrange a bond issue to accelerate the approximately \$31.5 million in accrued but unpaid leave time that the City is currently paying the BCPSS over time.

237. After school system employees were transferred from the city payroll to the school system payroll as part of the creation of an independent Board under the Consent Decree and S.B. 795, the City agreed to pay the Board an amount to cover the cost of accrued unpaid leave for those employees, over a number of years. The current

⁴ The Board has recently provided the Court with copies of the new Plan, which apparently was approved by the Board during a meeting on August 10.

balance owed comes to \$31.6 million, to be paid in 11 payments, the first ten in the amount of \$2.8 million each and the balance in a final payment. (Tr. 1147-49.)

238. City Finance Director Peggy Watson testified that the City is prepared to arrange a bond issue that would yield the present value of those payments to the BCPSS. (Tr. 1149-50.) Ms. Watson and a number of documents confirm that the BCPSS could then use the amount yielded by that issue to provide educational benefits to children. (Tr. 1150; Bradford Exhibits 34, 37, 94.)

239. The BCPSS has indicated a willingness to engage in such a transaction. The most recent Financial Recovery Plan drafted by the CEO, and recently submitted (after the hearing) to the Court, provides that the “City of Baltimore will accelerate its payments to BCPSS for unpaid leave.”

240. The City could increase its local share of school funding. The Court notes that the City’s local share of school funding has remained flat since the Court issued its June 2000 declaration finding that substantial additional funds were necessary, while the State’s share of school funding has increased, albeit not enough for compliance with the June 2000 declaration. (Tr. 1168-70; State Exhibit 1, Brooks Dec. Attachment A, at 4.)

241. The City could arrange a further long-term loan to its partner, the BCPSS, and could arrange for repayment on more generous terms than the almost immediate repayment of the bulk of the \$42 million loan it already has offered. City Finance Director Peggy Watson and City documents confirm that at least one major bond rating agency, Standard & Poor, has determined that the City’s level of reserves was “satisfactory” even after the \$42 million initial loan was made. (Tr. 1132-1136; City Exhibit 4.)

242. The BCPSS also could cut its planned \$10 million “rainy day” fund by a substantial amount, recognizing that if there ever were a “rainy day” for the students of Baltimore City, this is it.

I. Management Of The System, While Still Exhibiting Deficiencies, Seems To Be Improving Under The New CEO And Management Team

243. The BCPSS is currently operating under almost entirely new management, including a new CEO, a new CAO, a new CFO, a new Director of Human Resources, and several new Area Officers.

244. The BCPSS, under this new management team, appears to be moving to address a number of the issues that led to the accumulation of the deficit. It is instituting a new computerized tracking system that should permit it to accurately track vacancies and salaries, which has been an issue in the past, and it has imposed significant new budgeting and fiscal controls. It has a timeline to address and appears to be making progress toward, the issues raised by the Ernst & Young and Greater Baltimore Committee audits.

245. Most of the evidence of mismanagement presented at the hearing appeared to relate to issues that are not current, and that were not attributable to current management.

246. The Court believes at this time that the current new management should be permitted to continue its work.

247. The Court has continuing concerns, however, about the management of the system. In particular, there was troubling evidence at the hearing about the reporting and tracking of student credits, graduation requirements, and other information. There was also troubling evidence about continuing issues with correctly determining the number of students in the free and reduced price lunch program, continuing issues tracking Medicaid payments, and the like, all of which could have financial consequences for the system and harmful effects in the students. (Tr. 1450:24-1451:9.)

III. APPLICABLE LAW

A. *The Maryland State Constitutional Requirement of Educational Adequacy*

As this Court first recognized in 1996 during proceedings on Plaintiffs' motion for partial summary judgment, an education is not only of paramount importance to children and society, it is also a constitutional right of every Maryland schoolchild. This conclusion is mandated by the Maryland Court of Appeals' direction in *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 638-39 (1983). In *Hornbeck* the Court of Appeals held that the right to an adequate education is guaranteed by Article VIII of the Maryland Constitution. Article VIII of the Maryland Constitution 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. Consistent with *Hornbeck*, this Court previously held in this Court's Order of October 18, 1996, that “the thorough and efficient language of Article VIII requires that all students in Maryland's public schools be provided with an education that is adequate when measured by contemporary educational standards.” 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.

