

KEITH BRADFORD, et al.

Plaintiffs

v.

MARYLAND STATE BOARD OF
EDUCATION et al.,
Defendants.

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BOARD OF SCHOOL COMMISSIONERS
OF BALTIMORE CITY et al.,

Plaintiffs,

v.

MARYLAND STATE BOARD OF
EDUCATION et al.,

Defendants.

* * * * *

MEMORANDUM OPINION

INTRODUCTION

A. Background

Six years ago, the Bradford Plaintiffs and the City plaintiffs filed two separate suits in this Court, both alleging that the State was failing to provide the students of Baltimore City with the constitutionally required "thorough and efficient" education. The Bradford Plaintiffs are parents of children attending Baltimore City public schools who are "at risk" of educational failure, meaning that they live in poverty or otherwise are subject to economic, social, or educational circumstances increasing the odds that they will not receive an adequate education. The Bradford Plaintiffs sued the Maryland State Board of Education, the Governor, the State Superintendent of

Schools, and the State Comptroller of the Treasury on December 7, 1994. The City case, filed on September 15, 1995, was brought by the Mayor, the City Council of Baltimore, and the Board of School Commissioners of Baltimore City and its President against the same State defendants. The Governor and the Comptroller of the Treasury were dismissed from both suits after the Court found that "relief can be granted without the Governor being a party to the litigation." (Transcript of Apr. 4, 1995, at 12). The suits were consolidated for trial.

On October 18, 1996, this Court entered partial summary judgment for the City and for the Bradford Plaintiffs and held that BCPSS schoolchildren were not receiving the constitutionally required "thorough and efficient" education. The Court first affirmed the relevant legal standard, holding that the "thorough and efficient" language of Article VIII requires that "all students in Maryland be provided with an education that is adequate when measured by contemporary standards." (10/18/96 Order ¶ 1). Next, this Court held:

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

(Id. ¶ 2).

The Court's partial summary judgement decision did not resolve the parties' disputes over the cause of that inadequate education and the appropriate remedy. During the 1996 proceedings, the State contended that the City was to blame for failing to manage the BCPSS adequately. The City contended that the State was not providing funding sufficient to support a constitutionally adequate educational system. The Bradford Plaintiffs contended that a combination of factors

was involved, and that a remedy would need to address both inadequate funding and management problems. The Court set the case for trial to resolve these issues.

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

Because the parties were aware in 1996 that \$230 million over five years was not enough to provide an adequate education to Baltimore City's unique population of disadvantaged children, the Consent Decree provides a mechanism for the New Board to request additional funds from the State throughout the term of the Decree. It also provides that, after June 1, 2000, if the State fails to satisfy the New Board's request for additional funds, the New Board may go back to Court for a determination of whether additional funding is needed in order for the BCPSS to provide a Constitutionally Adequate Education.

Thus, in any year during the Decree's five-year term (from Fiscal Year 1998 through 2002), the New Board may ask the State for additional funds necessary to run the schools. If the Board presents the State with a detailed plan setting out why it needs more money and what it

will be used for, the State has an obligation to use its "best efforts" to satisfy the New Board's request for additional funds, subject only to the availability of funds. (Consent Decree ¶ 52).

For its last two years, FY 2001 and 2002, the Decree provides an additional mechanism for the New Board to ask for funds after an "interim evaluation" of the schools has occurred, and authorizes a return to Court if the funds are not forthcoming. To implement this interim evaluation, the Decree requires the State and New Board jointly to hire an independent consultant halfway through the five-year term to assess the schools' performance and needs. (Consent Decree ¶¶ 40, 41). "The consultant must assess, among other things, the sufficiency of additional funding provided by the State." (Id. ¶ 41). The parties also agreed that the consultant could make recommendations concerning "the need for funding in excess of the amounts provided herein in order for the BCPSS to provide its students with an education that is adequate when measured by contemporary standards." (Id.)

Once the independent expert has issued the interim evaluation, the Decree permits the New Board to request additional funds from the State based on the results of the evaluation. (Consent Decree ¶ 53). The independent expert's report was due on February 1, 2000. (S.B. 795, § 6). The State and the New Board jointly chose and hired Metis as an expert to perform the interim evaluation required by the Consent Decree. The Metis Report was issued on February 1, 2000, and it confirms the need for substantial additional funding. The State and New Board had until June 1, 2000 to negotiate over the request. On June 9, 2000 the New Board and the Bradford Plaintiffs filed with this Court a Petition For Further Relief Pursuant to the Consent Decree. In this petition the Plaintiffs are seeking additional funding from the State.

