

IN THE
CIRCUIT COURT FOR BALTIMORE CITY

KEITH A. and STEPHANIE E.,
BRADFORD, as parents of
BRANDON, KENDALL, and
ADRIAN BRADFORD,
211 Bryant Avenue
Baltimore, MD 21217,

and

SHIRLEY WILEY,
as parent of SHAWN, ANDREW, and
ANTONIO LANE, and ERICA POINTER
844 Bethune Road
Baltimore, MD 21225,

and

LETTY J. HEROLD,
as parent of AMY and
CHRISTINA FLEMING,
5320 Wright Avenue
Baltimore, MD 21205,

and

LAWRENCE H. FULTON,
as parent of YOLANDA L.,
AMANDA V., AND DANIEL H.,
1613 Burnwood Road
Baltimore, MD 21239,

and

ROXANNE BARTEE-EL,
as parent of SEAN, YAHSMIN,
and ISAIAH BERRY-BEY,
1905 Park Avenue,
Baltimore, MD 21217

and

COMPLAINT

Civil No. 94340058/

CE 189672

JANICE SMITH,
as parent of OLIVER REDD and
MICHEAL DABNEY,
755 West Lexington Street
Apartment 610
Baltimore, MD 21200

and

RAMONA PISKOR,
as parent of KURT and
MIRANDA BARTLING,
12 North Wolfe Street,
Baltimore, MD 21231

v.

THE MARYLAND STATE BOARD OF
EDUCATION, and CHRISTOPHER T.
CROSS, CHRISTOPHER E. GRANT,
EDWARD ANDREWS, ROBERT C.
EMBRY, JR., GEORGE W. FISHER,
MARVIN E. JONES, ELMER B. KAELIN,
ROSE LAPLACA, JOAN C.
MAYNARD, HARRY D. SHAPIRO,
and EDMONIA T. YATES,
in their official capacities as
members of the State Board of
Education,
200 W. Baltimore Street
Baltimore, MD 21202,

and

WILLIAM DONALD SCHAEFER, in
his official capacity as
Governor of The State of
Maryland,
State House
Annapolis, MD 21404,

and

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PRELIMINARY STATEMENT

1. This Complaint seeks declaratory and injunctive relief, pursuant to the Education and Due Process Clauses of the Maryland Constitution, to direct the State of Maryland to provide all schoolchildren residing in Baltimore City with an adequate public school education. This complaint presents claims that were not adjudicated in Hornbeck v. Somerset County, 295 Md. 597, 458 A.2d 748 (1983), as the Court of Appeals acknowledged in that case. Nor do the claims presented herein seek to reduce or reallocate educational resources currently provided to any other school district in Maryland. Rather, this case is brought solely to ensure that all schoolchildren in Baltimore City have access to a constitutionally adequate public education.

2. Education is among the most important functions of a state government. For our State and local communities, education of the next generation is essential to the continuation and prosperity of our civilization, democracy, and economy. For the individual child, education is essential to the achievement of his or her human potential. As the United States Supreme Court recognized in Brown v. Board of Education, education has become:

a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Particularly in light of the increasingly complex and competitive nature of the job market and the world, education has never been more important than it is today to the well-being and futures of schoolchildren, the City of Baltimore, and the State of Maryland.

3. In Maryland, an adequate education is not only of paramount importance to children and society, it is also a constitutional right of every schoolchild. Hornbeck,

458 A.2d at 780. That right is guaranteed by the Maryland Constitution, which places upon the General Assembly the duty to establish and maintain throughout the State a "thorough and efficient" system of public schools. This constitutional duty obligates the State to provide for a public education system, effective in each school district in Maryland, which offers each child an adequate education as measured by contemporary education standards.

4. Contemporary education standards in Maryland include, but are not limited to, those education standards established by the State through statutes, regulations and other pronouncements of its officials and agencies. By establishing those standards, the State of Maryland has defined elements of an adequate education and established minimum levels of student performance or outcomes which should be attained in each school district, including minimum levels for student performance on standardized tests of basic skills at various grade levels, attendance at school, and graduation and dropout rates. State standards also prescribe minimum levels of educational resources and services that should be available in public schools, including minimum levels for the number and quality of teachers and other professional staff, textbooks, computers and other instructional supplies, library and media resources, and physical facilities. Other contemporary education standards, in addition to those established by the State, further inform the State's constitutional duty to provide an adequate education.

5. For the reasons described below, schoolchildren in Baltimore City, particularly students "at risk" of educational failure, as defined below in paragraph 8, are not receiving an adequate education that conforms to contemporary educational standards. Indeed, both student outcomes and educational resources in BCPS fall short of the standards for an adequate education consistently and to a far greater extent than in any other school district in Maryland. Particularly when considered in light of many

other Maryland school districts' general ability to approach or exceed these standards, the lack of adequate educational opportunities in BCPS is clear.

6. The injuries to Baltimore City schoolchildren resulting from BCPS's current inability to provide students with an adequate education are particularly acute, since the student population in Baltimore City is from one of the most impoverished communities in Maryland, and therefore has a high proportion of "at-risk" students. As the State itself has recognized, Baltimore City's schoolchildren are as fully capable of learning and benefiting from education as are children who reside elsewhere in the State. Because of economic, social, and educational disadvantages and other factors, however, schoolchildren in Baltimore City need additional educational resources and services that are not currently provided if they are to receive an adequate education. The educational success or failure of these schoolchildren, moreover, will significantly determine the social and economic future of Baltimore City and Maryland.