This Court has continuing jurisdiction to remedy the constitutional violation it found in October 1996 and June 2000. *See Green v. County Sch. Bd.*, 391 U.S. 430, 439 (1968)(“the court should retain jurisdiction until it is clear that state-imposed segregation

has been completely removed”); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 337 (Wyo. 1980)(directing the trial court to “retain jurisdiction until a constitutional body of [public school financing] legislation [was] enacted”).

B. The Court’s Inherent Power and Jurisdiction to Enforce its Own Orders

This court has the inherent power and jurisdiction to enforce its own orders. *See e.g., Reich v. Walker W. King Plumbing & Heating Contractor*, 98 F.3d 147, 154 (4th Cir. 1996); *Virginia Panel Corp. v. MAC Panel Co.*, 139 F. Supp. 2d 753, 756 (W.D. Va. 2001); *Link v. Link*, 35 Md. App. 684, 688, 371 A.2d 1146, 1149 (1977); Memorandum Opinion of June 25, 2002, at 4-5.

IV. CONCLUSIONS OF LAW

The focus of these proceedings was on the ability of the Baltimore City Public School System (BCPSS) to operate financially and programatically during the upcoming school year given the system’s serious cash-flow crisis and accumulation of a \$58 million structural deficit. The system is in its current precarious position due to the cumulative effect of substantial under-funding by the State, past mismanagement by the School Board and prior administrators and the City’s hastily conceived bail-out, which has imposed an unreasonable and unnecessary timetable for financial recovery. Clearly, the economic downturn of the system was set in motion by the State’s failure to provide the financial support the experts and this court found to be necessary in 2000. The City exacerbated the problem by taking over the system when it did not have the economic wherewithal to operate the system. It is evident, however, that money alone cannot solve

the system's problems. The school system has lacked leadership at all levels, lacked control of its finances, lacked accountability and was top-heavy with administrative positions.

The Court is gravely concerned that measures taken by the State, City and School Board to address the current fiscal crisis have compromised the quality of education being provided to Baltimore City's schoolchildren. It is clear from the sheer weight of the evidence adduced during the July and August hearings that the constitutional violation that this Court found in October 1996 and June 2000 is continuing. Given the existence of this persistent constitutional violation, the System must not significantly reduce educational opportunities available to children. The BCPSS, however, under the direction of the Fiscal Operating Committee, has diverted funds toward the rapid pay down of the deficit which would otherwise be used to pay for fundamental educational services and programs for Baltimore City schoolchildren. Compounding the problem, the State has been unwilling to provide immediate funding in accord with this Court's final 2000 order and will not arguably comply with that order until 2008 when full funding under the *Bridge to Excellence Act* is received.

In the mean time the children cannot be made to suffer for the mistakes of the adults. To that end, the court will declare that both the Memorandum of Understanding between BCPSS and Baltimore City and S.B. 894, which require the pay down of the \$58 million deficit in two short years, null and void as applied to BCPSS. Additionally, the Court will declare that the State should make every effort before FY 2008 to provide the substantial additional funding which it has unlawfully failed to provide in contravention of this Court's final 2000 order. For this school year alone, the State and BCPSS should

make available \$30-45 million in operational funding to be spent on programs and services that benefit at-risk children. The Court sees no reason at this time for a major restructuring of the BCPSS. The Court, however, is concerned with the City's role under the MOU, which gives the City increased authority over the BCPSS budget through the Fiscal Operating Committee. The City has impressive capacity to assist the BCPSS in book-keeping and accounting. It lacks the capacity, however, to link educational outcomes to mandated budget cuts. Therefore, the Court will further declare that the City shall continue to monitor BCPSS' accounting and finances through the Fiscal Operating Committee and the MOU, but decisions regarding program funding and the BCPSS operating budget must be made solely by the School Board under the direction and assistance of the Maryland State Board of Education.

