

Keith Bradford, <i>et al.</i> ,	*	IN THE
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Plaintiffs,	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
Maryland State Board of Education,	*	BALTIMORE CITY
	*	
Defendant.	*	Case No.: 24C94340058
	*	
	*	

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**PLAINTIFFS’ PETITION FOR FURTHER RELIEF**

Plaintiffs Keith Bradford, *et al.*, along with additional class representatives Stefanie Croslin and Angela Gant,<sup>1</sup> by their undersigned attorneys, respectfully submit this Petition for Further Relief in this longstanding school-finance case seeking to enforce the Court’s prior declarations of Plaintiffs’ constitutional rights to a “thorough and efficient” education under Article VIII of the Maryland Constitution. Defendants, the state officials responsible for school finance in Maryland, have failed to provide sufficient funding to comply with the Maryland Constitution and this Court’s repeated declarations in 1996, 2000, 2002, and 2004 regarding insufficient funding of Baltimore City public schools. This Petition for Further Relief seeks to compel Defendants to comply with their constitutional obligations to provide an adequate education to Baltimore City school children consistent with contemporary education standards. In support of this Petition for Further Relief, Plaintiffs set forth the following grounds and incorporate by reference the accompanying Memorandum in Support, which provides extensive points and authorities as to why further relief is necessary.

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<sup>1</sup> Along with this motion, Plaintiffs have filed a notice of substitution, as permitted by this Court’s order of December 11, 1995 (Dkt. 41), designating Stefanie Croslin and Angela Gant to replace some of the prior class representatives. Their particular circumstances are discussed in that notice.

1. Plaintiffs are the parents of Baltimore City children facing the risk of not receiving the education they need to succeed in life.

2. Under Article VIII of the Maryland Constitution, the State of Maryland must establish a “thorough and efficient” system of public education throughout the state, and must further provide sufficient funding to maintain that system. Article VIII guarantees that all students in Maryland’s public schools be provided with an education that is “adequate when measured by contemporary educational standards.” *Montgomery Cty. v. Bradford*, 345 Md. 175, 189 (1997).

3. Plaintiffs brought this suit in 1994 to compel the State to comply with its constitutional duty to provide an adequate education to Baltimore City school children, including adequate funding for the Baltimore City Public School System (“BCPSS”). Defendants include the State Superintendent and the State Board of Education, among others. The City of Baltimore filed its own education funding lawsuit nine months later. The two cases were consolidated. Due to subsequent legal changes in the local responsibility for Baltimore City public schools, BCPSS has also become a party to the case.

4. In 1996, this Court granted Plaintiffs partial summary judgment as to whether the children were receiving a constitutionally sufficient education, specifically finding that “[t]here is no genuine material factual dispute in these cases . . . that the public school children in Baltimore City are not being provided with an education that is adequate when measured by contemporary educational standards. Dkt. 1-66, Order at 2 (Oct. 18, 1996). Shortly before a trial on causation and remedy, the Court entered a Consent Decree that provided immediate, but small, funding increases for school operations and for certain improvements to the decrepit school facilities.

5. In 2000, this Court found that BCPSS students continued to be deprived of “an education that is adequate when measured by contemporary standards” and “still are being denied

their right to a ‘thorough and efficient’ education” as constitutionally required. Dkt. 10 at 25 (Jun. 30, 2000). It further declared that “additional funding is required to enable [BCPSS] to provide an adequate education measured by contemporary educational standards,” that “the State is not fulfilling its obligations under Article VIII of the Maryland Constitution,” and that “additional funding of approximately \$2,000 to \$2,600 per pupil” per year was needed for FY 2001 and 2002 educational and operational funding. *Id.* at 26.

6. In 2002, this Court extended the term of the Consent Decree until the State’s constitutional violations were remedied and ruled that it would “retain jurisdiction and continue judicial supervision of this matter until such time as the State has complied with this Court’s June 2000 Order.” *See* Dkt. 25 at 3, 5 (June 25, 2002).

7. In 2004, this Court ruled that the State was continuing to violate Article VIII because it still had not provided the \$2,000 to \$2,600 per pupil it had found necessary in 2000. In the aggregate, this Court found, “the State ha[d] unlawfully underfunded [BCPSS] by an amount ranging from \$439.35 million to \$834.68 million” for FY 2001, 2002, 2003, and 2004. Dkt. 50 at 64-65 (Aug. 20, 2004). The Court found that compliance with its 2000 order would not occur until at the least full funding of a formula established by a state commission (the “Thornton Commission”) and enacted by General Assembly in the Bridge to Excellence Act was achieved, and further, that, because the State “has unlawfully underfunded BCPSS,” it “should endeavor to repay over the next several years the amounts it failed to fund pursuant to this Court’s 2000 order.” *Id.* at 65; *see also id.* at 67-68. This Court also ruled that changed circumstances since 2001 made it “likely” that the Thornton levels “were too low” even then to measure “the cost of an adequate education.” *Id.* at 15 ¶¶ 52-55; 24 ¶ 94.