This Court held a hearing on the New Board and the Bradford Plaintiffs' Petition For Further Relief Pursuant to the Consent Decree on June 26, 2000. All of the evidence presented by counsel for the Plaintiffs' and Defendants' during the hearing was admitted by agreement of counsel for all parties.

THE COURT'S FINDINGS OF FACT

Based on the evidence presented, this Court makes the following factual determinations:

A. The Negotiation Process Between the New Board, the Bradford Plaintiffs and the State on the Plaintiffs' Request for Additional Funding

According to the undisputed evidence presented, this Court finds the following events occurred regarding the negotiation process. On May 19, 1999, Abbey Hairston, Special Counsel and J. Tyson Tildon met with Louis Bograd and Bebe Verderey, representing the American Civil Liberties Union, concerning paragraph 53 of the Consent Decree Bradford v. Maryland State Board of Education, et al., which allows the Board to request from the State funding in amounts greater than those identified in Paragraph 47 of the Consent Decree in fiscal year 2001 and 2002.

A workgroup consisting of J. Tyson Tildon; Commissioners Colene Daniel and C. William Struever; Judith Donaldson, Board Executive; Dr. Elizabeth Morgan, Chief Academic Officer; Roger Reese, Chief Financial Officer; Gail Amos, Special Education and Support Services Officer; Monzella Owings, General Counsel; Abbey Hairston, Special Counsel; Bebe Verderey, ACLU Representative; Louis Bograd, ACLU Representative; Susan Goering, ACLU Representative; and Beth McCallum, Bradford Plaintiffs' Representative; was convened on June 3, 1999 to develop a plan identifying the programs and funding required in order to provide a constitutionally adequate education for the children of Baltimore City.

The Board hired Pamela Shaw, a consultant, on June 15, 1999 to facilitate the development of a case statement to support the appropriation of additional State funding to the Baltimore City Public School System.

On, or about, June 11, 1999, J. Tyson Tildon contacted Senator Barbara Hoffman, Chairperson of the Senate Budget and Taxation Committee; Senator Clarence Blount, Chairperson of the Economic and Environmental Affairs Committee; and Delegate Howard P. Rawlings, Chairperson of the House Appropriations Committee; to advise them of paragraph 53 of the Consent Decree, the development of the plan and case statement to support additional funding and the Board's intent to pursue additional State funding.

On, or about, June 11, 1999, J. Tyson Tildon contacted Dr. Nancy Grasmick, State Superintendent of Schools, to advise her concerning the provisions of Paragraph 53 of the Consent Decree, development of the plan and case statement, and the Board's intent to pursue State funding, and to invite John Sarbanes, Special Assistant to Dr. Grasmick, to join the workgroup.

On, or about, June 11, 1999, Commissioner C. William Struever contacted Kathleen Kennedy Townshend, Lt. Governor, to advise her concerning the provisions of paragraph 53 of the Consent Decree, the development of the plan, and case statement to support additional funding, and the Board's intent to pursue additional State funding.

On June 28, 1999, Pam Shaw, Consultant, conducted a meeting with representatives of educational organizations, advocates, and foundations to solicit detailed input into the case statement to support the appropriation of additional State funding.

Between June 1999 and September 24, 1999, the workgroup researched, developed, and refined the case statement and plan to support the request for additional State funding.

On July 7, 1999, Ms. Aubrey Block, Ms. Katerina Kaler, Ms. Syvilla Woods, and Mr. Seth Harris, teachers for the Baltimore City Public School System, were hired to assist Pam Shaw in researching and documenting educational issues to support the additional state funding.

On September 24, 1999, the Board directed that a detailed Executive Summary be created and that the Board's top ten funding priorities be identified within the Executive Summary.

On August 14, 1999, John Sarbanes, special assistant to Dr. Nancy Grasmick, State Superintendent of Education, was provided with a copy of the working draft of the Integrated Reform Plan.

On October 6, 1999, the Board issued the final draft of its case study and plan to support additional State funding. The final draft requested total funding of \$265 million and highlighted \$48.2 million annually for ongoing funding support for the ten highest priority initiatives.

On October 6, 1999, Dr. Robert Booker, Commissioners Bill Struever and J. Tyson Tildon met with Dr. Grasmick, State Superintendent of Schools, and presented the final draft of the Remedy Plan - Building On Success, dated October 5, 1999, and the Integrated Reform Plan, dated October 6, 1999.

