



January 22, 2019

The Honorable Larry Hogan
Governor of Maryland
100 State Circle
Annapolis, MD 21401

Dear Governor Hogan:

We represent a class of parents of students attending public schools in Baltimore City in *Bradford v. Maryland State Board of Education*, a case pending in the Circuit Court for Baltimore City. As you may know, the Circuit Court in *Bradford* has found that the State is in violation of its duty under Article VIII of the Maryland Constitution to provide a “thorough and efficient” public school education to Baltimore City students because, among other things, the State has failed to provide sufficient funding for an adequate education.¹ The Court has repeatedly found that the State must ensure that sufficient funding is available to comply with the constitutional standard.² However, the State has been in violation of that order throughout the last decade. According to the State’s own estimate for FY2015, the “adequacy gap” to be addressed for the Baltimore City public schools (“BCPSS”) to have constitutionally-sufficient funding is at least \$290 million annually.³ The *Bradford* Court has determined it will retain jurisdiction until adequacy is achieved.⁴

We write now to address two recent events related to the State’s obligation to comply with *Bradford*. First, as you know, the “Kirwan” Commission – the State Commission tasked with revising the state’s formula for funding education – has been working to assess statewide needs for educational funding, including recommending changes to the current school funding formula necessary to ensure that all districts have sufficient funds to provide the adequate education required by Article VIII of the Maryland Constitution. Studies before the Kirwan Commission found that BCPSS needs approximately \$358 million in additional funding annually to provide

¹ *Bradford v. Maryland State Dep’t of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), Order, Oct. 18, 1996.

² *Id.*, Mem. Op., June 30, 2000, at 24-25; *id.* Mem. Op., Aug. 20, 2004, at 57-58.

³ Dep’t of Legislative Services, Office of Policy Analysis, *Adequacy of Education Funding in Maryland*, Dec. 8, 2016, at 7.

⁴ *Bradford v. Maryland State Dep’t of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), Order, June 25, 2002; *id.* Mem. Op., June 25, 2002, at 5; *id.* Mem. Op., Aug. 20, 2004, at 57-58; *id.* Order, Aug 20, 2004, at 1-2.

students a constitutionally adequate education.⁵ However, in December, state legislators recommended that the Kirwan Commission’s final findings, and state action to address those findings, be delayed until at least next year and quite possibly further, all while the constitutional violation continues.⁶

Second, you recently announced that your Administration will propose legislation providing approximately \$3.5 billion towards school facilities construction over the next ten years.⁷ Although we support providing additional funds for school facilities, we urge you to recognize that any funding proposal should address issues faced by the students and districts with the greatest need. Moreover, any funding proposal must satisfy *Bradford* and ensure that facilities at BCPSS are adequate for Baltimore City students to have the “thorough and efficient” education to which they are constitutionally entitled under Article VIII. For decades, starting well before your administration, BCPSS has been starved of the funds necessary to maintain its facilities, let alone to bring them to modern standards. The children attending BCPSS are expected to learn in physical facilities that oftentimes lack functional and reliable heat, lack air conditioning, lack drinkable water, are absent 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.⁸ The 21st Century building program has been an important start, but it will replace at most only about 18 percent of BCPSS buildings.⁹ BCPSS has also had to commit at least \$20 million/year of its operating dollars for 30 years to leverage the bonds that finance the program¹⁰ – taking already limited dollars out of classrooms. Unfortunately, the needs for children in BCPSS schools are far greater, with at least 85 percent of the school buildings rated “very poor” or “poor” by industry standards.¹¹ Using estimates projected by BCPSS from the 2012 Jacobs Report, it would cost \$3 billion to bring Baltimore City Public School buildings up to a minimally acceptable standard through repairs and building replacements and \$5 billion to complete a full portfolio replacement to meet modern educational standards.

This letter addresses both issues, which are closely related. BCPSS pays for many repairs and renovations to facilities out of its operating budget.¹² Unlike any other school system in Maryland, BCPSS must pay substantial debt service payments for facility-related bonds, meaning that it must

⁵ 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 112.

⁶https://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.

⁷ <https://governor.maryland.gov/2018/12/11/governor-larry-hogan-announces-over-3-5-billion-building-opportunity-fund-school-construction-initiative/>.

⁸ *E.g.*, <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).

⁹<https://baltimore21stcenturyschools.org/roadmap> (listing school projects and status).