8. This Court further declared that, due to inadequate funding, academic achievement among City students remained grossly unsatisfactory. *Id.* at 24-30 ¶¶ 94-125. The Court ruled that the constitutional violation it had previously found in 1996 and again in 2000 “is continuing,” that Baltimore City children “still are not receiving an education that is adequate when measured by contemporary educational standards,” and that they therefore were “still being denied their right to a ‘thorough and efficient’ education under Article VIII of the Maryland Constitution.” Dkt. 51, Order at 1-2 ¶ 1 (Aug. 20, 2004). And again, the Court declared that it would “continue to retain jurisdiction to ensure compliance with its orders and constitutional mandates, and to continue monitoring funding and management issues,” and that it would revisit its continuing jurisdiction once full funding was achieved. *Id.* at 2 ¶ 6. This never happened.

9. Despite this Court’s repeated declarations, the State has abdicated its responsibilities to provide adequate funding for instructional activities and to address the chronically abysmal physical condition of school facilities in Baltimore City. State funding for BCPSS has largely stayed flat since FY 2009.

10. Starting in FY 2009, the State has acted to halt full Thornton funding. These actions have caused a steadily increasing “adequacy gap” for BCPSS. By FY 2013, the Department of Legislative Services (“DLS”) calculated an adequacy gap of \$156 million, and for FY 2015, that gap had risen to \$290 million. A state-required evaluation separately calculated a \$358 million annual “adequacy gap” in FY 2015. This means that, despite enactment of legislation in 2000 to implement the Thornton funding levels, children in Baltimore City were no better off in 2015 than they were in 2000 when the Court first declared that the adequacy gap for BCPSS was unconstitutional. Indeed, even if the Thornton formula had been followed, as this Court recognized in 2004, it falls far short of the amount needed for constitutional adequacy today.

11. There have also been repeated delays in the work of the State “Commission on Innovation and Excellence in Education” (the “Kirwan Commission”), which was expected to address these funding issues with a final report by December 31, 2017, so that funding could be considered in the 2018 legislative session. That deadline has been postponed repeatedly, most recently from December 31, 2018 to December 31, 2019. A BCPSS plan submitted to the Kirwan Commission further shows the inadequacy of the educational funding currently being provided; when costs are assigned to the menu of services the plan found necessary for educating BCPSS students, the additional amounts needed will likely be substantially higher than the “adequacy gaps” found by DLS and the state-required evaluation.

12. Each time the State delays, Baltimore City children suffer the consequences. BCPSS has less staff and less experienced staff than any other school district in Maryland. It has the highest ratio of students to staff of any school district in the state. BCPSS students perform at levels well below contemporary standards on standardized tests at elementary, middle, and high school levels. Graduation rates are lower than in any other district, whereas dropout rates are higher and continue to increase. On the State’s own “Star ratings,” BCPSS has significantly lower ratings than any other district in the state, with almost 60 percent of its schools receiving low one- or two-star ratings and only three schools (of 159) receiving the highest five-star rating.

13. BCPSS serves a student population with unique needs, which requires additional supports. According to DLS, BCPSS has the highest “at risk student index” in the state—the percentage of students who receive free and reduced meals, have limited English proficiency, and have special education needs. Further, its students are racially isolated from surrounding school districts.

14. The State also has abdicated its duty under Article VIII to provide funding sufficient to ensure that students in the City attend school in buildings that are safe, functional, have reliable heat and air conditioning, and have sufficient facilities to support an adequate education program. In violation of the children's constitutional rights, the physical condition of most school facilities in Baltimore City is abysmal. Children attending BCPSS are expected to learn in physical facilities that oftentimes lack functional and reliable heat, lack air conditioning, lack drinkable water, lack security measures such as classroom doors that lock or appropriate coverage by security cameras, have dilapidated elevators that routinely break down because they are decades beyond the date when they should have been replaced, and often have roofs and structures that are leaking, crumbling, and well beyond their useful lives.

15. Six years ago, at least 85 percent of the school buildings were rated "very poor" or "poor" by the engineering firm, Jacobs, which relied on accepted industry standards to assess every school building in BCPSS. BCPSS and the State rely on this report to assess facilities deficiencies in BCPSS. Based on those figures, BCPSS estimates that it would cost \$3 billion to bring BCPSS buildings up to a minimally acceptable standards through repairs and building replacements and \$5 billion to complete a full portfolio replacement to meet modern educational standards.