On October 28, 1999, Commissioner Bill Struever, Roger Reese, Chief Financial Officer, and J. Tyson Tildon met with Major Riddick, the Governor's Chief of Staff, to discuss the Baltimore City Public School System's capital budget request, and the Remedy Plan - Building On Success, dated October 5, 1999, and the Integrated Reform Plan, dated October 6, 1999. Major Riddick advised the Board that a realistic expectation of funding for capital improvements would

approximate \$40 million and that any realistic request for additional State operating funds should approximate the capital funding request.

On November 4, 1999, Dr. Robert Booker and J. Tyson Tildon, met with Dr. Nancy Grasmick, State Superintendent of Schools, to solicit support for the Remedy Plan and Integrated Reform Plan, and to advise Dr. Grasmick concerning the meeting with Major Riddick. Dr. Grasmick advised the Board to limit its funding request to the top ten priorities and to link the priorities to the Maryland State Department of Education Initiatives.

On November 10, 1999, Dr. Robert Booker and J. Tyson Tildon, met with Senator Barbara Hoffman to solicit support for The Remedy Plan, dated October 5, 1999 and the Integrated Reform Plan, dated October 6, 1999. Senator Hoffman advised the Board to restrict its funding request to the top ten priorities and to link the priorities to the Maryland State Department of Education Initiatives.

On November 13, 1999, John Sarbanes, Special Assistant to Dr. Grasmick, State Superintendent of Schools, called Jude Pasquariello, Executive Assistant to Dr. Robert Booker, to discuss the reformatting of the Remedy Plan to include intent, rationale, budget assumptions, and MSDE linkages.

On November 13, 1999, John Sarbanes, Special Assistant to Dr. Nancy Grasmick, State Superintendent of Schools, met with Judith Donaldson, Board Executive, and Jude Pasquariello, Executive Assistant to Dr. Robert Booker, and offered suggestions concerning the basic structure of the plan and specific language for the opening section and the priorities.

On December 9, 1999, the Board and Dr. Robert Booker issued Building On Success: A Remedy Plan to Address Continuing Funding Needs of the Baltimore City Public School System.

The final Remedy Plan requests additional funding of \$49.7 million for the top ten academic initiatives of the Baltimore City Public School System.

On December 9, 1999, Dr. Robert Booker, Commissioner Struever, Roger Reese, Chief Financial Officer, and J. Tyson Tildon met with Fred Puddestar, Secretary of the Maryland State Department of Budget Management, to request the State's inclusion of the funding request in the Fiscal Year 2001 budget.

On December 9, 1999, Dr. Robert Booker and the Board presented the Remedy Plan to the Baltimore City delegation to the General Assembly. The Board asked the delegation to support the Remedy Plan and to request the Governor to fully fund the Remedy Plan in the Fiscal Year 2001 budget.

On December 10, 1999, Dr. Robert Booker and J. Tyson Tildon met with Baltimore City Mayor Martin O'Malley to solicit his support for the Remedy Plan and to request that he include full funding of the Remedy Plan as a top priority of his administration and that he request the Governor to fully fund the Remedy Plan in the Fiscal Year 2001 budget.

On December 11, 1999, Dr. Robert Booker and J. Tyson Tildon met with Baltimore City Deputy Mayor, Jeanne Hitchcock, to solicit her support for the Remedy Plan and to request that the O'Malley Administration work with the State to assure full funding of the Remedy Plan in the Governor's Fiscal Year 2001 budget.

On December 13, 1999, Governor Parris Glendening visited Mount Royal Elementary/Middle School with Senator Clarence Mitchell, IV. Also present were Dr. Robert Booker and J. Tyson Tildon. Senator Mitchell discussed with the Governor the great needs of the children of Baltimore City. Dr. Booker and J. Tyson Tildon advised the Governor that the Board

was requesting an additional \$49.7 million in funding for Fiscal Year 2001 and that the request had been shared with Dr. Grasmick, Mayor O'Malley, and Secretary Puddester. The Governor was further advised that the Board was scheduled to meet with him on December 23, 1999 to further discuss funding of the Remedy Plan. The Governor's office canceled the meeting of December 23, 1999, and rescheduled the meeting for January 6, 2000.

On January 6, 2000, Governor Glendening, Major Riddick, Chief of Staff, and Karen Johnson, Deputy Chief of Staff met with J. Tyson Tildon, Dr. Robert Booker, and Commissioner Strusver to discuss funding for the Remedy Plan. Governor Glendening indicated that the original budget submission had been finalized and that he would consider funding for the Remedy Plan during the supplemental budget process.

On January 7, 2000, Dr. Robert Booker met with the Baltimore City Council to solicit their support for the Remedy Plan and to request the Council to work with Mayor O'Malley's Administration to assure full funding of the Remedy Plan in the Governor's fiscal Year 2001 budget.

