



October 15, 2019

William Kirwan, Chair  
Kirwan Commission on Innovation and Excellence in Education  
The Blueprint for Maryland's Future Funding Formula Workgroup  
Maryland Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401

**Re: *Bradford v. Maryland State Board of Education***

Dear Members of the Commission:

On behalf of the Plaintiff class in *Bradford v. Maryland State Board of Education*, we write to apprise the Kirwan Commission of the proceedings in the case, as well as to urge the Commission to allocate adequate funding to the Baltimore City Public School System (BCPSS), as required by Article VIII, Section 1 of the Maryland Constitution. As discussed below, and in the attachments, the State's failure to direct adequate funding to BCPSS violates the Consent Decree in the case, as well as multiple decisions from the Court. More fundamentally, it represents a constitutional violation that is continuing to harm generations of children in Baltimore City – a district in which the majority of students are African-American and the majority live in poverty or have other special needs putting them “at risk” of educational failure – by depriving them of the adequate education guaranteed by Maryland's Constitution.

**A. Article VIII of the Maryland Constitution Requires the State to Ensure Students Receive an Adequate Education.**

Article VIII of the Maryland Constitution requires the State to provide Maryland's children with an education that is “adequate when measured by contemporary educational standards.”<sup>1</sup> When the State “‘fails to make provision for an adequate education,’ or the State's school financing system ‘[does] not provide all school districts with the means essential to provide the basic

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<sup>1</sup> *Hornbeck v. Somerset Cty. Bd. of Educ.*, 295 Md. 597, 615 (1983); *Montgomery Cty. v. Bradford*, 345 Md. 175, 189 (1997).

education contemplated by §1 of Article VIII, when measured by contemporary educational standards,' a constitutional violation may be evident."<sup>2</sup> The State's constitutional responsibility to all Maryland children includes not only the duty to ensure that schools have sufficient operational funding for instruction, but also adequate physical facilities, so that students may receive a "thorough and efficient" education. In fact, the State establishes exacting standards for such facilities.<sup>3</sup>

**B. The Court in *Bradford* Found that the State Had Failed to Provide Students in BCPSS an Adequate Education.**

For approximately two decades, the State has been under a court order finding that adequate funding of Baltimore City schools is required so that students may receive a constitutionally adequate education. In 1994, the *Bradford* class and the City plaintiffs (the Board of School Commissioners of Baltimore City, the Mayor and City Council of Baltimore City, and the City Superintendent) filed two separate suits in the Circuit Court for Baltimore City, both alleging that the State was failing to provide the students of Baltimore City with the "thorough and efficient" education that Article VIII of Maryland's Constitution requires.

On October 18, 1996, based on an extensive and essentially undisputed factual record, the Court entered partial summary judgment for the Plaintiffs, finding that Baltimore City schoolchildren were not receiving the "thorough and efficient" education guaranteed by the Maryland Constitution. Among other things, evidence showed that Baltimore City schools performed abysmally on the State's own "MSPAP" tests for reading, writing, geometry, and mathematics; dropout rates and absenteeism were unacceptably high; the State had designated over a fifth of the schools in the system as "reconstitution-eligible," meaning their performance was so deficient that the State could take over if the schools they did not improve; and a substantial proportion of the system's physical facilities were in poor condition.<sup>4</sup> The Court also received evidence that almost 70 percent of students in Baltimore City experienced poverty or otherwise faced the risk of educational failure, accounting for almost one-third of all such students in the

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<sup>2</sup> *Bradford*, 345 Md. at 181.

