

KEITH BRADFORD, et al.

Plaintiffs

v.

MARYLAND STATE BOARD OF  
EDUCATION et al.,  
Defendants.

\* \* \* \* \*  
BOARD OF SCHOOL COMMISSIONERS  
OF BALTIMORE CITY et al.,

Plaintiffs,

v.

MARYLAND STATE BOARD OF  
EDUCATION et al.,  
Defendants.

\* \* \* \* \*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE NO.: 94340058/CE189672  
\* \* \* \* \*  
\* CASE NO. 95258055/CL20251  
\* \* \* \* \*

MEMORANDUM OPINION

BACKGROUND

On December 7, 1994, the Bradford plaintiffs filed suit against the Maryland State Board of Education, the Governor, the State Superintendent of Schools, and the State Comptroller of the Treasury (hereinafter collectively referred to as "MSBE") alleging that the State was failing to provide the students of the Baltimore City Public School System ("BCPSS") with the "thorough and efficient" education guaranteed by Article VIII of Maryland's Constitution. The Bradford plaintiffs are parents of children attending the BCPSS who are "at risk" of educational failure, meaning that they live in poverty or otherwise are subject to economic, social, or educational circumstances increasing the odds that they will not receive an adequate education.

On September 15, 1995, the Board of School Commissioners of Baltimore City and its President, the Mayor, and the City Council of Baltimore ("hereinafter collectively referred to as "School

Commissioners") filed suit in this Court also alleging the failure of the MSBE to provide an adequate education for City students.<sup>1</sup> The suits were consolidated for trial.

On October 18, 1996, this Court entered partial summary judgment for the School Commissioners and for the Bradford plaintiffs, holding that Article VIII, Section 1, of the Maryland Constitution requires that the General Assembly provide all students in Maryland's public schools with an education that is adequate when measured by contemporary standards and that the public school children in Baltimore City are not being provided with an education that is adequate when measured by contemporary educational standards. (October 18, 1996 Order).

On November 26, 1996, the parties reached a settlement and signed a five-year Consent Decree, 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 (hereinafter "Board") 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).<sup>2</sup>

In June 2000, the Board and the Bradford plaintiffs sought additional funding, under a provision in the Decree that permitted the Board to return to Court based on an expert "interim evaluation" of the schools' progress.<sup>3</sup> Based on the evaluation and other evidence submitted, this Court found that the State

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<sup>1</sup>The Governor and the Comptroller of the Treasury who were original parties, were dismissed from both suits after the Court found that "relief can be granted without the Governor being a party to the litigation." (Transcript of Apr. 4, 1995, at 12).

<sup>2</sup>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).

<sup>3</sup>"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).

was still not providing a constitutionally adequate education to Baltimore public school students, and that approximately \$2,000 to \$2,600 per pupil in additional operational funding, annually was necessary to meet constitutional standards. (06/30/00 Memorandum Opinion and Order).

This Court's judicial supervision over the remedy established by the Consent Decree will terminate on June 30, 2002 unless this Court extends its supervision for "good cause."

On May 24, 2002, the School Commissioners and the Bradford Plaintiffs' filed a Joint Motion for Extension of Judicial Supervision until such time as the constitutional adequacy of the education provided by the BCPSS has been remedied. This Court held a hearing on Joint Motion on June 20, 2002.

#### DISCUSSION

In 1999, the General Assembly enacted legislation that created the Governor's Commission on Education Finance, Equity, and Excellence ("Thornton Commission" or "Commission"). The Commission was charged with studying, evaluating, and making recommendations to largely endeavor to support the outcomes embodied in the Consent Decree. After two years, the Commission proposed an education finance system. The Commission's proposal called for an increase in State aid of \$1.1 billion by fiscal 2007 and it urged the Governor, the President of the Senate, the Speaker of the House, and other members of the General Assembly to make every possible effort to re-prioritize appropriations in the fiscal year 2003 State budget in order to begin implementation of the Commission's recommendations in fiscal year 2003.