16. The system has reached a breaking point, and the condition is getting steadily worse. Last winter, the system closed for a week because numerous ancient heating systems failed and classrooms were without heat; last summer, schools closed for lack of air conditioning; this winter, problems have recurred.

17. Article VIII clearly requires adequate facilities, both because an adequate education under contemporary standards should be understood to include the facilities where students learn, and because adequate facilities are necessary for adequate learning. Nonetheless, BCPSS has been

starved of the funds necessary just to maintain its facilities, let alone bring them to modern standards. It spends \$23 million annually on maintenance, which is well below the amount required under industry standards. To meet industry standards for maintenance, the system would be forced to take scarce funds from a budget needed to provide for in-classroom learning.

18. The State's lack of funding for BCPSS violates Plaintiffs' constitutional rights as determined by this Court in 2000, 2002, and 2004. This Court expected Defendants to comply with its findings and to fund BCPSS at constitutionally required levels, but the State has ignored those rulings for more than a decade. As the State has made clear that it will not voluntarily adhere to the State Constitution, Plaintiffs return to this Court to seek further relief compelling Defendants to meet their constitutional obligations under Article VIII.

19. For these reasons, and those set forth in the Memorandum in Support, this Court should order Defendants to show cause why Plaintiffs are not entitled to the following relief.

20. First, this Court should find and declare that:

- a. The State is violating Article VIII by failing to provide a "thorough and efficient" education, *i.e.*, an education that is "adequate when measured by contemporary educational standards," to students at risk of educational failure attending BCPSS;
- b. The State has been in continuous violation of Article VIII since this litigation commenced and has never complied with the Court's prior declarations as to its constitutional obligations under Article VIII, including the Court's declaration that, at a minimum, "full Thornton funding" is constitutionally required;
- c. The State's current funding level for educational services in BCPSS is below constitutionally required levels;
- d. The State's continuing failure to provide funding to BCPSS at levels required by Article VIII has deprived BCPSS students of least \$2 billion that this Court has ordered over the past decades;
- e. These constitutional violations will persist until the State of Maryland, including its legislative and executive branches, acts to provide

- constitutionally adequate funding for educational services in BCPSS and to remedy the effects of its prior constitutional violations;
- f. The State also is violating Article VIII by failing to provide sufficient resources to ensure that BCPSS facilities are adequate for a “thorough and efficient” education, *i.e.*, one that is “adequate when measured by contemporary educational standards”; and
- g. These constitutional violations will persist until the State of Maryland, including its legislative and executive branches, acts to remedy the physical condition of the facilities to make them “adequate when measured by contemporary educational standards.”

21. Second, this Court should order Defendants to comply immediately with the Court’s prior rulings that “full Thornton funding,” at the very least, is constitutionally required, using, at a minimum, the \$290 million shortfall in annual funding that DLS found was needed for “full Thornton funding” for FY 2015, as adjusted for subsequent inflation;

22. Third, this Court should order Defendants to develop and submit a comprehensive plan for full compliance with Article VIII and the Court’s prior orders and declarations, subject to review and approval by the Court. This must include, but not be limited to, provisions:

- a. Remedying the effect of the aggregate shortfall of past violations of Article VIII;
- b. Directing sufficient State funding and oversight to ensure that all BCPSS schools are brought into compliance with educational adequacy standards, including but not limited to, funding necessary for the Baltimore City Public School System’s 2019 “Investing in our Future: A World-Class Education System for Baltimore City Students”;
- c. Ensuring that the State provides sufficient funding such that all BCPSS schools will have, among other things, adequate and reliable HVAC systems; adequate and reliable plumbing and piping systems; drinkable water; clean, well-lighted, and well-maintained facilities; adequate roofing; adequate and functioning bathrooms; adequate fire safety provisions; adequate ventilation; sufficient specialized facilities for a modern constitutionally adequate education, including computer, science, art, and music;
- d. Directing on-going capital and operational funding sufficient to maintain, update, and replace BCPSS buildings as necessary, including funding



necessary to bring all schools to the standards of the 21st Century Schools program;

- e. Ensuring adequate resources for, and organizational structure supporting, ongoing maintenance of facilities, including but not limited to sufficient staff for maintenance, consistent with industry standards and consistent with the current aged condition of BCPSS facilities and consistent with the staffing levels of other systems in Maryland; and
- f. Removing unnecessary procedural barriers to accomplishing the above as quickly as reasonably possible, including bidding and contracting requirements;

23. Fourth, this Court should order the final approved plan to be entered as an enforceable judicial decree of the Court along with any additional relief that the Court finds necessary and appropriate; and

24. Finally, this Court should order that, should Defendants not comply with these orders and decrees, Defendants may be required to pay compensatory damages, including attorney's fees incurred in enforcing the Court's orders and decrees, as well as penalties to compel compliance.

Dated: March 7, 2019

Respectfully submitted,

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