¹⁰ <https://baltimore21stcenturyschools.org/about/financing-plan>.

¹¹ Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 26.

¹² BCPSS, *Comprehensive Educational Facilities Master Plan*, Oct. 12, 2018, at 72-73.

divert scarce dollars from instruction to address the deplorable physical condition of Baltimore City school buildings. For these reasons, the State’s budget and any legislation related to school funding should incorporate funds to remediate both the unconstitutional adequacy gap in instruction and operations and BCPSS’s deteriorating school facilities – as the Maryland constitution requires and as Baltimore children deserve. We stand ready to work with State and legislative leaders on the specifics of any such legislation and provide our concrete suggestions in section C below.

A. The State Is Violating Court Orders Compelling Constitutionally Required Funding of Education in Baltimore City.

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.”¹³ 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 education contemplated by §1 of Article VIII, when measured by contemporary educational standards,’ a constitutional violation may be evident.”¹⁴

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. Indeed, the State establishes exacting standards for such facilities.¹⁵

You recognized that adequate school facilities as well as educational programs are an essential component of an adequate education in your recent announcement, explaining:

I believe very strongly that every single child in Maryland deserves access to a world-class education regardless of what neighborhood they happen to grow up in, and an important part of that is making sure that all of our students are educated in facilities that are modern, safe, and efficient which provide them with an environment that encourages growth and learning.¹⁶

Since 2000, the State has been under a court order finding that specific funding of Baltimore City schools is required so that students may receive a constitutionally adequate education.¹⁷ In 2002, 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.¹⁸ In 2004, the Circuit Court for Baltimore City *again* ordered

¹³ *Hornbeck v. Somerset Cty. Bd. of Educ.*, 295 Md. 597, 615 (1983); *Montgomery Cty. v. Bradford*, 345 Md. 175, 189 (1997).

¹⁴ *Bradford*, 345 Md. at 181.

¹⁵ *E.g.*, COMAR 13A.01.02.04; COMAR 23.03.02.01, *et seq.*

¹⁶ <https://governor.maryland.gov/2018/12/11/governor-larry-hogan-announces-over-3-5-billion-building-opportunity-fund-school-construction-initiative/>.

¹⁷ *Bradford v. Maryland State Dep’t of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), Mem. Op., June 30, 2000, at 24-25.

¹⁸ Stephen C. Bounds, John R. Woolums, et al., *Maryland School Law Deskbook, 2016-17 School Year Edition*, § 4.37.

the State to continue phasing in the funding mandated by the “Thornton” formula.¹⁹ However, the State halted or capped the inflation increases nearly a decade ago,²⁰ causing an “adequacy gap” in BCPSS educational funding that the State estimates has now reached at least \$290 million a year.²¹ This means that, according to the State’s own assessments, Baltimore City schools are well behind where they were when the *Bradford* court last assessed the inadequacy of State educational funding.²² Moreover, a study before the Kirwan Commission found that annual increased funding needs for BCPSS are even greater, at \$358 million a year.²³ This is an unacceptable violation of the court’s orders and a major constitutional deprivation for many of the State’s children with the greatest needs.

Baltimore City lacks the resources of more wealthy jurisdictions, which are able to provide substantially more in educational funding.²⁴ Because Baltimore City does not have the resources to do this, the effect of the State’s noncompliance with the Thornton formula and the “adequacy gap” for children in Baltimore City schools has had a disproportionately greater impact.

Children attending Baltimore City public schools have needs that are greater than those of students in any other district in the State. Not only have the schools been chronically underfunded, but those deficiencies affect a student population that is the poorest in the State. Eighty-seven percent of BCPSS students live in poverty as measured by eligibility for Free and Reduced-price meals.²⁵ Additionally, 15 percent of BCPSS students qualified as students with disabilities, compared with 12 percent statewide.²⁶

Moreover, the systemic underfunding of BCPSS disproportionately deprives students of color of a constitutionally-adequate education. In 2017, BCPSS’s student population was 79.4 percent African-American, 8 percent white, and 10.4 percent Hispanic or Latino. This is compared with the State’s overall student population, which is 33.7 percent African-American.²⁷ The underfunding of the school district that has the largest percentages of African-American and poor

¹⁹ *Bradford v. Maryland State Dep’t of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), Mem. Op., Aug. 20, 2004, at 57-58.