On January 10, 2000, Dr. Robert Booker, Roger Reese, Commissioner Struever, Judith Donaldson and J. Tyson Tildon met with the House of Delegates Speaker Casper Taylor to explain the components of the Remedy Plan and to solicit his support for full funding of the Remedy Plan in the Fiscal Year 2001 budget.

On January 17, 2000, Judith Donaldson and Mindy Binderman, legislative consultant, met with Delegate Salima Marriott, Chairperson of the Baltimore City delegation to the House of Delegates, to explain the components of the Remedy Plan and to solicit the delegation's support for full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On January 21, 2000, Roger Reese, Judith Donaldson and Mindy Binderman met with Delegate Howard P. Rawlings, chairperson of the House Appropriations Committee to explain the components of the Remedy Plan and to solicit his support for full funding for the Remedy Plan in the Fiscal Year 2001 budget.

In January 2000, Senators Hoffman and McFadden sent a letter to Governor Glendening requesting full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On February 2, 2000, Dr. Booker, Dr. Grasmick and J. Tyson Tildon briefed the House Ways and Means Committee concerning the recommendations and conclusions of the interim evaluation conducted by Metis Associates, Inc.. As a part of this briefing, the recommendations and conclusions were linked to the Remedy Plan and the additional funding request for the Fiscal Year 2001 budget. Dr. Booker, Dr. Grasmick and J. Tyson Tildon supported full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On February 16, 2000, Dr. Booker, Dr. Grasmick and J. Tyson Tildon briefed the House Appropriations Committee concerning the recommendations and conclusions of the interim evaluation conducted by Metis Associates, Inc.. As part of this briefing, the recommendations and conclusions were linked to the Remedy Plan and the additional funding request for the Fiscal Year 2001 budget. Dr. Booker, Dr. Grasmick and J. Tyson Tildon supported full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On February 23, 2000, Mindy Binderman met with Senators Nathaniel McFadden and Clarence Blount to solicit support for the Remedy Plan and to request their assistance in requesting full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On February 23, 2000, the Baltimore City Senators signed a letter to Governor Parris N. Glendening requesting that the Baltimore City Public School System receive an additional \$49.7 million as part of the supplemental budget.

On March 3, 2000, Dr. Booker, Commissioner Struever, Roger Reese, Judith Donaldson, and Mindy Binderman met with State Department of Budget and Management Secretary Fred Puddester to discuss progress in achieving full funding for the Remedy Plan. Secretary Puddester was advised that failure to fully fund the Remedy Plan could result in the Board going back to court pursuant to paragraph 53 of the Consent Decree. Secretary Puddester advised that he and the Governor were aware of the provisions of the Consent Decree and that they were working to achieve maximum funding for the Remedy Plan.

On March 13, 2000, Dr. Booker, Commissioner Struever and J. Tyson Tildon met with Senator Hoffman to discuss progress in achieving full funding for the Remedy Plan and to solicit her assistance in achieving full funding for the Remedy Plan in the Fiscal Year 2001 budget.

On March 15, 2000, Dr. Booker, Commissioner Struever, and Judith Donaldson met with Governor Glendening to discuss progress toward fully funding the Remedy Plan and to offer suggestions for possible funding sources. The Governor was advised that failure to fully fund the Remedy Plan could result in the Board returning to court to seek appropriate funding. Governor Glendening indicated that he had been made aware of the provisions of the Consent Decree and that he was working with his staff to maximize funding for the Remedy Plan.

Subsequent to the March 15, 2000 meeting, when the Governor released his Supplemental Budget #2, \$8 million was targeted specifically to fund the Baltimore City Remedy Plan.

On April 6, 2000, Fred Puddester, Secretary of the Department of Budget and Management, provided the Board with a list of educational initiatives funded during the 2000 general assembly session and the specific funds that would accrue to Baltimore City Public Schools. That list contained funding in the amount of \$30.7 million.

On April 24, 2000, Dr. Booker, Roger Reese, Judith Donaldson, Commissioner Struever and J. Tyson Tildon met with Fred Puddester, Secretary of the Department of Budget and Management to discuss the total amount of funding that Baltimore City would receive under the Remedy Plan. Secretary Puddester was asked to review the \$30 million and to remove any monies that would not align with the Remedy Plan. The Board also discussed the need to begin the process of negotiation under paragraph 53 of the Consent Decree.

Subsequent to the April 24, 2000 meeting, Secretary Puddester sent the Board a revised listing of educational initiatives aligned with the Remedy Plan and the corresponding funding for Baltimore City Public Schools. The total funding under this listing was \$27.4 million.