A. The Constitutional Violation This Court Identified in October 1996 and June 2000 is Continuing

Article VIII of Maryland's Constitution provides that 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. Under Article VIII, a "thorough and efficient" education, meaning an education that is adequate when measured by contemporary educational standards, is the constitutional right of every Maryland schoolchild. *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 639, 458 A.2d 758, 780 (1983); *Montgomery County v. Bradford*, 345 Md. 175, 181, 691 A.2d 1281, 1284 (1997); Order of October 16, 1996; Memorandum Opinion of June 30, 2000, at 24-25 (final, binding, and the law of this case because the State dismissed its appeal). Under these standards, the constitutional

violation that this Court found in October 1996 and 2000 is continuing. A number of objective indicators, including the student scores, dropout rates, and other indicators described in the Court's finding of facts above, demonstrate that the students in Baltimore City, as of August 2004, are still not receiving an education that is adequate when measured by contemporary educational standards. They are still being denied their right to a "thorough and efficient" education under Article VIII of the Maryland Constitution.

B. The Court is Supervising A Phased-In, Gradual Remedy For That Constitutional Violation, And Until That Remedy Is Achieved The System Must Not Reduce Educational Opportunities Available to Children

The State of Maryland enacted the historic *Bridge to Excellence Act* in 2002 in direct response to this Court's June 2000 order declaring that additional State funding of \$2,000 to \$2,600 per pupil was required for constitutional adequacy. The *Bridge to Excellence Act* was intended to eliminate the "adequacy gap" between pre-existing funding and the amounts necessary for school systems to comply with state educational standards. Under the *Bridge to Excellence Act*, Baltimore City is to receive increases in State funding over pre-existing funding of approximately \$258 million, to be fully phased in by FY 2008. This money is meant to provide Baltimore City with sufficient State funding to achieve adequacy. Evidence at the hearing indicates that the system should receive at least another \$225 million over current levels under Thornton by FY 2008. Full compliance with this Court's June 2000 declaration will not arguably occur until the BCPSS receives at least \$225 million in additional State funding under the Thornton Act. Therefore the State and BCPSS are under a continuing obligation to remedy the inadequacy of the education provided to students in the BCPSS. Until that constitutional violation has been corrected, the system must continue to make progress toward

constitutional adequacy. To that end, the parties shall not substantially reduce the educational opportunities provided to Baltimore's school children.

C. Declaratory Relief Ensuring Continued Progress Towards That Gradual Remedy, And No Deprivation of Educational Opportunities As A Result of The Budget Crisis, Is Appropriate

This Court has the authority and jurisdiction to enforce its own orders and to remedy the constitutional violation it found in October 1996 and 2000. *See e.g., Reich*, 98 F.3d 147, 154 (4th Cir. 1996); *Virginia Panel Corp.*, 139 F. Supp. 2d 753, 756 (W.D. Va. 2001); *Link*, 35 Md. App. 684, 688 (1977); Memorandum Opinion of June 25, 2002, at 4-5; *Green v. County Sch. Bd.*, 391 U.S. 430, 439 (1968) (“the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed”); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 337 (Wyo. 1980) (directing the trial court to “retain jurisdiction until a constitutional body of [public school financing] legislation [was] enacted”). Accordingly, the Court rules that, as a matter of law, the steps taken to address the fiscal crisis facing the Baltimore City public schools must not stop the progress towards providing a constitutionally adequate education for Baltimore schoolchildren. The following steps taken to address the fiscal crisis did reduce educational opportunities and impermissibly interfered with progress towards providing a constitutionally adequate education for Baltimore schoolchildren: elimination of a systemic summer school program, increases in class size by up to four children, reduction of experienced teachers and elimination or reduction of mentors and academic coaches, elimination of guidance counselors in elementary school. Among other things, the steps taken above, while achieving cost savings, reduced educational

opportunities and impermissibly interfered with progress towards providing a constitutionally adequate education for Baltimore school children.