²⁰ Dep’t of Legislative Services, Office of Policy Analysis, *Education in Maryland*, in Legislative Handbook Series, Vol. IX, 2014, at 63; 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 ii; Stephen C. Bounds, John R. Woolums, et al., *Maryland School Law Deskbook, 2016-17 School Year Edition*, § 4.37.

²¹ Dep’t of Legislative Services, Office of Policy Analysis, *Adequacy of Education Funding in Maryland*, Dec. 8, 2016, at 7 (estimating the “adequacy gap” resulting from failure to implement Thornton Commission increases for FY 2015).

²² Compare *id.* at 7 (FY2015 adequacy gap of \$290 million) with *id.* at 3 (FY2002 adequacy gap of \$270 million).

²³ 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 112.

²⁴ <http://dls.maryland.gov/pubs/prod/InterGovMatters/SteAidLocGov/Overview-of-State-Aid-to-Local-Governments-Fiscal-2019-Allowance.pdf>, at 31, 49.

²⁵ *Id.* at 52.

²⁶ <http://mdideareport.org/SupportingDocuments/MDSpecialEducationEarlyInterventionCensusDataRelatedTables.pdf>.

²⁷ <http://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20172018Student/2018EnrollbyRace.pdf>.

students²⁸ also sends a message to BCPSS students that they are less valuable. This cannot be tolerated.

The ACLU has worked diligently to present support and information to the Kirwan Commission on how to bridge the adequacy gap, but, as you know, the Commission's final report and funding proposals have been delayed.²⁹ Recent announcements by the Commission and other State policymakers that the Commission will delay its final report until the end of this year, and that legislation and funding implementing its recommendations will be delayed until the 2020 legislative session or beyond, mean that the "adequacy gap" in Baltimore City will continue to grow and the constitutional violations (and the violations of the *Bradford* court orders) will continue unabated. This is unacceptable.

Every year of delay means another year that children do not receive the education mandated by the State Constitution. Every year of delay increases the adequacy gap in Baltimore City, making compliance that much more difficult. It is incumbent upon the State to comply with the court orders and meet its constitutional obligations to provide Baltimore City children with a thorough and efficient education.

In the FY 2020 budget and in legislation this legislative session, therefore, we urge you to include sufficient funds directed towards educational funding to comply with the existing *Bradford* court orders.

B. Baltimore City Schools' Physical Facilities Further Violate Constitutional Standards.

1. BCPSS Schools are in Extremely Poor Condition.

School facilities in Baltimore City are in abysmal condition. For decades, the State has abdicated its responsibility to provide adequate funding to address that condition. Due to chronic underfunding, it is estimated it would cost \$3 billion to bring Baltimore City School buildings up to minimally accepted standards through repairs and building replacements (based on a projection using the 2012 Jacobs Report). Replacing all existing schools to modern educational standards will cost an estimated \$5 billion, based on BCPSS' escalated estimates from the 2012 Jacobs report. The system has literally reached a breaking point.

Because of the urgency of the facilities crisis and BCPSS's lack of adequate funding, BCPSS very often must pay for repairs and renovations to facilities out of its operating budget, meaning that it must divert scarce dollars from instruction.³⁰ Additionally, as noted, BCPSS has been required to pledge at least \$20 million annually out of operating funds to support the 21st Century program.³¹ As a result, the constitutional "adequacy gap" in Baltimore City with respect to instruction is aggravated by the ongoing need to respond to the facilities crisis.

We recognize that in recent years the State has supported and participated in the 21st Century Schools Program, which has allowed the renovation or replacement of nine Baltimore City school

²⁸<http://dls.maryland.gov/pubs/prod/InterGovMatters/SteAidLocGov/Overview-of-State-Aid-to-Local-Governments-Fiscal-2019-Allowance.pdf>, at 52, 56.

²⁹https://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.

³⁰ BCPSS, *Comprehensive Educational Facilities Master Plan*, Oct. 12, 2018, at 72-73.

³¹ <https://baltimore21stcenturyschools.org/about/financing-plan>.

buildings and will eventually lead to 23-28 new or fully renovated schools,³² and also provided emergency funding last winter³³ when schools had to close because major elements of ancient heating systems failed in many of them. These contributions, while important, do not come close to resolving the problem.