On May 22, 2000, the New Baltimore City Board of School Commissioners met with Major Riddick, the Governor's Chief of Staff; Karen Johnson, Deputy Chief of Staff; T. Eloise Foster, Secretary for the Department of Budget and Management; and MaryEllen Barbera, Counsel to the Governor, to negotiate for full funding for the Remedy Plan under the conditions of the Consent Decree. Major Riddick stated that the Governor had agreed to fund, at a minimum, an additional \$3 million to support after school programs or summer school programs and an additional \$3 million to be obtained from State agency budgets.

B. The findings and Recommendations of the Metis Report

1. Overall Conclusions of the Metis Report

This Court also finds and adopts the overall conclusions of the Metis Report as its findings. The Metis report concluded that :

1. The City-State Partnership created by the Maryland General Assembly in 1997 has played a key role in the System's reform effort. The impact of the Partnership is seen not only in the availability and utilization of funds, but also in contributions to policy issues.

2. During its brief history, the New Baltimore City of School Commissioners has taken meaningful and essential steps to improve the BCPSS.

3. BCPSS has made progress in improving management, including reorganizing the human resources function and overhauling the management information systems (MIS).

4. BCPSS has made meaningful progress in implementing instructional initiatives at the elementary grade levels, recruitment and retention initiatives, and professional development initiatives.

5. BCPSS has demonstrated mixed results in improving student achievement but that is a reasonable expectation at such an early stage in a multi year reform effort.

6. Although in need of some design changes, overall the Master Plan provides a strong focus and structure for reform. It includes most of the kinds of strategies that are believed to promote successful student outcomes, and is tailored to specific problems that have been identified in the System, such as high rates of teacher turnover and large class sizes

7. Overall financial resources available to BCPSS are not adequate. On the basis of the analysis conducted by the Council of the Great City Schools, an additional \$2,698, resulting in a total per pupil expenditure of \$10,274, is necessary for adequacy.

8. Metis has identified certain specific strategies in the Master Plan that require specific funding: full day pre-kindergarten and kindergarten, middle and highschool

initiatives, extended learning opportunities for all eligible students, teacher and principal recruitment, mentoring, coaching and ongoing school-based professional development, alternative learning settings, additional classroom technology, and school facilities improvement. Metis notes that BCPSS has developed a Remedy Plan (December 9, 1999) that includes most of these initiatives.

9. In order for BCPSS to be effective in building support for identified adequacy levels, it will need to go beyond the partial programmatic budget it has created for certain key "driver" actions in the Master Plan and develop a System-wide budget that is grounded at the school level and incorporates the initiatives that the System must take to reach its goals.

2. Specific conclusions and recommendations of the Metis Report

This Court also finds and adopts the specific conclusions and recommendations of the Metis Report as its findings.

Sufficiency of Funding for BCPSS

The Metis Report made the following specific conclusions and recommendations on the issue of sufficiency of funding for BCPSS :

1. Based on a model that ties academic standards to resources needed to attain them, the Council of Great City Schools concludes that the overall resources available to the BCPSS are not adequate, and that adequate resources would equal \$10,274 per pupil, an amount \$2,698 higher than the current per pupil expenditure of \$7,576.

Recommendation: Seek increased funding to bring BCPSS up to the level of adequacy identified by the Council of Great City Schools.

2. An analysis of spending patterns comparing BCPSS expenditures by category with those of the average large city school system and the national average, found that Baltimore schools spend their resources in about the same way that other school systems spend theirs.

3. Several critical strategies are not included as priority initiatives in the Master Plan, (e.g., early childhood -

full day pre-kindergarten and kindergarten - and middle and high school initiatives).

4. Other strategies are not funded at a level that would fully meet the need (e.g., extended learning opportunities for all eligible students; additional strategies that would improve the System's competitive position in teacher recruitment and retention; expanded teacher and principal mentoring, coaching, and ongoing school-based professional development; additional alternative learning settings; additional technology in the classroom; and school facilities improvements).

Recommendation: Additional funds should be used for the following:

full-day pre-kindergarten;
middle and high school initiatives;
extended learning opportunities for
all eligible students;
strategies to improve the BCPSS'
competitive position for teacher recruitment and retention;
additional opportunities for teacher
and principal mentoring, coaching, and ongoing school-
based professional development;
additional alternative learning
settings;
technology in the classroom; and
school facilities improvements.

5. BCPSS reports, by Master Plan objective and strategies, only the additional amounts to fund "Driver Actions/Key Priority Initiatives". Total BCPSS budget and expenditures are reported according to functional categories.