7. This is a class action lawsuit brought on behalf of present and future students in the Baltimore City Public Schools who are at risk of educational failure. "At-risk" students are those who experience circumstances of economic, social, and/or educational disadvantage that substantially increase the likelihood that they will fail to obtain an adequate education in public school.

8. Students who are "at risk" include those who:
- (a) live in poverty (usually defined for educational purposes by their eligibility for free or reduced price school meals);
 - (b) attend schools with a high proportion of students living in poverty (more than thirty percent eligible for free or reduced price meals);
 - (c) live with fewer than two parents;
 - (d) have parents who did not themselves graduate from high school;
 - (e) live with parents who are unemployed;

- (f) are homeless;
- (g) are parents or pregnant;
- (h) live under the threat of violence at home or at school;
- (i) have been retained in grade on at least one occasion;
- (j) score more than one year below grade level on standardized testing measures; or
- (k) have otherwise been determined to be in need of remedial education.

9. The vast majority of students attending Baltimore City Public Schools are at risk in accordance with the foregoing definition. For example, 67.7% of the students in BCPS are eligible for free or reduced price school meals. Also, 95.5% of schools with grade 3 and 95.7% of schools with grade 8 in Baltimore City have 30% or more of their students eligible for free or reduced price meals. The percentage of students at risk of educational failure in Baltimore City is far higher than in any other jurisdiction in Maryland.

PARTIES

A. Plaintiffs

10. Plaintiffs Keith A. Bradford and Stephanie E. Bradford sue as parents of minor children, Brandon Bradford, Kendall Bradford and Adrian Bradford. Keith A. Bradford and Stephanie E. Bradford and their sons are all residents of Baltimore City. Brandon Bradford is a student in the 3rd Grade at Westside Elementary School in Baltimore City. Kendall Bradford and Adrian Bradford are not yet of school age, but plaintiff parents expect to enroll them in Baltimore City Public Schools in 1995 and 1997, respectively.

11. Plaintiff Shirley Wiley sues as a parent of minor children, Shawn Lane, Andrew Lane, Antonio Lane and Erica Pointer. Shirley Wiley and her children are all

residents of Baltimore City. Shawn Lane is student in the 7th Grade at Benjamin Franklin Middle School in Baltimore City. Andrew Lane is a student in the 5th Grade at Patapsco Elementary School in Baltimore City. Antonio Lane is a student in the 4th Grade at Patapsco Elementary School in Baltimore City. Erica Pointer is a student in the 3rd Grade at Patapsco Elementary School in Baltimore City.

12. Plaintiff Letty J. Herold sues as a parent of minor children, Amy Fleming and Christina Fleming. Letty J. Herold and her daughters are all residents of Baltimore City. Amy Fleming is a student in the 11th Grade at Patterson High School in Baltimore City. Christina Fleming is a student in the 10th Grade at Mergenthaler Vocational-Technical High School in Baltimore City.

13. Plaintiff Lawrence H. Fulton sues as a parent of minor children, Yolanda L. Fulton, Amanda V. Fulton and Daniel H. Fulton. Lawrence H. Fulton and his children are all residents of Baltimore City. Yolanda L. Fulton is a student in the 11th Grade at Mergenthaler Vocational-Technical High School in Baltimore City. Amanda V. Fulton is a student in the 7th Grade at Chinquapin Middle School in Baltimore City. Daniel H. Fulton is a 5th Grader at Northwood Elementary School in Baltimore City.

14. Plaintiff Roxanne Barteel sues as a parent of minor children, Sean Berry-Bey, Yahsmin Berry-Bey, and Isaiah Berry-Bey. Roxanne Barteel and her children are all residents of Baltimore City. Sean Berry-Bey is a student in the 7th Grade at Mt. Royal Elementary/Middle School in Baltimore City. Isaiah Berry-Bey is a student in Kindergarten at Coldstream Park Elementary School in Baltimore City. Yahsmin Berry-Bey is not yet of school age, but plaintiff parent expect to enroll her in Baltimore City Public Schools in 1995.

15. Plaintiff Janice Smith sues as a parent of minor children, Oliver Redd and Micheal Dabney. Janice Smith and her sons are all residents of Baltimore City. Oliver Redd is a student in the 5th Grade at Lexington Terrace Elementary School in Baltimore

City. Michael Dabney is a student in the 3rd Grade at Lexington Terrace in Baltimore City.

16. Plaintiff Ramona Piskor sues as a parent of minor children, Kurt Bartling and Miranda Bartling. Ramona Piskor and her children are all residents of Baltimore City. Kurt Bartling is a student in the 2nd Grade at Hampstead Hill Elementary School in Baltimore City. Miranda Bartling is a student in Kindergarten at Hampstead Hill Elementary School in Baltimore City.