Baltimore has, by far, the oldest physical facilities of any other large system in Maryland.³⁴ According to established industry criteria for assessing facilities, at least 85 percent of the system's 158 schools are now in "very poor" or "poor" condition.³⁵ Among the well-documented problems are: failure of ancient boiler systems (causing school closures due to lack of heat); roofs and other structural elements that are well past their replacement time; and lack of drinkable water due to un-remediated lead in water pipes.³⁶ In addition to crumbling structures, many Baltimore schools lack the range of specialized facilities necessary for an education that is adequate by contemporary educational standards.³⁷

These issues came to a head last winter when students in 87 Baltimore City public schools – over half of all public schools in the City – attended class in rooms that were without heat or with limited heat because boilers and other major elements of the schools' aging heating systems failed.³⁸ As a result, over the course of a two-week period, over 60 schools were forced to close, with thousands of students forced to miss multiple days of instructional time. Teachers and families tried to raise funds to buy winter coats and space heaters for their shivering students, including through well-publicized GoFundMe campaigns.³⁹ This past summer, numerous schools again were forced to close; this time, because classrooms had no air conditioning.⁴⁰ Nearly 40 percent of all BCPSS schools lack air conditioning.⁴¹ The school district is addressing that issue, but those efforts further limit its ability to use limited resources to address other critical needs.

Student, parent, and teacher comments illustrate the abysmal conditions in which Baltimore City children are expected to learn. Parent Michael Boyd says: "To be in a cold building all the time is

³²<https://baltimore21stcenturyschools.org/roadmap> (listing school projects and status).

³³https://www.washingtonpost.com/local/hogan-announces-25m-to-help-heat-baltimore-schools/2018/01/08/333f90ec-f4aa-11e7-9af7-a50bc3300042_story.html?utm_term=.bfe3a22d5e99.

³⁴ BCPSS, *Comprehensive Educational Facilities Master Plan*, Oct. 12, 2018, at 73; Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 13.

³⁵ Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 26.

³⁶ E.g., <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).

³⁷ Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 17 (BCPSS facilities have "failing" grade on educational adequacy assessment).

³⁸ BCPS Memo to Delegate Maggie MacIntosh, Jan. 22, 2018; Washington Post, "Kids are freezing: Amid bitter cold, Baltimore schools, students struggle.", Jan. 5, 2018.

³⁹<https://www.wbaltv.com/article/gofundme-created-in-hopes-of-solving-cold-school-crisis-in-baltimore-city/14751935>.

⁴⁰ E.g., Wmar2, *Lack of air conditioning closes 70+ Baltimore City schools early on first day*, Sept. 4, 2018

⁴¹<http://www.baltimoresun.com/news/maryland/education/k-12/bs-md-ci-schools-dismiss-early-20180906-story.html>.

miserable. The only thing you can think of is being cold, and vice versa when it's hot. When it's hot the only thing you can think of is being hot. No[] matter what the teacher is doing, she could be doing something you like, but if you're hot you get distracted.” Student Dashawna Bryant has sickle cell anemia, and spent a week in the hospital after a day in an unheated classroom last winter. She says: “I would like our leaders to know that students in Baltimore also have a dream, and just because some of us aren't rich enough to have those dreams come true doesn't mean they should be taken away from us. I want to study to be a child psychologist when I go to college. I know some of my friends are trying to be doctors or lawyers or judges, but the fact that we go to a Baltimore City school, and the fact that we don't have heating or air conditioning or all this funding, takes away from those dreams. And it makes it harder for people to want to go to college because they know how hard it is for them. So I just want the elected leaders to know that just because we don't go to a private school, or just because we don't live out in the county, we do still have dreams that we want to accomplish.”

The State has failed to resolve these problems despite clear notice that BCPSS facilities are rapidly deteriorating. A 1992 assessment demonstrated that over 20 percent of BCPSS schools were then in “poor” condition, “with seriously leaking roofs and other structural defects,” and only 16 percent were in “good” condition.⁴² By 1996, the percentage of schools rated as poor had risen to 35 percent, with only 10 percent of the buildings rated in “good” condition.⁴³ By 2003, a State task force examining the “minimal adequacy” of buildings concluded that almost 70 percent of BCPSS facilities did not meet air quality standards; 95 percent did not have sufficient heating and cooling systems (compared to 16 percent of schools statewide); none had drinkable water; almost 60 percent did not meet standards for “human comfort;” 36 percent did not meet fire safety standards; almost 30 percent lacked adequate bathrooms; and many did not have sufficient space for library use, science labs, technology education, arts education, and health services.⁴⁴ In 2004, the State Superintendent of Schools testified that \$1 billion in additional funding was required to bring the BCPSS facilities to adequacy.⁴⁵ For the next several years, however, the State did not perform updated assessments of facilities, notwithstanding the Kopp Commission's recommendation that it do so every four years.⁴⁶