Recommendation: Align the System's total budget and expenditures by Master Plan objective and strategy, and develop a programmatic budget for all funds so that the amount of total funding for programmatic initiatives is clear and so that student outcomes can be measured against levels of investment."

C. The Findings and Recommendations of the New Board's Remedy Plan

This Court also finds that in accordance with the provisions of the Consent Decree the New Board has submitted a detailed remedy plan requesting \$265 million annually for

instructional programs and \$133 million annually for capital improvements (including wiring projects) .

At the State's request, the New Board also submitted a plan entitled Building on Success A Remedy Plan to Address Continuing Funding Needs of the Baltimore City Public School System. This plan, submitted on December 9, 1999 identified BCPSS's most pressing immediate needs for additional instructional programs in FY 2001. At the State's request, the New Board limited that FY 2001 funding request to an increase of no more than \$50 million, ultimately seeking \$49.7 million in additional funding for instructional programs. This December 1999 remedy plan asked for a downpayment of \$49.7 million for the critical priorities the Board identified for FY 2001.

The New Board's Remedy Plan submitted on December 9, 1999 listed the ten most pressing priorities for which the New Board was requesting State funding totaling \$49.7 million. These priorities include:

1. Recruiting/Retaining Quality Teacher; seeking \$4,200,000 in additional State funding.
2. Professional Development; seeking \$3,200,000 in additional State funding.
3. Student Academic Interventions (Extended Year/Extended Day); seeking \$12,000,000 in additional State funding.
4. Ready to Learn (Expanding pre-kindergarten and full-day kindergarten programs); seeking \$5,000,000 in additional State funding.
5. High School Reform to Prepare for High School Assessments; seeking \$5,400,000 in additional State funding.
6. Middle School Reform; seeking \$3,600,000 in additional State funding.

7. Student Support Services; seeking \$4,500,000 in additional State funding.
8. Instructional Leadership; seeking \$950,000 in additional State funding.
9. Enriched Instructional Curriculum
 - a. Arts and Physical Education in Schools; seeking \$3,000,000 in additional State funding.
 - b. Gifted and Talented Programs; seeking \$1,750,000 in additional State funding.
 - c. Modern and Classical Languages; seeking \$2,000,000 in additional State funding.
10. Instructional Technology; seeking \$4,100,000 in additional State funding.

D. The Maryland State School Superintendent's Response to The Metis Report and the New Board's Remedy Plan

This Court further finds that Dr. Grasmick, The Maryland State Superintendent of Schools, in her February 24, 2000 letter to Senator Blount, Chairman of the Senate Economic and Environmental Affairs Committee; Delegate Hixson, Chairman of the House Ways and Means Committee; Senator Hoffman, Chairman of the Senate Budget and Taxation Committee and Chairman of the Senate Spending and Affordability Committee; and Delegate Rawlings, Chairman of the House Appropriations Committee, commented on BCPSS's progress and, in doing so, made observations on the Metis report. Dr. Grasmick stated in this letter that, "we concur with the Independent Evaluator that the City-State Partnership continues to be a viable and important structure for driving reform across the system."

In commenting on the issue of sufficiency, Dr. Grasmick in her letter stated:

we are not surprised by the observations and the Council of Great City Schools on the sufficiency of the overall funding for BCPSS. While the specific levels of funding recommended are subject to debate, there is no question that the high concentration of poverty and high percentages of special needs

children in Baltimore City place a heavier burden on the schools and justify calls for increased resources. We agree with Metis that increased funding for certain specific strategies in the BCPSS Master Plan is warranted and note that many of the strategies identified by Metis are ones BCPSS has addressed in its Remedy Plan.

Dr. Grasmick concluded the letter by stating:

Finally, the System should continue to make the case for additional funding in certain key areas. The Building on Success Remedy Plan (dated December 9, 1999) presents BCPSS' request for additional State funding of ten key priorities in FY 2001. The Remedy Plan is the product of hard thinking about where new monies can have most sufficient impact on the achievement of the Baltimore City Students. The Plan deserves careful consideration in the current legislative session. Please note that the State Board of Education recently endorsed the Remedy Plan as an important and strategic response to the ongoing needs of BCPSS.