17. The schoolchildren plaintiffs are all "at risk" as defined in paragraph 8.

B. Defendants

18. The Maryland State Board of Education ("the State Board") is responsible for determining elementary and secondary education policies for the State of Maryland; administering the public schools of the State through the promulgation of bylaws, rules, regulations, and other statements; developing and adopting State education performance and resource standards; investigating and determining the educational needs of public schools throughout the State; formulating methods and programs to improve educational conditions as needed; preparing and submitting an annual State public school budget, including necessary appropriations of State aid to BCPS; and fulfilling other duties prescribed by Md. Code Ann., Educ. § 2-205 and other provisions of law. The individual members of the State Board include Christopher T. Cross, Christopher E. Grant, Edward Andrews, Robert C. Embry, Jr., George W. Fisher, Marvin E. Jones, Joseph Edmonds, Elmer B. Kaelin, Rose Laplaca, Joan C. Maynard, Harry D. Shapiro, and Edmonia T. Yates. Those Board members are sued in their official capacities.

19. William Donald Schaefer is sued in his official capacity as the Governor of the State of Maryland. As Governor, he is responsible for the administration of the government of the State, pursuant to the State Constitution and laws.

20. Nancy S. Grasmick is sued in her official capacity as the State Superintendent of Schools for the State of Maryland ("the State Superintendent"). The State Superintendent is responsible for advising the State Board on the establishment of basic policies and guidelines for the program of instruction in public schools; carrying out and implementing the education policies of the State Board; enforcing the laws with respect to education as well as the bylaws, rules, and regulations of the State Board; advising and assisting the State Board in investigating and determining the educational needs of public schools throughout the State and in developing State education performance and resource standards; advising and assisting the State Board in formulating methods and programs to improve educational conditions as needed; certifying the State Board's annual public school budget, including necessary appropriations of State aid to BCPS; and fulfilling other duties prescribed by Md. Code Ann., Educ. §§ 2-205, 2-303, other provisions of law, and directives of the State Board. The State Superintendent also is responsible for the administration of the State Department of Education ("the State Department"), which has authority over matters of elementary and secondary education that affect the State as well as general care and supervision of public elementary and secondary schools.

21. Louis L. Goldstein is sued in his official capacity as the Comptroller of the Treasury for the State of Maryland ("the State Comptroller"). The State Comptroller is responsible for the general supervision of the fiscal affairs of the State of Maryland, including the duties prescribed under Art. VI of the Maryland Constitution and other provisions of law.

CLASS ACTION ALLEGATIONS

22. The individual named plaintiffs identified in the above paragraphs 10 through 17 seek to bring this action on behalf of a class of all other similarly situated persons, pursuant to Rule 2-231 of the Maryland Rules of Procedure. The class to be

represented by those individual plaintiffs consists of all present and future students in the Baltimore City Public Schools who are at risk of educational failure.

23. The exact number of members of the proposed class is not known, but that number is more than 70,000, which is the approximate number of children eligible for free or reduced price school meals attending BCPS this year. The members of the proposed class are so numerous that joinder of their individual claims would be impractical.

24. The claims of the proposed class members involve common questions of law and fact. All of the proposed class members are injured or directly threatened with injury by the defendants' violation of the same basic rights, and proof of plaintiffs' injuries and defendants' violations will turn on the same factual showings and legal theories with respect to all of the proposed class members' claims.

25. The claims of the representative plaintiffs identified in the above paragraphs 10 through 17 are typical of the claims of the proposed class. The injuries suffered by those representative plaintiffs are typical of the injuries sustained by the proposed class as a whole.

26. The representative plaintiffs identified in the above paragraphs 10 through 17 and their undersigned counsel are able to, and will, fairly and adequately represent and protect the interests of the proposed class.

27. This action is properly maintained as a class action under Rule 2-231(b)(2), because the claims raised herein are based on defendants' acts and refusals to act on grounds generally applicable to the proposed class. Accordingly, declaratory and injunctive relief is appropriate on behalf of the proposed class as a whole.

FACTUAL ALLEGATIONS

A. Background and Framework for State Education Standards

28. The Education Clause of the Maryland Constitution provides that 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. This clause was incorporated in and has been a part of the State Constitution since 1867.

29. As has been recognized by the Court of Appeals, a component of the State's constitutional obligation to maintain a "thorough and efficient system of free public schools" is the duty to provide all schoolchildren in Maryland with access to a public education that is adequate, as measured by contemporary education standards. Hornbeck, 458 A.2d at 780. The State itself, through its Attorney General, also has recognized that the Maryland Constitution guarantees all public school students the right to an adequate education. See 62 Opinions of the Maryland Attorney General 338, 350 (provided to State Senate Nov. 9, 1977).

30. The State's constitutional duty to provide for an adequate education runs to every school-aged child throughout Maryland. The State of Maryland, through the State Board, the State Superintendent, and various State Commissions, explicitly has acknowledged and accepted the following principles: (i) all children can learn; (ii) all children have the right to attend schools in which they can progress and learn; and (iii) all children shall have the real opportunity to learn equally rigorous content. These principles apply to at-risk schoolchildren in Baltimore City, just as they apply to schoolchildren in other communities and school districts in Maryland.

31. Most recently, the 1993-94 Maryland Governor's Commission on School Funding (hereinafter the "Governor's Commission") issued a report in January 1994 which acknowledged that "each school system in the state must have the resources and

staff composition, along with the professional and community will, to provide each student with a rigorous and fundamental education." The Governor's Commission further recognized that the "State must devote additional resources to children with special needs so they can progress and learn equally rigorous content. To break the generational cycle of poverty, particular attention must be paid to ensuring that children living in poverty succeed in school."