The most recent comprehensive survey available, by the engineering firm Jacobs in 2012, demonstrates the further deterioration of Baltimore City school facilities. Jacobs assessed all 185 school buildings then operating and rated them on the established industry standard, the Facilities Condition Index (FCI), for physical conditions and educational adequacy, including security, technology, classroom size, special use areas like libraries, lighting, as well as specific equipment

⁴² 1992 Facilities Master Plan; *Bradford v. Maryland State Dep't of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), State Amended Admission 86.

⁴³ 1995 Facilities Master Plan; *Bradford v. Maryland State Dep't of Education*, No. 94340058/CE189672 (Md. Cir. Ct. Baltimore City), State Amended Admission 86.

⁴⁴ Task Force to Study Public School Facilities Final Report (“Kopp Commission Report”), Feb. 2004, at 90, 125.

⁴⁵ *Bradford v. Maryland State Dep't of Education*, No. 94340058/CE189672 Tr., May, 2004, at 1284:5-10, 1413:11-19, 1586:5-10.

⁴⁶ Task Force to Study Public School Facilities Final Report (“Kopp Commission Report”), Feb. 2004, at 10; 21st Century Facilities Commission Final Report (“Knott Commission Report”), Jan. 2018, at 9.

and space for programs like science, technology, and music/arts.⁴⁷ Its findings were damning. The overall FCI for BCPSS was 60 (on a 0-100 scale, with 100 the worst score), reflecting “facilities in very poor condition.”⁴⁸ Of these, 50 had such high FCIs that they “should be considered as candidates for replacement or [treated as] surplus.”⁴⁹ Simply put, “City Schools buildings do not provide the physical structures, technology and instructional space to support 21st-century teaching and learning.”⁵⁰ The report estimated that it would cost almost \$2.5 billion to renovate the buildings “to address current facility needs and educational adequacy deficiencies, and to cover lifecycle renewal costs for 10 years.”⁵¹ BCPSS now estimates that replacement costs would be over \$5 billion (based on an extrapolation of the 2012 Jacobs report).

Fixing the problems by replacing individual components is not an efficient or viable option, as the State recognized in approving the 21st Century Building Program. The buildings and systems are so aged and decrepit that replacing a single component – the boilers in a school, for instance – will not solve the problem for long because another problem, such as leaks in piping to and from the boilers, will soon appear. Wholesale replacement of the schools with failing grades is the only cost-efficient long-term option.

Nor are sufficient funds available even for necessary current maintenance. Facility management professionals use three percent of current replacement value as a guideline for the annual investment necessary to maintain school buildings in good condition. The district’s current replacement value is approximately \$5 billion. To achieve the recommended industry standards formula, BCPSS would need to increase the operating budget for maintenance from approximately \$23 million to \$150 million a year.⁵² This doesn’t even touch the deferred maintenance costs of \$3 billion, based on an estimate of the backlog of deferred maintenance.

2. These Deficiencies Have a Severe Effect on Students and Their Ability to Learn.

Just as insufficient operational/educational funding has a direct effect on the quality of education students receive, dilapidated school buildings also directly impact teaching and learning. As a State report explained, research “demonstrates a strong correlation between certain facility factors and student achievement.”⁵³ Recent research has confirmed “significant correlations between poor structural, conditional, and aesthetic attributes of school buildings and low student learning and achievement. These attributes include lighting, temperature and thermal comfort, acoustics, indoor air quality, and other environmental factors.”⁵⁴ For instance, a 2017 study found that

⁴⁷ Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 8-11.

⁴⁸ *Id.* at 25.

⁴⁹ *Id.* at 33.

⁵⁰ BCPSS, *State of City Schools Buildings: Summary of the Preliminary Jacobs Report*, at 6.

⁵¹ Jacobs, *State of School Facilities, Baltimore City Public Schools*, June 2012, at 10.

⁵² BCPSS, *Comprehensive Facilities Maintenance Plan*, SY2018-19, at 2-3.

⁵³ Task Force to Study Public School Facilities Final Report (“Kopp Commission Report”), Feb. 2004, at 4 (citing educational facilities expert Dr. Glen Earthman).