E. Senator Hoffman and Delegate Rawlings Recommendation Regarding the State's Efforts to Fund the BCPSS Remedy Plan

This Court also finds that Senator Hoffman, Chairman of the Senate Budget and Taxation Committee and Chairman of the Senate Spending and Affordability Committee; and Delegate Rawlings, Chairman of the House Appropriations Committee; asserted their recommendation to Governor Paris Glendening on the issue of funding the BCPSS Remedy Plan in a letter to the Governor dated January 26, 2000. In this letter Senator Hoffman and Delegate Rawlings state:

As Baltimore City representatives on the Budget and Taxation Committee, and after reviewing the budget submission for FY 2001, we felt impelled to write about our sense that Baltimore City was poorly served. In the midst of a year of plenty, Baltimore City is like the starving Little Match Girl, with her nose pressed up against the window of

the grocery store. The proprietor (Governor) is cheerfully doling out goodies to the mostly prosperous, while the destitute (Baltimore City) sinks further into despair. The FY 2001 budget looks like the state of our economy - prosperous, cheerful and full of good news, but like our economy, the budget is sadly lacking support for the neediest counties, especially Baltimore City.

This budget should be adjusted to provide a more balanced approach to the range of needs of the state. Allow us to make some suggestions:

Fund, on a one-time basis, a total of \$25 million for wiring the Baltimore City Public Schools for the Internet. This can be done over two years. Currently only 41 of the 181 schools are wired. The goal of making Maryland a technology leader is a sham when the larger urban area is left out. The Internet and technology have the potential of leveling the playing field for children born into poverty. Allowing the "digital divide" to widen is unconscionable.

While we are grateful for an increase in school construction funds, the Baltimore City Public Schools has an even greater need for an increase in their operating budget. SB 795 which created the City/State partnership for the schools, allows the BCPS to request additional funding from the state for specific purposes of their master plan. This year BCPS asked the state for \$50 million to help them fund the master plan. As far as we can tell, there is no money in the budget at all in this category. We're sure that you remember that under the terms of the bill and the court settlement, it is likely that we will find ourselves back in court if the state does not attempt to meet some of these needs since the bill says that the state should attempt to meet the needs of the school system if it has the resources. Obviously, we have the resources, but somehow the special situation of the Baltimore City Public Schools has been ignored. The school system is making progress and deserves to be assisted to continue in this path.

Not too long ago some of us met with representatives of the Annie E. Casey Foundation to talk about Maryland's children and families. Doug Nelson made a cogent point that should be remembered. When a state

reviews its situation and finds that there is a concentration of problems in one area, the right thing to do is focus resources to solve those problems, and not worry so much about spreading money around to everyone. Realistically we know that is hard to do, so we don't expect you to have a budget that is totally tilted towards the needy. But this budget, Governor, is much too tilted in the other direction. We implore you to focus some of your attention and resources to those that need it the most the children and families of Baltimore.

F. The Reconstitution of Three Baltimore City Public Schools

This Court finds that the disadvantages which affect the students of the reconstituted schools in Baltimore City are mirrored by students in the rest of the BCPSS population. This Court further finds that in the second Affidavit of Howard Linaburg, the Director of Budget Services for the Baltimore City Public Schools, dated June 25, 2000, Mr. Linaburg evaluates the cost of funding three reconstituted schools in Baltimore City. Mr. Linaburg in his second affidavit shows that the per pupil amount that the State proposes to pay to Edison, Inc. to operate the reconstituted schools exceeds the BCPSS' own actual costs of operating those schools. The evidence specifically shows based on the total cost of operating the three reconstituted schools, Montebello Elementary School would have received \$5,025.17 per pupil; Gilmor Elementary School would have received \$5,229.15; and Furman Templeton would have received \$6,485.56 per pupil- for a weighted average of \$5,513.74 per pupil.

Howard Linaburg's second Affidavit also shows that under the Edison contract, Edison will receive \$2,436.83 more per pupil to manage and operate Montebello Elementary School; \$2,232.85 more per pupil to manage and operate Gilmor Elementary School; and \$976.44 more

per pupil to manage and operate Furman Templeton Elementary School- for a weighted average of \$1,948.26 per pupil.

In his second Affidavit Linaburg concludes and this Court adopts as its findings that if State funding for all Baltimore City Public Schools was increased by the same \$1,948.26 per pupil figure, State support for BCPSS would increase by \$190,257,330.

Applicable Law and Discussion

I. The Maryland State Statutory Requirement of Best Efforts

According to the evidence presented, the Consent Decree, paragraph 52, sets out the procedure by which the Board may request funds greater than those described in paragraph 47 of the Consent Decree. Paragraph 47 states that: "The State shall provide to the Baltimore City Public Schools the following additional funds, subject to appropriation by the General Assembly:

FY 1998 \$30 million
FY 1999 \$50 million
FY 2000 \$50 million
FY 2001 \$50 million
FY 2002 \$50 million."

(Consent Decree ¶ 47).

