



December 15, 2020

The Honorable Lawrence Hogan, Jr.
Governor of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable Bill Ferguson
President of the Maryland Senate
State House, H-107
100 State Circle
Annapolis, MD 21401

The Honorable Adrienne A. Jones
Speaker of the Maryland House of Delegates
State House, H-101
100 State Circle
Annapolis, MD 21401

Re: Fiscal Year 2022 Budget for Education: Keith Bradford, et al., v. Maryland State Board of Education

Dear Governor Hogan, President Ferguson, and Speaker Jones:

We represent a class of parents of students attending public schools in Baltimore City in *Bradford, et al. v. Maryland State Board of Education*, a case pending in the Circuit Court for Baltimore City. In advance of the announcement of the budget for fiscal year 2022 and the upcoming legislative session, we write to draw your attention to this long-standing case involving funding of Baltimore City Public Schools (“City Schools”). Providing adequate funding supporting public school education in Baltimore City is not only the right thing to do, it is the State’s responsibility under the Maryland Constitution and binding court orders.

Adequate funding is particularly urgent this year. The State’s long-term continuing underfunding of Baltimore City schools has deprived generations of children in Baltimore City of a constitutionally-adequate education, including among other things the chance to receive an education that is adequate by contemporary educational standards and to attend safe and suitable facilities that have heat and air conditioning. The State’s own calculations show that as of 2017, Baltimore City needed at least \$342 million more annually to provide students with adequate instruction¹ and estimates of what is needed to restore Baltimore City’s physical facilities are between \$3 and \$5 billion. Those needs are increasing every year that the State does not address the funding deficiency. And this year, the COVID-19 pandemic is making the situation far worse, putting children even further behind academically.

As you know, the Maryland Constitution requires that the State establish a “thorough and efficient” public school system.² The Court of Appeals of Maryland interpreted this provision to require an “adequate education when measured by contemporary educational standards.”³ The State is constitutionally required to employ district-specific methods to the extent that providing for an “adequate education” requires it.⁴ While the State is not required to ensure precise equality among districts, it must attempt to “minimize the impact of undeniable and inevitable demographic and environmental disadvantages on any given child.”⁵

Under these principles, the Court in *Bradford* found that children in Baltimore were being denied a “thorough and efficient” public school education in violation of Article VIII of the Maryland Constitution.⁶ The Court repeatedly declared that funding was insufficient to comply with the constitutional standard between 1996 and 2004.⁷

The State initially attempted to meet its constitutional and Court-mandated responsibility to provide adequate funding through changes to the funding formula through the 2002 Bridge to Excellence in Education Act, but the effect of that formula had begun eroding by 2007. That erosion created an “adequacy gap” of at least \$342 million annually between constitutionally-required and actual funding as of FY 2017.⁸

In 2016, the state's consultant, Augenblick, Pailach and Associates (“APA”), reported that City Schools needs approximately \$358 million (in FY15 dollars) in additional funding

¹ Dep’t of Legislative Services, 2017 Adequacy Analysis, http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnInnovEduc/2019_07-24_AdequacyDLS.pdf, page 9.

² Article VIII, § 1 of the Maryland Constitution.

³ *Montgomery Cty. v. Bradford*, 345 Md. 175, 189 (1997) (“Bradford I”); *see also Hornbeck v. Somerset Cty. Bd. of Educ.*, 295 Md. 597, 615 (1983).

⁴ *Bradford I*, 345 Md. at 181 (citing *Hornbeck*, 295 Md. at 639).

⁵ *Hornbeck*, 295 Md. at 639.

⁶ *Bradford v. Maryland State Dep’t of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), Order, Oct. 18, 1996.

⁷ *Id.*, Mem. Op., June 30, 2000, at 24-25; *id.* Mem. Op., Aug. 20, 2004, at 57-58.

⁸ Dep’t of Legislative Services, 2017 Adequacy Analysis.

annually to provide students a constitutionally adequate education.⁹ Under either estimate, the size of the adequacy gap has undoubtedly grown in the years since those estimates were generated.

Beginning its work in 2016, the "Kirwan" Commission was charged with "reviewing the findings and recommendations of the *Study on Adequacy of Funding for Education in the State of Maryland*."¹⁰ But the State has repeatedly delayed full action on the Kirwan Commission's recommendations, all while the constitutional violation and the continuing irreparable injury to generations of children continues.¹¹ In recent years, the State has provided some additional funding to school districts statewide, including City Schools, to fill funding gaps in the absence of a fully revised funding formula. For example, SB1030 /The Blueprint for Maryland's Future City Schools expanded City Schools' community schools program from 50 schools in FY 2019 to 126 schools in FY 2020, and 115 schools received resources to invest in wraparound supports such as counseling, social workers, and after school programs for students living in concentrated poverty. And earlier this year, the General Assembly passed the *Blueprint for Maryland's Future* bill (HB1300) implementing the Kirwan Commission's recommendations. However, the veto of that legislation further delayed a ramp up in funding for Baltimore schools. That bill would have made progress on closing the adequacy gap for City Schools, although it bears emphasis that the additional amount that HB1300 would have provided in FY 2022 to City Schools was still less than expert estimates of what is required for educational adequacy.