The Maryland General Assembly accepted the challenge posed by the Thornton Commission and on April 4, 2002, enacted Senate Bill 856, the *Bridge to Excellence in Public Schools Act*. 2002 Laws of Maryland Ch. 288. This Act restructures Maryland's public school finance system and increases annual State aid to public schools. If all the planned S.B. 856 increases take effect, Baltimore City schools will receive approximately \$258 million in increased state aid, annually, by FY 2008. The increases, however, are not certain to be fully funded because the General Assembly has not identified a revenue

source for the bulk of them, instead making such increases contingent on a joint legislative resolution affirming that the necessary revenue is available. The MSBE concedes this in the State Defendant's Memorandum in Opposition to Motion for Extension of Judicial Supervision when it stated, "While the General Assembly must pass a joint resolution supporting the funding levels contained in SB 856 for future fiscal years, given the General Assembly's passage of SB 856 and its overwhelming support of the Thornton Commission's recommendations, it is highly unlikely that it would not pass such a resolution." *Id.* at 29.

#### APPLICABLE LAW

The parties agreed in the Consent Decree that the Court may extend judicial supervision on a showing of "good cause." (Consent Decree, ¶ 68). Plaintiffs assert that "good cause" exists for two reasons: 1) The constitutional violation that this Court identified in 1996 and in 2000 is continuing, and 2) So that the Court may continue to monitor and enforce compliance with its June 2000 Order.

The Court does not need to address the merits of the first proposition, as the second proposition alone provides an adequate basis for extending jurisdiction. Wholly apart from the Consent Decree, this Court has the inherent power and jurisdiction to enforce its own orders. *See Reich v. Walker W. King Plumbing & Heating Contractor*, 98 F. 3d 147, 154 (4<sup>th</sup> 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). In the education funding arena courts regularly declare what the Constitution requires, and then retain jurisdiction to monitor actions the executive and legislative branches take to comply with constitutional mandates. *See, e.g., Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 337 (Wy. 1980) (directing the trial court to "retain jurisdiction until a constitutional body of [public school financing] legislation [was] enacted"); *Robinson v. Cahill*, 355 A.2d 129, 139 (N.J. 1976) (court retained jurisdiction to ensure the legislature complied with its order).

In June 2000, the Court declared that the State was not providing the children of BCPSS with a constitutionally adequate education and that approximately an additional \$2,000 to \$2,6000 per pupil was needed (June 30, 2000 Order). Now, two years have passed and the State has yet to comply with this Court's order, even though the State's own Thornton Commission identified funding needs substantially greater than those the Court recognized in June 2000. Although S.B. will arguably result in substantial compliance with the June 2000 order by 2008, it is uncertain that all the recommended increases will be funded. The State's lack of compliance to date with the June 2000 order, and the uncertainty over S.B. 856's funding stream, provide an independent basis for extending judicial supervision in this matter, as does the fact that the U.S. District Court for the District of Maryland's jurisdiction over the Special Education portion of the BCPSS will not end in all probability before fiscal year 2005.

#### CONCLUSION

Upon examination of all of the evidence presented at the June 20, 2002 hearing and for the reasons stated in this Opinion, this Court should, pursuant to paragraph 68 of the Consent Decree, retain jurisdiction and continue judicial supervision of this matter until such time as the State has complied with this Court's June 2000 Order.

June 25th 2002  
DATE

  
JOSEPH H. H. KAPLAN  
CHIEF JUDGE

KEITH BRADFORD, et al.

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**ORDER**

For the reasons stated in the Memorandum Opinion of even date herewith and upon consideration of the Joint Motion of the Board of School Commissioners and the Bradford Plaintiffs for Extension of Judicial Supervision, the opposition to the Motion and the response thereto, the evidence submitted to the Court in connection with it, and the entire record in this case, it is this 25th day of June, 2002.

ORDERED, ADJUDGED and DECREED, pursuant to paragraph 68 of the Consent Decree, that this Court will retain jurisdiction and continue judicial supervision of this matter until such time as the State has complied with this Court's June 2000 order.

June 25th, 2002  
DATE

  
JOSEPH A. H. KAPLAN  
CHIEF JUDGE