32. As recognized by the Governor's Commission, some children, including many children residing in Baltimore City, because of individual circumstances or the environments in which they live, may require greater or different resources and services than others to receive an adequate education from the public schools. "At risk" children are especially likely to need such resources and services. The existence of children with such special needs does not alter the State's constitutional obligation to ensure that all children have an opportunity to attend a public school system that is adequate to address their needs; instead, it requires the State to provide sufficient resources and services as necessary to meet the special needs of children in different environments or school districts. All three of the principles set forth in paragraph 30 above apply to schoolchildren who have special needs just as they apply to all other schoolchildren.

33. Consistent with its constitutional obligations, the General Assembly has enacted various statutes included in the Education Article of the Annotated Code of Maryland. Those statutes, inter alia, establish the existing framework for a State system of public schools, in part by delegating authority to various State and local agencies and officials, including the State Board, the State Superintendent, the City of Baltimore and the City Board. The General Assembly, however, has not and cannot delegate or otherwise relieve itself or the State from the ultimate responsibility imposed upon it by the Maryland Constitution to establish and maintain an adequate education system in each school district in the State. Therefore, regardless of the causes of any failure to provide a constitutionally adequate education to Maryland students, and regardless of

at what level of government such causes arise, responsibility for any such failure rests with the State.

34. The State, by statute, further has provided that all individuals between the ages of 5 and 21 shall be admitted free of charge to the public schools of the State and that each child in Maryland must attend a public school or its equivalent for at least 180 days each year between the ages of 5 and 16. Md. Code Ann., Educ. §§ 7-101, 7-103 through 7-301. By conferring this statutory right to attend school, and by imposing a legal requirement of compulsory school attendance upon its citizens, the State has heightened and made all the more important its constitutional duty to ensure the adequacy of the public schools to which it compels the attendance of Maryland's children for many of the formative years of their lives.

35. The General Assembly has enacted additional statutes which establish or direct the establishment of State education standards pertaining to, inter alia, minimum reading levels for each grade; statewide objectives and assessments of student achievement in reading, writing, mathematics, and other subjects; the graduation of students from high school; the ratios of professional staff to students; teacher certification; textbooks; materials of instruction; supplies; school library or media center collections; and school building construction.

36. The State Board, acting pursuant to the above statutory and constitutional mandates, has promulgated regulations and otherwise has established standards for education in Maryland in Title 13A of the Code of Maryland Regulations ("COMAR"). These regulations and standards establish State standards concerning the quantity and quality of educational opportunities that must be provided to every schoolchild in the State, including standards for each of the areas identified in the preceding paragraphs.

37. The State Board further has adopted a number of resolutions that establish additional education standards through the Maryland School Performance Program ("MSPP"). As part of the MSPP, the State Board has established measures of

"satisfactory performance" for local school districts with respect to a number of important "data-based areas" of student performance. The State Board has defined "satisfactory performance" for these purposes as "a realistic and rigorous level of achievement indicating proficiency in meeting the needs of students."

38. Through the MSPP, the State Board has established certain measures of student performance or outcomes as valid and useful standards by which to assess the adequacy of education provided in a school district. A school district in which an unacceptably high proportion of students fails to attain the desired outcomes that the State Board has determined can and should be attained by virtually all students does not provide a constitutionally adequate education.

39. The State Board, State Superintendent, State Department, and various State Commissions also have issued or adopted various reports, guidelines, directives, or other forms of statements that establish additional education standards against which the performance of local school districts, including BCPS, may be measured.

40. Through the statutes, regulations, resolutions, and other pronouncements referred to in the preceding paragraphs, the State of Maryland has established education standards that inform what constitutes an adequate education consistent with contemporary education standards -- the level of education guaranteed by the Maryland Constitution to all schoolchildren and in all communities throughout the State.

B. Lack Of An Adequate Education in BCPS

41. The State of Maryland and the defendants have failed to provide schoolchildren in Baltimore City with an adequate education. In particular, the defendants have failed to provide resources sufficient and appropriate to enable BCPS to meet or make meaningful progress toward meeting contemporary education standards, especially with respect to at-risk students. The inadequacy of education

available to schoolchildren in BCPS is evidenced by, among other things, measuring the level of student outcomes and the availability of educational resources in BCPS against numerous contemporary standards of educational adequacy, including but not limited to the education standards established by the State. In many cases, the comparison between BCPS and the balance of districts in Maryland reflects the fact that many and in some cases most districts in the State have achieved or are approaching compliance with those State standards. While a number of measures of student outcomes are detailed in the paragraphs that follow, they are not intended to be an exhaustive list of the relevant measures of student outcomes.

Measures Of Student Outcomes

(i) MSPAP And Other Tests --Grades 3, 5, and 8

42. The State Board in recent years has developed a set of criterion-referenced tests (the "MSPAP tests") to measure what students have learned with respect to a State-prescribed set of "desired learning outcomes." Those "learning outcomes" specify what the State Board has determined students "should know, be able to do, and how they should act as a result of their educational experiences," at various grade levels. These tests are administered annually to students throughout the State in grades 3, 5, and 8, and cover a number of subjects, including reading, mathematics, writing, language, social studies, and science.

43. The MSPAP tests for grades 3, 5, and 8 are scored according to 5 levels of performance, with level 1 representing the highest performance and 5 the lowest performance. The State Board has established that students scoring in levels 1 through 3 have demonstrated "satisfactory" performance for a given subject and grade level. The State Board has established that a school district has achieved a district-wide

"satisfactory" level -- indicating proficiency in meeting the needs of students -- when 70% of its students have scored at levels 1 through 3.