The court hereby finds that the financial savings associated with these steps exceeds \$30 million. The Court finds that the current BCPSS budget reserves \$45 million (\$35 million for deficit reduction and \$10 million in reserve fund) to address fiscal issues rather than devoting those funds to education programs. Therefore, a declaration is appropriate which directs the BCPSS and the State to make available an additional \$30-45 million in operational funding this fiscal year to be spent on programs and services that benefit at-risk children. The Court further directs the parties to report to it in four weeks on the status of the additional funding and plans for its use.

D. The Schedule Established for the Elimination of the \$58 Million Structural Deficit and The Creation of a \$20 Million Cash Reserve Starves the School System of the Operational Funds Needed to Sustain The System's Progress Toward Academic Achievement and Constitutional Adequacy

Senate Bill 894 and the Memorandum of Understanding (“MOU”) between the City of Baltimore and the Baltimore City Public School System (“BCPSS”) both require the accumulated \$58 million deficit to be eliminated by FY 2006. The Court has the power and authority to strike the statute, as applied to Baltimore City, to the extent that it violates the children’s constitutional right to an adequate education by requiring funds to pay down the deficit at the expense of reduced educational opportunities. *See, e.g., Sugarloaf Citizens Ass’n, Inc. v. Gudis*, 319 Md. 558, 568, 573 A.2d 1325, 1331 (1990) (declaring section 19A-22(b) of Montgomery County Code unconstitutional and explaining that “[c]ourts can invalidate legislation on grounds of unconstitutionality.”); *Bd. of Pub. Works v. Baltimore County*, 288 Md. 678, 421 A.2d 588 (1980) (invalidating provisions of Chapter 889 of the Acts of 1980 that authorized the expenditure of state

funds); *Beauchamp v. Somerset County Sanitary Comm'n*, 256 Md. 541, 261 A.2d 461 (1970) (affirming the unconstitutionality of Chapter 674 of the Laws of 1996 that provided a property exemption from the levy of taxes); *Brigham v. State*, 692 A.2d 384 (Vt. 1997) (system for funding public education held in violation of state constitution); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978) (statutory funding scheme found unconstitutional). Similarly, the Court may invalidate the MOU to the extent that it stands in direct conflict with the Board's constitutional duty and is contrary to public policy. See 15 Grace McLane Geisel, *Corbin on Contracts* § 79.1-.3 (revised ed. 2003)(courts have the right to refuse contract enforcement when necessary to protect a public interest)(constitutions are declarations of public policy); *Medex v. McCabe*, 372 Md. 28, 811 A.2d 297 (2002)(contracts conflicting with public policy are invalid); *Jennings v. Gov't Employees Ins. Co.*, 302 Md. 352, 488 A.2d 166 (1985)(holding insurance policy clause contrary to public policy invalid and unenforceable). For the reasons discussed below, the Court finds both S.B. 894 and the MOU void to the extent they require the deficit to be eliminated by the end of fiscal year 2006. Additionally, the Court finds that, absent additional funding from the State of Maryland, the deficit should be retired no sooner than fiscal year 2008 and that no more than \$5 million per year should be dedicated to the creation of a \$20 million cash reserve.

The City's effective take over of the BCPSS through the MOU accomplished one thing, it brought the budget into line, though it did so at the expense of the most important job of the school system, educating the children. The City had a myopic view of the system. Their focus was on rescuing a bankrupt system and returning it to solvency regardless of the impact on the system's capability to educate its students. The City's

effort has gone a long way in restoring financial stability to the school system. It's \$42 million loan met the system's short-term cash-flow needs and allowed the system to close out FY 04 with a balanced budget. But the funds used to pay back \$34 million of the city loan were drawn directly from the \$90 million payment the School System received from the State on July 31, 2004. These funds were intended for classroom instruction and to expand educational programs and opportunities for the city's at-risk student population, not for debt service. Instead, these funds were siphoned away to repay the City. The City knew when it extended the loan that the School Board was scheduled to receive the \$90 million payment from the State. In short, the City risked very little to effectively retake control of the school system pursuant to the MOU. The School Board, in crisis, had no choice but to sign on and sign on they did.