⁵⁴ Build Us Schools, *Education Equity Requires Modern School Facilities* at 2 (Sept. 2018) (citing research).

moving students out into new facilities increased test scores by ten percent of a standard deviation in math and five percent in English-language arts.⁵⁵

Additionally, as discussed above, there are disproportionate numbers of students who are poor and students of color attending the Baltimore City schools. The poor condition of BCPSS schools exacerbates the effects of historic discrimination and other barriers to achievement.

Baltimore City has the lowest per capita wealth and lowest tax base of any large district in the State⁵⁶ and lacks the resources that other jurisdictions of comparable size use to support school construction. Baltimore City also lacks the resources that other jurisdictions of comparable size use to supplement their public school maintenance budgets. As the 21st Century Schools Commission declared, this imbalance should be ameliorated by greater State funding to poorer districts: “[T]he State must focus its limited resources on critical areas of need, *especially in low-wealth jurisdictions including those with a higher proportion of students living in poverty* and those experiencing excessive enrollment growth.”⁵⁷

C. The State Must Ensure that Both Education and Facilities Are Constitutionally Adequate.

The State should comply with the governing *Bradford* orders and fulfill its constitutional duty to the students of Baltimore City by addressing the “adequacy gap” in educational funding starting this legislative session. That would require at least \$290 million, escalated from FY15, in increased annual funding to the BCPSS.⁵⁸ We ask further that the State move as quickly as possible to obtain and act on the Kirwan Commission’s recommendations, as that work so far shows substantial additional needs in BCPSS.⁵⁹

With respect to facilities, the State should live up to the 21st Century Commission’s promise to focus resources on “critical areas of need” and meet your own goal of ensuring that “every single child in our state” attends a school facility that is “modern, safe, and efficient” by including provisions in any facilities legislation sufficient to ensure that Baltimore City schools meet those standards. This could be done, for instance, by including funding necessary to fulfill the 21st Century Schools program for Baltimore City – estimated by the BCPSS as an additional \$5 billion over ten years – while in the meantime addressing improvements to current facilities to ensure students’ constitutional rights are protected during the transition period while schools are being repaired/replaced. It could also be accomplished by reducing the deferred maintenance backlog so that current facilities meet adequacy standards.

Any legislation related to school facilities must ensure that all BCPSS buildings:

⁵⁵ Lafortune, J. and D. Schönholzer. 2017. Does new School Construction Impact Student Test Scores and Attendance? Berkeley: California Policy Lab, University of California.

⁵⁶<http://dls.maryland.gov/pubs/prod/InterGovMatters/SteAidLocGov/Overview-of-State-Aid-to-Local-Governments-Fiscal-2019-Allowance.pdf>, at 31, 49.

⁵⁷ 21st Century Facilities Commission Final Report “Knott Commission Report”), Jan. 2018, at 7.

⁵⁸ Dep’t of Legislative Services, Office of Policy Analysis, *Adequacy of Education Funding in Maryland*, Dec. 8, 2016, at 7.

⁵⁹ 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 112 (annual increase of \$358 million necessary for City schools).

- Have adequate and reliable HVAC systems throughout the system, including reliable heating in the winter and air conditioning in the summer;
- Have adequate and reliable plumbing and piping systems;
- Have adequate (repaired or replaced) roofs;
- Have adequate and functioning bathrooms;
- Receive structural repairs, as necessary;
- Address issues relating to mold/other harmful chemicals;
- Address lead in the water supply and ensure drinkable water;
- Have adequate fire safety provisions;
- Have adequate ventilation;
- Have sufficient specialized facilities for a modern constitutionally adequate education, including computer, STEM, art, music, etc.

The legislation should also include sufficient resources for the 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 the BCPSS, including approximately \$150 million per year for ongoing maintenance.⁶⁰

Baltimore City school children cannot wait any longer. When schools annually have been denied hundreds of millions of dollars that a court has found necessary for educational programs; when schools cannot stay open during cold winter weather and late-spring or late-summer heat waves; when teachers must raise funds to buy winter coats for their students; when a school system reaches a multi-billion dollar backlog in deferred maintenance and has funding available to pay only a small fraction of what is required for basic ongoing maintenance, the State Constitution compels action. We ask that the State take that action in the current legislative session.

⁶⁰ BCPSS, Comprehensive Facilities Maintenance Plan, SY2018-19, at 2-3.

We are available and happy to discuss this letter further with you at any time.

Respectfully submitted,



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