44. Because the MSPAP tests for grades 3, 5, and 8 measure student performance with respect to "learning outcomes" and assessments that were established in recent years, the State Board has indicated that it does not anticipate that all or most students will score above the "satisfactory" standards in the first years the tests are administered. The State Board has stated, however, that school districts should make substantial progress toward the achievement of the State's "satisfactory" standards and reach them by 1995.

45. In the 1990-91 and 1991-92 school years, the only years for which complete data for MSPAP testing are available, only 5% to 16% of BCPS students achieved "satisfactory" scores on each of the six different tests given in grades 3, 5, and 8. The proportions of students achieving "satisfactory" scores in the other 23 school districts in Maryland were generally 2.5 to 7 times greater on each test at each grade level than in BCPS. The proportion of students achieving "satisfactory" scores in 1991 and 1992 are summarized below:

Percentage of Students Achieving "Satisfactory" Scores on MSPAP Tests in the 1990-91 and 1991-92 School Years

	<u>Reading</u>		<u>Math</u>		<u>Writing</u>	<u>Lang.</u>	<u>Science</u>	<u>Social Stud.</u>
	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>
<u>Grade 3</u>								
<u>BCPS</u>	8.8%	11.7%	8.8%	10.4%	12.6%	8.9%	13.6%	16.2%
<u>Other 23</u>	30.3	31.5	28.1	30.2	29.6	33.1	35.0	36.5
<u>Grade 5</u>								
<u>BCPS</u>	8.4%	9.5%	9.8%	20.5%	11.5%	6.3%	10.4%	10.8%
<u>Other 23</u>	31.1	28.5	26.4	46.5	27.0	32.1	34.7	37.8

<u>Grade 8</u>								
<u>BCPS</u>	7.3%	7.1%	6.9%	6.9%	10.9%	5.1%	4.8%	8.1%
<u>Other 23</u>	29.9	26.2	26.2	37.7	29.3	31.4	34.4	29.7

46. At the same time, as summarized below, the proportion of BCPS students scoring in level 5, the lowest possible level on the MSPAP tests in the 1990-91 and 1991-92 school years, was nearly twice as great as the proportion of students from the other 23 Maryland school districts scoring in level 5:

Percentage of Students Scoring in the Lowest Level
on MSPAP Tests in the 1990-91 and 1991-92 School Years

	<u>Reading</u>		<u>Math</u>		<u>Writing</u>	<u>Lang.</u>	<u>Science</u>	<u>Social Stud.</u>
	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>	<u>90/91</u>	<u>91/92</u>
<u>Grade 3</u>								
<u>BCPS</u>	64.1%	48.4%	64.7%	52.6%	62.4%	66.2%	52.9%	60.1%
<u>Other 23</u>	33.5	26.1	38.4	28.7	37.3	34.5	28.0	36.8
<u>Grade 5</u>								
<u>BCPS</u>	66.8%	57.3%	59.3%	45.0%	58.0%	71.9%	54.7%	N/A
<u>Other 23</u>	36.1	28.5	37.3	21.0	38.9	35.7	23.1	N/A
<u>Grade 8</u>								
<u>BCPS</u>	69.7%	57.3%	71.0%	63.2%	63.2%	75.7%	57.3%	67.8%
<u>Other 23</u>	35.7	27.8	35.1	24.7	33.4	35.2	19.4	32.7

These students scoring at level 5, who are enrolled disproportionately in BCPS, are the children most in need of additional and/or improved educational services if they are to achieve the "desired learning outcomes" and receive an "adequate" education as established by the State Board.

47. The State Department of Education has designated the 1992-93 school year as the baseline for measuring compliance with MSPAP school performance standards. In that year, BCPS continued to fall far short of meeting the State's satisfactory standards to a far greater degree than any other jurisdiction in the State. Available data for the 1992-93 school year MSPAP test results, summarized below, indicates that

approximately 3 to 6 times more students in the State as a whole achieved at the "satisfactory" level than in BCPS and nearly twice as many students in BCPS performed in the lowest achievement level.

Percentage of Students Achieving "Satisfactory" Scores and
Achieving at the Lowest Level on MSPAP Tests in the 1992-93** School Year

	<u>Reading</u>		<u>Math</u>		<u>Science</u>		<u>Social Stud.</u>	
	<u>Satisfactory</u>	<u>Lowest Level</u>	<u>Satisfactory</u>	<u>Lowest Level</u>	<u>Satisfactory</u>	<u>Lowest Level</u>	<u>Satisfactory</u>	<u>Lowest Level</u>
<u>Grade 3</u>								
<u>BCPS</u>	5.4%	39.7%	7.1%	63.4%	8.0%	65.2%	9.4%	67.3%
<u>State*</u>	N/A	N/A	28.6	32.8	31.1	34.0	31.9	37.7
<u>Grade 5</u>								
<u>BCPS</u>	7.3%	58.9%	11.8%	51.3%	7.7%	64.1%	9.6%	89.2
<u>State*</u>	24.7	32.5	39.5	23.1	33.3	30.2	31.3	66.5
<u>Grade 8</u>								
<u>BCPS</u>	5.1%	58.5%	5.4%	60.2%	6.7%	59.0%	6.1%	72.1%
<u>State*</u>	24.6	27.7	35.8	24.1	N/A	N/A	25.9	39.2

* Includes data for BCPS.