In March 2019, the *Bradford* plaintiffs returned to Court, seeking additional relief in two principal areas. First, they sought provision for adequate educational programs, including funding sufficient for such programs, in light of the massive erosion of the funding called for by the Bridge to Excellence in Education Act that put City Schools even farther behind than they were when the Court made its original determinations between 1996 and 2004. Second, they sought much needed funding to address the deficiencies of the physical facilities in Baltimore City. Passed in 2013, the 21st Century Schools program leverages dedicated revenue from City Schools, the City, and the state to provide \$1 billion for school construction projects in Baltimore. However, only 28 schools are projected to be fully modernized under that program; there are nearly 100 more schools that are in desperate need of renovations or rebuilding. Decades of substantial underfunding have led to the conditions that exist today in City Schools' facilities, including the lack of functional and reliable heat and air conditioning, drinkable water, and basic security measures, such as classroom doors that

⁹ Augenblick, Palaich & Associates, *Final Report of the Study of Adequacy of Funding for Education in Maryland*, prepared for Maryland State Dep't of Education, Nov. 30, 2016, at 111.

¹⁰ Charge of the Commission on Innovation and Excellence in Education, http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnInnovEduc/09-29-2016_Charge_of_Commission.pdf

¹¹ Ovetta Wiggins, *Ambitious Md. Effort to Boost, Change Education Funding Delayed Another Year*, WASH. POST, Dec. 20, 2018, https://www.washingtonpost.com/local/md-politics/ambitious-md-effort-to-boost-change-education-funding-delayed-another-year/2018/12/19/16938d00-ffc5-11e8-83c0-b06139e540e5_story.html?utm_term=.b3526a581158.

lock. They also often have roofs and structures that are well beyond their useful life and are leaking or crumbling.¹²

The State tried to persuade the Court to deny the plaintiffs' claim on a variety of procedural grounds, all of which the Court rejected in January 2020.¹³ Among other things, the Court rejected the State's claim that the Courts could not review the adequacy of school funding. However, the trial is unlikely to begin before the end of this academic year. Meanwhile, students continue to be deprived of their constitutional right to an adequate education.

We urge you to consider the fiscal year 2022 budget and legislative session as an opportunity to recognize the lack of resources for City Schools, stop the snowballing generational effects of underfunded education, and make these communities whole even before the Court has the opportunity to act on the plaintiffs' renewed Court petition. In addition to overriding the vetoes on the *Blueprint* bill (HB1300) and the Built to Learn Act (HB1), it would be a necessary and important first step towards remedying the existing constitutional violations for the State to ensure that:

- the “Bridge” funding — including funding from SB1030 passed in 2019 for priority *Blueprint* programs — smoothing the gap between current funding and full Kirwan funding is continued and, if necessary, protected from any veto;
- *the Blueprint* “Correction” or “Companion” bill is “front-loaded” to immediately provide aid to students who live in Baltimore City and districts that are currently furthest from funding “adequacy”; and
- Funding is provided to address issues caused by the COVID-19 pandemic including holding districts harmless from funding reductions due to enrollment losses this year, ensuring Baltimore students have adequate computer devices and internet service, ensuring that the most vulnerable students have access to safe in-person learning during the 2020-2021 school year, continuing to support City Schools' efforts to provide on-site testing to symptomatic staff and students, providing tutoring and support services to mitigate learning loss and to address mental health needs.

Thank you very much for your consideration.

¹² *E.g., Leaky Roofs, Lead in the Water, Fire Risk: Baltimore Schools Face Nearly \$3 billion Maintenance Backlog*, BALTIMORE SUN, Sep. 27, 2018, <http://www.baltimoresun.com/news/maryland/education/k-12/bs-md-ci-facilities-costs-20180914-story.html>; Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 23; BCPSS, *Comprehensive Educational Facilities Master Plan*, Oct. 12, 2018, at 616-26 (listing needs).

¹³ Order, Jan. 16, 2020.

Respectfully submitted,

Sherrilyn Ifill
President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, Suite 5
New York, New York 10006
Phone: (212) 965-2200
Email: sifill@naacpldf.org

Deborah A. Jeon
ACLU of Maryland Foundation
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
Phone: (410) 889-8550
Email: jeon@aclu-md.org

Elizabeth McCallum
Baker & Hostetler, LLP
1050 Connecticut Ave., NW
Washington, DC 20036
Phone: (202) 861-1522
Email: emccallum@bakerlaw.com

Cc: Steve Sullivan, Esq. Assistant Attorney General
Mark Simanowith, Esq.