The MOU requires the immediate pay down of the \$58 million accumulated deficit over two years. Sixty percent, \$35 million, is to be paid down by the close of FY05 and the remaining forty percent, \$23 million, is to be paid down by close of FY06. (BCPSS Ex. 11, draft Financial Recovery Plan at p. 14). Additionally, the MOU requires that \$10 million be set aside in each of FY 05 and FY 06 as a reserve against unanticipated expenses. (*Id.*) This schedule for eliminating the deficit starves the school system of the operational funds needed to sustain the system's progress toward academic achievement and constitutional adequacy. The great weight of the evidence submitted over the course of the four day hearing in this case clearly establishes that the constitutional violation this court first found in 1996 is continuing. Resolving the present fiscal crisis while simultaneously ensuring that educational quality and opportunity are not further compromised requires a greatly more nuanced approach than the immediate

and abrupt pay down of the deficit. Article VIII's emphasis on educational adequacy demands nothing less. Simply put, the children of the Baltimore City Public School System continue to receive an inadequate education as measured by contemporary educational standards and, while that constitutional violation persists, the system must not reduce educational opportunities available to them.

Going forward, balanced budgets are undoubtedly the goal, and a necessary component of a "thorough and efficient" system of education. The court is keenly aware that one "cannot spend more than it earns." But neither can the State, School Board nor City, if allowed to exert continued control over BCPSS' budget, shirk their constitutional obligation by cutting fundamental educational programs to resolve the budget crisis in the most expedient manner available. The court sees no reason why the \$58 million structural deficit needs to be eliminated in a manner that suffocates operational cash flow and that ultimately results in disproportionately high class sizes, drastic reductions in administrative capacity and the elimination of fundamental educational programs. The State (and Sen. Robert Neall, who then was consulting on the BCPSS' financial problems) all have previously represented to the Court that if BCPSS is running a currently balanced budget (which it is) there is no fiscal reason why it should not take a longer period of time to retire the deficit, so that more money would be available for educational purposes. (Tr. 1584-85.) Indeed, Senator Neall suggested a 10-year period. (*Id.*)

Abbreviated time-lines and expedited repayment schedules are inappropriate here, in the context of public education, where the state and school system, in the face of a persistent constitutional violation, must continue to strive toward the goal of a thorough

and efficient education for the children of Baltimore City. To do otherwise would jeopardize, if not destroy, the gains made under the City-State partnership since 1996. For the above reasons, both S.B. 894 and the MOU between the City and BCPSS should be declared null and void to the extent that they require retirement of the \$58 million deficit in two years. Additionally, the Court finds that, absent additional funding from the State of Maryland, the deficit should be retired no sooner than fiscal year 2008 and that no more than \$5 million per year should be dedicated to the creation of a \$20 million cash reserve.

E. The State Has Not Complied With Its Constitutional Obligations Or its Obligations Under the June 2000 Declaration

The State of Maryland has not complied with its constitutional obligations to provide and fund a thorough and efficient education for the students in Baltimore City public schools, nor has it complied with this Court's June 2000 order, a final order of this court, which constitutes the law of this case. The State has failed to provide the additional \$2,000 to \$2,600 per pupil that was ordered by this Court in 2000. The State will not even arguably comply with that declaration until, at the earliest, the full amount of funding provided for in the *Bridge to Excellence Act* is received by BCPSS. Even then, the State will have substantially underfunded the amounts due under the 2000 declaration. For the fiscal years 2001, 2002, 2003 and 2004 alone, the State has unlawfully underfunded BCPSS by an amount ranging from \$439.35 million to \$834.68 million⁴. The State