** Indicates baseline year data.

48. The trends in MSPAP results reflected in paragraphs 45 to 47 continue to the present and reflect BCPS's inability to meet or make substantial progress toward meeting the State's standard for "satisfactory" performance.

49. BCPS administers other standardized tests, the results of which also demonstrate that students in Baltimore City are not receiving an adequate education. The Comprehensive Test of Basic Skills ("CTBS") is administered to certain students in grades 3, 5, and 8, in the subject areas of reading, language, and math. In 1991-92 and 1992-93, the most recent years for which complete data are available, the CTBS scores of students in BCPS were substantially below the State average, and either the lowest or among the lowest of any school district in the State, for each of the CTBS subject area tests and at every grade level in which the tests were administered.

50. The inadequacy of education in BCPS, as reflected in standardized test scores, further is demonstrated by test results from past years. From at least the 1981-82

through the 1989-90 school year, Maryland school districts administered the California Achievement Test ("CAT") at least once a year to students in grades 3, 5, and 8. CATs were given in a number of subject areas, including reading, mathematics, and language.

51. CAT scores are reported as grade level equivalents. The State Board has recognized that students who score one grade equivalent or more below their actual grade level on tests such as the CAT are at risk of not being promoted to the next grade level and are in need of compensatory and remedial instruction. COMAR 13A.02.06.02 and 13A.04.06.

52. BCPS students consistently scored substantially below the statewide average on CATs in all subject areas and at all grade levels tested. Every year, for almost every grade level and subject area tested, the CAT scores for BCPS students were lower than for any other school district in Maryland. Moreover, substantial numbers of BCPS students scored 1 or more grade equivalents below the statewide averages and national norms on CAT tests during each year in which those tests were administered.

(ii) Maryland Functional Tests -- High School

53. The State Board has developed and requires local school districts to administer the Maryland Functional Tests, which are designed to measure the extent to which high school students have attained "basic competencies" in the areas of reading, mathematics, writing, and citizenship. These tests are designed to measure basic skills that schools should teach and that students should learn by the end of eighth grade in an adequate education program.

54. These basic functional tests are administered for the first time to students in the ninth grade, except for the citizenship test which is administered by some school districts for the first time to students in the tenth grade. Students who do not pass one or more of the four subject area tests the first time they take them may retake those tests in subsequent years. Successful completion of each of the four functional tests at some

point during grades 9 through 12 is a precondition to graduation from high school, absent exceptional circumstances.

55. The State Board has established standards for what constitutes "satisfactory" performance by school districts on each of the four tests, based upon the proportion of students who pass the tests. The State Board has established separate standards for (1) the percentage of "first-time takers" that have passed each of the tests, and (2) the percentage of students who have passed the tests at some point by the end of eleventh grade.

56. BCPS consistently has failed to meet the State's satisfactory standards for the Maryland Functional Tests. It also consistently has had the lowest pass rate of any school district in Maryland -- ranking 24th among 24 local districts -- on each of the Maryland Functional Tests.

57. The proportion of "first-time takers" in BCPS who fail each of the four Maryland Functional Tests is approximately 1.5 to 3 times the level prescribed by the State as the "satisfactory" failure rate for a Maryland school district. "First-time taker" failure rates for the four most recent years for which complete data are available are set forth below:

	<u>Failure Rates</u>			
	<u>Reading</u>	<u>Math</u>	<u>Writing</u>	<u>Citizenship</u>
State Established "Satisfactory" level	<u>5.0%</u>	<u>20.0%</u>	<u>10.0%</u>	<u>15.0%</u>
BCPS 1994	11.0	55.4	36.7	21.4
BCPS 1993	8.6	51.8	24.5	37.7
BCPS 1992	11.2	61.7	29.3	42.9
BCPS 1991	13.9	55.7	37.6	42.9
BCPS 1990	15.0	56.7	32.7	38.6

58. The State Board has established, as an additional standard of "satisfactory" school district performance, that 90% of students should have passed all four of the

Maryland Functional Tests by the end of eleventh grade. Among BCPS students who remained in school through grade 11 (i.e., who are not among the significant proportion of their peers who dropped out by that time, as discussed below) in 1991 only 78.0% had passed all four tests, in 1992 only 76.1% had passed all four tests, in 1993 only 79.7% had passed all four tests, and in 1994 only 76.7% had passed all four tests. This means that in each of the last several years more than 20% of BCPS eleventh graders had not attained an eighth grade level of knowledge in at least one core subject. BCPS was the lowest rated school district in Maryland on this measure in 1991, 1992, and 1993. BCPS was the only district that did not meet the State's "satisfactory" standard in 1992, and it was one of only two districts that did not meet the State's "satisfactory" standard in 1991 and 1993.

(iii) Student Attendance

59. The State Board has recognized that another critical measure of an adequate school system is the extent to which it is successful in encouraging or compelling students to attend school on a regular basis. Students who do not attend school regularly cannot be expected to receive an adequate education. A school district's proficiency in this area depends significantly on the availability of resources to implement and administer an effective student attendance policy as well as on the adequacy of educational opportunities provided to students when they do attend school. To a significant extent, therefore, student attendance rates are directly related to the quality and adequacy of education available in the schools; students are more likely to attend schools that are able to offer an adequate education and to meet their needs.