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

A. The State's Efforts To Fund the Ten Most Critical Priorities in the BCPSS'

\$49.7 Million Remedy Plan

According to the evidence presented to this Court, the State has provided to the BCPSS a list of State funds for fiscal year 2001 and 2002 that the State asserts are directly tied to the BCPSS' \$49.7 million Remedy Plan for fiscal year 2001. In examining this list, the Court declares that there are items in this list that cannot be expended on the Remedy Plan in either fiscal year 2001 or fiscal year 2002. These funds cannot be counted toward the Remedy Plan because BCPSS does not meet requirements to qualify for these funds.

The evidence presented to this Court indicates that \$1.1 million of the \$33.8 million promised by the State can not be expended on BCPSS' \$49.7 million Remedy Plan for fiscal year 2001 because BCPSS does not meet requirements to qualify for these funds and \$12.8 million is the funding BCPSS would have otherwise received. Therefore, this Court declares that the State is only providing \$19.9 million in additional funding that will be able to be used to fund the \$49.7 million Remedy Plan in 2001.

Based on the evidence presented, this Court further declares that of the \$49.7 million that the State asserts is to be allocated to the Remedy Plan for fiscal year 2002, \$1.1 million cannot be expended on the Remedy Plan and \$24.7 million would have otherwise been received by the BCPSS. Therefore, this Court declares that the State is only providing \$23.9 million in additional funding that will be able to be used to fund the Remedy Plan in 2002.

B. The Court's Determinations on the State's Best Efforts to Fund BCPSS

Based on the evidence presented, this Court must declare that in light of the Constitutional mandate of "thorough and efficient" education the allocation of \$19.9 million for 2001 and the

allocation of \$23.9 million for 2002 out of a \$940 million budget surplus in Fiscal Year 2001 is not making a "best effort" out of the available funds.

II. The Maryland State Constitutional Requirement of Educational Adequacy

As this Court 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 filed in the instant cases 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 in its Order of October 18, 1996 filed in the instant cases, 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.

The Court's Determination on The Maryland State Constitutional Requirement of Educational Adequacy

In examining the evidence presented to this Court at the hearing held on June 26, 2000 this Court declares that, although the management changes and new funding brought about by the Consent Decree have resulted in improvements to both the management and instructional programs of the Baltimore City public schools, the public schoolchildren in Baltimore City still are not being provided with an education that is adequate when measured by contemporary educational standards. They still are being denied their right to a "thorough and efficient" education under Article VIII of the Maryland Constitution.

This Court also declares that additional funds provided for the Baltimore City public schools in the State budget for Fiscal Year 2001 fall far short of these levels and will not enable the New Baltimore City Board of School Commissioners to provide the City's schoolchildren with a Constitutionally Adequate Education when measured by Contemporary Educational Standards during Fiscal Years 2001 and 2002. The level of new operating funds provided by the State budget also falls substantially short of the \$49.7 million sought by the New Board as an initial first step in implementing its comprehensive remedy plan. Given the substantial budget surplus and new sources of revenue available in Fiscal Year 2001 the State has not made its "best efforts" to fund the \$49.7 million Remedy Plan and to make a reasonable downpayment on the additional funding of approximately \$2,000 to \$2,600 per pupil that is need in order for students of Baltimore City Public School to receive a Constitutionally Mandated Adequate Education when measured by Contemporary Educational Standards.

CONCLUSION

Upon examination of all of the evidence presented at the June 26, 2000 hearing and for the reasons stated in this Opinion, this Court declares that additional funding is required to enable the Baltimore City public schools to provide an adequate education measured by contemporary educational standards. The amount of additional funding required cannot be determined with absolute precision. The Court determines, however, that the Baltimore City public schools need additional funding of approximately \$2,000 to \$2,600 per pupil for educational operating expenses for Fiscal Years 2001 and 2002, based on: (a) the findings of the independent evaluator jointly hired by the Maryland State Board of Education and the New Baltimore City Board of School Commissioners; (b) the comprehensive Remedy Plan developed by the New Board; (c) the amount the funds the State has provided to Reconstitute the three Baltimore City Schools, discussed previously; and (d) all of the other evidence presented by the parties.

Having determined and declared that the State is not fulfilling its obligations under Article VIII of the Maryland Constitution, as well as under the Consent Decree, the Court trusts that the State will act to bring itself into compliance with its constitutional and contractual obligations under the Consent Decree for the Fiscal Years 2001 and 2002 without the need for Plaintiffs to take further action.

DATED: June 30, 2000

Joseph H. H. Kaplan,
Judge

Circuit Court for Baltimore City

Signature Appears on the Original Document

Judge