<sup>3</sup> *E.g.*, COMAR 13A.01.02.04; COMAR 23.03.02.01, *et seq.*

<sup>4</sup> Attachment 3, Plaintiffs' Opposition to Defendant's Motion to Dismiss, at 6.

entire State.<sup>5</sup> Due to these failures, shortly before the trial was to begin in November 1996, the parties entered into the Consent Decree, agreeing to “provide a meaningful and timely remedy . . . to meet the best interests of the school children of Baltimore City.”<sup>6</sup>

In 2000, the Court heard undisputed evidence that, although student test scores in the BCPSS were improving with the additional funds provided by the Decree, BCPSS still fell woefully short of providing the education necessary to enable students to come close to meeting the State’s own standards of performance.<sup>7</sup> The Court, in response, declared that the funds provided by the State as reflected in the FY 2001 budget, “f[e]ll far short . . . and [would] not enable the . . . Board . . . to provide the City’s schoolchildren with a Constitutionally Adequate Education when measured by Contemporary Educational Standards during Fiscal Years 2001 and 2002.”<sup>8</sup> Accordingly, it declared that the State must provide additional funding to BCPSS in order to comply with constitutional requirements.<sup>9</sup>

In response, the State passed the Bridge to Excellence Act (the “Thornton” Commission formula), which provided additional funding to be phased in over six years and also required annual increases in funding to keep pace with inflation.<sup>10</sup> In 2004, the Court again ordered the State to continue phasing in the funding mandated by the “Thornton” formula.<sup>11</sup> However, the

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<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 11.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.*

<sup>10</sup> Attachment 1, Letter from NAACP Legal Defense Fund, *et al.*, to Governor Lawrence Hogan, Governor of Maryland, January 22, 2019, at 3.

<sup>11</sup> *Id.* at 3-4.

State halted or capped the inflation increases over a decade ago,<sup>12</sup> creating an “adequacy gap” in BCPSS educational funding that the State estimated to be, as of 2017, at least \$342 million a year.<sup>13</sup>

### **C. These Problems Persist Today.**

Unsurprisingly, based on the record of persistent underfunding, many of the problems identified in 1996 continue today. The State’s own official measure of school performance confirms that BCPSS schools fail to meet state standards in numerous categories, and the seriously deficient physical conditions of BCPSS schools also deprive Baltimore City schoolchildren from learning in an adequate educational environment.

In 2017, the General Assembly passed legislation, the Protect Our Schools Act of 2017 (HB 978), refining the factors and calculations that the Maryland State Board of Education uses to assess schools statewide, assigning them star ratings—from one to five stars—and percentile rankings based on performance.<sup>14</sup> All schools in the State are assigned a star rating based on the possible percentage of points achieved after an assessment of, among other things, standardized test scores, graduation rates, and the chronic absenteeism rate.<sup>15</sup>

BCPSS has 23 schools that received only one star, almost twice the number of one-star schools in all other Maryland school districts combined.<sup>16</sup> Only 3 percent of schools statewide received the lowest rating, and 66 percent of these schools (23 of 35) are in BCPSS.<sup>17</sup> Although

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> Attachment 3, Plaintiffs’ Opposition to Defendant’s Motion to Dismiss, at 23-24 (citing Dep’t of Legis. Servs., *Follow-up from July 24*, Meeting, Aug. 1, 2019, at 2).

<sup>14</sup> See Md. Laws 2017, ch. 29; Danielle E. Gaines, *With New Report Card, State Schools Receive A Star Rating*, Maryland Matters (Dec. 5, 2018), available at <https://www.marylandmatters.org/2018/12/05/with-new-report-card-every-state-school-receives-a-star-rating/>.

<sup>15</sup> *Id.*

<sup>16</sup> See <http://reportcard.msde.maryland.gov/>.

<sup>17</sup> *Id.*

three and four-star ratings were by far the most common statewide, only 39 percent of BCPSS schools received those ratings, compared to 74 percent of schools in the rest of the State.<sup>18</sup> BCPSS is the only school district in which the largest number of schools received two stars.<sup>19</sup> Altogether, almost 60 percent of BCPSS schools received only one or two stars (99 of 166 schools)—not only the largest percentage in the State, but more than *eight times* the percentage for the rest of the State, where less than 7 percent of all schools received only one or two stars (80 out of 1150 total schools outside of Baltimore City).<sup>20</sup> Conversely, only three BCPSS schools received five stars.<sup>21</sup> Baltimore County has 36 such schools; Howard County has 31 such schools; and, in Montgomery County, 50 schools were awarded five stars.<sup>22</sup> Other evidence of the deficiencies abounds as well, as detailed in the submissions the *Bradford* plaintiffs have made to the Court.