60. The State Board has established that a "satisfactory" level of student attendance for a school district is at or above 94% for grades 1 through 6. The State Board further has established that a "satisfactory" level of student attendance for a school district also is at or above 94% for grades 7 through 12. The State Board further

has determined that any individual student who is unlawfully absent from school for all or part of 20% or more of the school days in any marking period, semester, or year is properly deemed a "habitual truant." COMAR 13A.08.

61. BCPS does not meet these State standards for attendance, and it consistently experiences levels of nonattendance or absenteeism that are far higher than those for any other local school district in Maryland.

62. From 1989 to 1994, the five most recent school years for which data are available, the rate of absenteeism in BCPS grades 1 through 6, which has ranged from 6.4% to 9.6%, has exceeded the level permitted under the State standard for "satisfactory" attendance. During those same years, each and every one of the other 23 local school districts in Maryland has met and exceeded the State's 94% "satisfactory" standard for student attendance in grades 1 through 6.

63. From 1989 to 1994, the five most recent school years for which data are available, the rate of absenteeism in BCPS grades 7 through 12 has been approximately 20.0%, more than 3 times the level permitted under the State standard for "satisfactory" performance by a school district. Aside from BCPS, no school district in Maryland has had a rate of absenteeism for grades 7 through 12 that has even remotely approached the 20.0% rate in BCPS. Moreover, between the 1989-90 and 1992-93 school years, the rate of absenteeism for grades 7 through 12 in the other 23 school districts in Maryland has improved from 8.9% to 7.2%, approaching full compliance with the State's standard for "satisfactory" attendance.

64. In the 1990-91, 1991-92, and 1992-93 school years, approximately 35.0% of BCPS students from all grade levels were "habitual truants" under State standards; i.e., they were absent from school for more than 20 days during the year. In the 1993-94 school year, approximately 30% of BCPS students were absent from school more than 20 days. In the other 23 school districts in Maryland, only 13.2% of students from all grade levels were absent 20 or more days in 1990-91, and that figure improved to 11.0% by

1992-93. Moreover, no other school district in Maryland had even close to 35% of its students absent from school for more than 20 days in either 1990-91, 1991-92, or 1992-93.

(iv) Dropouts

65. The State Board has recognized that an essential measure of an adequate education system is the extent to which a school district is successful in encouraging and providing necessary support to students to keep them in school through grade 12. Children who do not complete high school do not receive an adequate education under any reasonable contemporary education standard. A school district's proficiency in this area depends significantly on the availability of resources to implement and administer effective dropout prevention programs as well as on the adequacy of educational opportunities provided to students at all grade levels. A school system that is able to offer an adequate education that supports student achievement at all grade levels, to provide remedial assistance to those students who fall below grade level, to encourage high rates of student attendance, and otherwise to meet the needs of its students will produce high graduation and low dropout rates.

66. As a standard of "satisfactory" performance, the State Board has established that a school district's annual dropout rate for grades 9 through 12 should not exceed 3%. Because this is an annual rate, it will cumulate over the four years that a class or cohort of students moves from grade 9 through grade 12. If a 3% dropout rate were maintained by a school district over time, it would mean that approximately 11.4% of schoolchildren in that district would drop out of school between the beginning of grade 9 and the end of grade 12, while 88.6% of the schoolchildren who entered grade 9 would complete grade 12.

67. From 1990 to 1993, the most recent years for which data are available, the annual dropout rate in BCPS has been 18.8%, 10.3%, 16.4%, and 18.5%, by far the highest of any district in the State, and up to 6 times higher than the State standard for

"satisfactory" performance. During those same years, the average annual dropout rate for the 23 other school districts in Maryland has been 4.3%, 3.4%, 3.4%, and 3.5%, only a small fraction of BCPS's rate and approaching full compliance with the State standard for "satisfactory" performance.

68. Indeed, for well over a decade, the annual dropout rate in BCPS has been many times higher than the State Board's 3% standard for "satisfactory" performance and substantially higher than in any other school district in Maryland. Over that period, the annual dropout rate in BCPS has been so high that its cumulative effect has meant that no more than half of the schoolchildren in BCPS have completed high school; the other 50% or more have dropped out of school.

69. This high long-term dropout rate already has had substantial negative effects on the social and economic fabric of Baltimore City and of the State as a whole. A substantial portion of intelligent and capable schoolchildren in Baltimore City have dropped out of school before graduating from high school and, as a result, are unlikely ever to reach or to contribute their full potential as participants in the work place and in society. Moreover, a student who drops out of school is much more likely to become a burden on society's resources.

70. Additional efforts are needed to improve and expand dropout prevention programs and to improve overall educational opportunities in BCPS. Additional education programs and efforts also are needed to seek to provide an adequate education to the significant number of school-aged children and others who have dropped out of BCPS in recent years.

(v) Preparation for Higher Education

71. The State Board has recognized that one of the central functions of an adequate system of elementary and secondary schools is to prepare students who wish

to continue their education so that they are qualified for admission and able to take advantage of higher education opportunities.

72. In the three most recent years for which complete data are available, only approximately 30.0% of those students who in fact graduated from BCPS high schools had completed minimum course requirements that would qualify them for admission to the University of Maryland System. That figure is substantially below the figure for high school graduates from the other 23 school districts in Maryland.