⁴ The City and BCPSS have set forth two different methods of calculating the amounts still owed by the State under this Court's 2000 order for its failure to adequately fund during FY 2001, 2002, 2003 and 2004. The City's method uses FY 2000 as the base year for calculating increases in State funding, while the BCPSS method uses FY 2001 as the base year. The Court will not rule at this time on which is the appropriate calculation, suffice to say, the State continues to owe BCPSS significant and meaningful sums under

cannot avoid its constitutional obligation to provide adequate funding to BCPSS by focusing on management deficiencies at BCPSS. While the Court recognizes that management problems would have persisted regardless of the State's increased funding, those problems are no defense to the State's on-going and continuous violation of its obligations under the Maryland constitution and a final order of this court. Had the State fully complied with this Court's June 2000 order to provide \$2,000 to \$2,600 per pupil, BCPSS would not have been faced by such a crippling fiscal crisis.

Based on the findings of fact set out above, the Court holds that the State has not complied with its constitutional obligation to the children of Baltimore City, and will not comply, until, at the earliest, the full amount of funding provided for in the *Bridge to Excellence Act* is received. Moreover, the State has unlawfully underfunded BCPSS by \$439.35 million to \$834.68 million in contravention of a final order of this court. The State should not only continue to move toward full funding of the *Bridge to Excellence Act*, but should endeavor to repay over the next several years the amounts it failed to fund pursuant to this Court's 2000 order.

F. At The Present Time , A Major Restructuring of BCPSS, As Suggested By the State, Is Not Necessary For the System to Function Efficiently and Effectively

The Court sees no reason at this time for a major restructuring of the BCPSS. The BCPSS is currently operating under almost entirely new management, including a new CEO, a new CAO, a new CFO, a new Director of Human Resources, and several new Area Officers. The BCPSS, under this new management team, appears to be moving to address a number of the issues that led to the accumulation of the deficit. It is instituting a

this Court's 2000 order. Were even a fraction of such money made available to BCPSS, the system could move toward financial recovery without reducing the basic educational programming offered to city students.

new computerized tracking system that should permit it to accurately track vacancies and salaries, which has been an issue in the past, and it has imposed significant new budgeting and fiscal controls. It has a timeline to address and appears to be making progress toward, the issues raised by the Ernst & Young and Greater Baltimore Committee audits. Indeed, most of the evidence of mismanagement presented at the hearing appeared to relate to issues that are not current, and that were not attributable to current management. The Court believes at this time that the current new management should be permitted to continue its work.

The Court, however, is concerned with the City's role under the MOU, which gives the City increased authority over the BCPSS budget through the Fiscal Operating Committee. The City has impressive capacity to assist the BCPSS in book-keeping and accounting. It lacks the capacity, however, to link educational outcomes to mandated budget cuts. The City has admitted that its Fiscal Operating Committee recommended cuts without regard to the impact on the classroom. (Tr. 1143, 1145). The result, for the moment, is a financially stable, yet educationally inadequate, "bare bones" system. Therefore, the Court will further declare that the City shall continue to monitor BCPSS' accounting and finances through the Fiscal Operating Committee under the MOU, but decisions regarding program funding and cuts to the operating budget must be made solely by Board of School Commissioners under the direction and assistance of the Maryland State Board of Education.

V. CONCLUSION

The foregoing findings and conclusions of law establish, beyond any question, that the Baltimore City public schools remain constitutionally inadequate, that they remain substantially under funded, and that the budgetary steps taken to address the recent fiscal crisis significantly impair the already inadequate educational opportunities available to Baltimore City's school children. For these reasons, the Court will render the following rulings and declarations:

1. The constitutional violation that this Court found in October 1996 and June 2000 is continuing. The students in Baltimore City, as of August 2004, still are not receiving an education that is adequate when measured by contemporary educational standards. They are still being denied their right to a "thorough and efficient" education under Article VIII of the Maryland Constitution.
2. Full compliance with the Court's June 2000 declaration will not occur until the BCPSS receives at least \$225 million in additional State funding under the Thornton Act by, at the latest, FY 2008.
3. Funding sufficient for the BCPSS to achieve constitutional adequacy will not occur until the BCPSS receives at least \$225 million in additional State funding by, at the latest, FY 2008.
4. The children of Baltimore City should not have to wait another three years for adequate funding, given the continued constitutional inadequacy they face. The State has unlawfully underfunded the Baltimore City school system by \$439.35 million to \$834.68 million representing amounts owed under this Court's final 2000 order for fiscal years 2001, 2002, 2003 and 2004. Given the substantial

underfunding of the BCPSS, the Court declares that it would be appropriate for the State to accelerate increases in full Thornton funding to the BCPSS. The Court will not, in any event, tolerate any delays in full Thornton funding for the BCPSS beyond FY 2008.