The injuries are not limited to the quality of education provided. Over the last 12 years, the condition of facilities in BCPSS, which were already inadequate, has continued to deteriorate and remains inadequate today.<sup>23</sup> According to a BCPSS survey, as of 2012, 85 percent of the system’s buildings were rated as being in “poor” or “very poor” condition, and estimates of amounts necessary to address the deficiencies range up to \$4 billion and higher.<sup>24</sup> These problems remain a present problem.

Given the State’s continued failure to adequately invest in BCPSS schools as the Constitution requires, in March 2019, the NAACP Legal Defense Fund, the ACLU of Maryland, and the law firm of Baker Hostetler, on behalf of the Plaintiffs, filed a petition for further relief in the case. Specifically, Plaintiffs seek an order finding that the State has violated the Court’s previous decisions, as a result of the failures identified above, and directing the State to provide

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Attachment 2, Plaintiffs’ Petition for Further Relief, at 41-59.

<sup>24</sup> *Id.* at 42.



BCPSS with the funding necessary for students to receive the adequate education guaranteed them by Maryland's Constitution.

Respectfully, we submit that the Kirwan Commission should focus on addressing the State's broken promises to Baltimore children by ensuring any formula it adopts addresses the long-standing adequacy and equity issues that have injured generations of Black and Brown students in the District. Unless the Kirwan Commission sufficiently addresses this failure, it could subject the State to continued and future liability.

**D. The Kirwan Commission Should Address These Problems.**

We appreciate that the Commission's Formula Workgroup has committed to addressing disparities by reshaping educational services, focusing on early learning, and accounting for inflation in funding projections. However, we remain deeply concerned, based on publicly available information about the Commission's work, that the changes proposed may be insufficient to address the level of systemic underfunding that exists. Any formula that the Commission adopts should close the massive "adequacy gap" facing Baltimore City schools and provide funding in amounts sufficient to meet, and appropriately directed to meeting, the panoply of educational needs of the student population attending Baltimore City schools. The *Bradford* Plaintiffs will continue to work with the Commission and the Formula Workgroup to comment on proposals in the context of the litigation. In the short term, we suggest that the Workgroup should consider changes in the following areas:

- Ensure that sufficient state funding is available for jurisdictions like Baltimore City with less wealth and large populations of students with greater needs. One way to start addressing this issue – although there are others – is to eliminate the requirement in the current proposed formula that the state provide a uniform floor of minimum funding to wealthy jurisdictions. This would free up funding for less-wealthy jurisdictions with greater needs.
- Ensure that adequate funding is provided to systems that have historically been underfunded and whose student populations have experienced discrimination. One way to start addressing this need is for the Commission to apply the Kirwan Commission Interim Report's "Workgroup 4" recommendations to "weighted categories," and not the base formula. Additionally, the Commission could require well-resourced localities to increase their local contribution, where appropriate and feasible.



- Ensure generally that funding is available for sufficient services for Compensatory Aid and English Language Learners (ELL), particularly in jurisdictions with less local resources. One way to begin addressing this issue is for the Workgroup to include and direct services in the current base and the current weighted categories for English Language Learners (ELL) so they are directed to the jurisdictions with the greatest needs; and
- Begin to address the facilities deficiencies facing some of the less-wealthy jurisdictions by including sufficient funding in the operational formula to cover the elevated facilities maintenance costs for jurisdictions with older buildings without requiring those jurisdictions to use funding that would otherwise go to educational programs.

### **E. Conclusion**

Attached to this correspondence is a letter sent to the State last January by the *Bradford* Plaintiffs, warning of its failure to comply with the Court's rulings in *Bradford* (Attachment 1), Plaintiffs' Petition for Further Relief (Attachment 2), and Plaintiffs' Opposition to the Defendant's Motion to Dismiss (Attachment 3). If we can provide further information regarding the *Bradford* litigation or the conditions in BCPSS, please do not hesitate to contact us at the information below.

Sincerely,

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