5. Had the State of Maryland honored its commitment under this Court's 2000 order by front-loading Thornton funding for the at-risk student population of the BCPSS, the Court would not have been compelled to extend the period for deficit reduction established by S.B. 894 and the Memorandum of Understanding.

6. The Court will continue to retain jurisdiction to ensure compliance with its orders and constitutional mandates, and to continue monitoring funding and management issues. When the full funding outlined herein is received, the Court will revisit the issue of its continuing jurisdiction, and determine whether the Consent Decree should then be additionally extended for good cause.

7. A number of the steps taken to address the fiscal crisis did reduce educational opportunities and impermissibly interfered with progress towards providing a constitutionally adequate education for Baltimore schoolchildren. Specifically, elimination of a systemic summer school program, increases in class size by up to four children, reduction of experienced teachers and elimination or reduction of mentors and academic coaches, elimination of guidance counselors in elementary school, among other things, reduced educational opportunities and impermissibly interfered with progress towards providing a constitutionally adequate education for Baltimore schoolchildren.

8. Accordingly, the Court declares that, in order to ensure continued progress towards constitutional adequacy, the parties should ensure that educational opportunities for the school children are not reduced, by making available to the children of Baltimore City at least the amount of funding representing the savings achieved from those reduced educational opportunities described above, to be spent solely on programs and services

that benefit at-risk children. The Court further declares that that amount constitutes at least an additional \$30-45 million in operational funding this fiscal year.

9. The Court believes that the best way to accomplish this goal would be for the parties with revenue raising capacity (the State or City) to increase the funding available to the BCPSS for the upcoming year.

10. To ensure that the necessary operational funding is available for BCPSS to provide the basic educational programs that have been reduced, the Court declares that S.B. 894's provision that the BCPSS' deficit must be eliminated by the end of fiscal year 2006 is unconstitutional as applied to the BCPSS.

11. To ensure that the necessary operational funding is available for BCPSS to provide the basic educational programs that have been reduced, the Court declares that the MOU's provision that the BCPSS' deficit must be eliminated by the end of fiscal year 2006 is null and void as against public policy.

12. Notwithstanding this Court's abrogation of the MOU's provision that the BCPSS' deficit must be eliminated by the end of fiscal year 2006, the City shall be repaid the remaining \$8 million of its \$42 million loan as scheduled.

13. Absent additional funding from the State of Maryland, BCPSS shall not retire the deficit before fiscal year 2008 and BCPSS shall not dedicate more than \$5 million per year toward the creation of a \$20 million cash reserve.

14. The City of Baltimore shall continue to monitor BCPSS' finances and accounting through the mechanisms established under the MOU, shall ensure that expenditures do not exceed revenues and may make recommendations concerning BCPSS' continued solvency. They shall not, however, through the MOU, impose budget cuts or restrict program funding. Such decisions must be made independently by the Board of School Commissioners under the direction of the Maryland State Board of Education.

15. The parties shall report to the Court in four weeks on the status of the additional funding and plans for its use. The report shall specifically list educational initiatives to be provided with the additional funding and describe how those initiatives will ensure continued progress towards constitutional adequacy. The report shall also update the Court and parties about the BCPSS' budget and fiscal situation.

16. Having issued this declaration, the Court trusts that the parties shall act in good faith and with all deliberate speed to ensure compliance without the necessity of further action by plaintiffs.

Date: August 20, 2004

Judge Joseph H.H. Kaplan

Judge's signature appears on original.

[Signature]
Chief Judge

Circuit Court for Baltimore City