73. Students who wish to continue their education following high school also typically must take and demonstrate proficiency on the Scholastic Aptitude Test ("SAT"). The SAT tests both math and verbal skills, with 800 points maximum available in each subject, for a combined maximum total score of 1600. A student's score on the SAT is an important factor in determining whether the student will be admitted to a university or college of his or her choice.

74. From 1989 to 1994, the average combined SAT score for BCPS students has been between 150 and 170 points below that for Maryland students as a whole and between 150 and 160 points below the national average. These differences are substantial, and they reflect a significant limitation on many BCPS graduates' ability to continue their education at a university or college.

Measures of Educational Resources

75. The State Board also has promulgated standards for resources that school districts should provide for their students as part of an adequate education. Failure to comply with these standards is an independent measure of educational inadequacy in BCPS. Inadequate resources contribute to the inadequate levels of student outcomes discussed in the foregoing paragraphs.

(vi) Teachers and Other Professional Staff

76. The General Assembly specifically has directed the State Board to establish minimum ratios of professional staff to students that are necessary to provide for an adequate education. Md. Code Ann., Educ. § 2-204. Pursuant to that directive, the State Board has established standards or guidelines for the appropriate ratios of various categories of professional staff to students.

77. With respect to teachers or instructional personnel, the State Board has determined that the appropriate staff to student ratio or class size depends significantly upon the "needs" of the students in the class, both at the elementary and at the high school levels. COMAR 13A.03.01; Md. School Bulletin, Vol. XLI, No. 2, at 82 (1965). Students with greater needs require lower student to teacher ratios or smaller class sizes.

78. The State Board also has recognized that BCPS "shoulders the responsibility of providing equitable and quality education to the State's neediest population." MSPP Report, 1991, at 17. More specific facts supporting the State Board's conclusion that the student population in BCPS has disproportionately greater needs than those in other Maryland school districts will be set forth below.

79. To provide an adequate education to its student population, therefore, BCPS requires lower student to teacher ratios or smaller class sizes than are required in other Maryland school districts.

80. BCPS, however, has among the highest student to teacher ratios and among the largest average class size of any school district in the State. Large class sizes inhibit BCPS's ability to provide constitutionally adequate educational opportunities to its schoolchildren.

81. Moreover, the aggregate student to teacher ratio for BCPS is misleading, since it includes the disproportionately large number of special education and other special classes in BCPS. Those special classes often by necessity have a small number of

students or an extremely small pupil to teacher ratio. Many regular classes in BCPS are substantially larger than the district-wide student to teacher ratio would suggest and are too large to permit effective teaching.

82. With respect to professional support staff (such as principals, guidance counselors, and school psychologists), in the three most recent years for which data are available, BCPS was among the districts with the fewest staff per 1,000 pupils in the State.

83. The availability of professional support staff to provide ancillary education services to support and supplement the services provided by teachers is of vital importance to improving learning and providing an adequate education. Such support staff is especially important for BCPS because of the high proportion of at-risk students in the school district, many of whom require additional guidance, social work, or psychological services if they are to obtain an adequate education. The lack of sufficient professional staff in BCPS contributes to the failure of BCPS to adequately meet the needs of its student population.

84. The State Board and State Superintendent also have established specific standards for the number of school librarians and library staff that should be assigned to each school, depending upon the school's enrollment. For example, for schools with between 200 and 800 students, the State has determined that 1 certified librarian and 1 clerical or technical library staff person are required to provide an adequate education. COMAR 13A.05.04; Standards for School Library Media Programs in Maryland (1986).

85. Measured against these State standards, fewer than 25% of schools in BCPS have the required number of certified librarians, and fewer than 1% have the required number of library staff, to serve their enrollments adequately. BCPS has one of the smallest librarian to student ratios of any school district in the State.

86. The State Board also has recognized that "[e]ffective instruction is dependent upon teachers who meet high standards of personal and professional

competence." Md. School Bulletin, Vol. XLI, No. 2, at 87-88 (1965); see COMAR 13A.03.01.

87. Many of the teachers and other professional staff who work in BCPS are highly competent. Nonetheless, in addition to having too few teaching and other professional staff positions, BCPS is unable to attract and retain qualified teachers and professional staff for many of the positions it does have.

88. BCPS receives only approximately 2.4 applications for each teaching position it seeks to fill, lower than the figure for any other school district in Maryland. At the same time, BCPS has the lowest acceptance rate of any school district in Maryland for offers of employment for teaching positions.

89. As a result, BCPS is forced to be far less selective than other districts in choosing among teaching applicants. BCPS extends offers of employment to approximately 62% of applicants for teaching positions, a figure substantially higher than that for any other school district in Maryland. Most school districts in the State extend offers of employment to fewer than 10% of applicants for teaching positions.

90. As a result of the factors summarized above, as well as the fact that some positions require specialized training or experience, BCPS in recent years has reported that it was unable to fill approximately 8% to 10% of its vacant teaching positions. This is substantially higher than the figure for any other school district in Maryland, most of which reported that they have been able to fill every teaching position that they have had open.

91. BCPS's failure to attract and retain qualified teachers and professional staff results in significant part from its inability to provide competitive salaries to teachers with various levels of experience.

92. In recent years, BCPS offered experienced teachers with 10 or more years of teaching experience between \$3,000 and \$8,500 less in annual salary than has been offered to such teachers by the neighboring school districts with which BCPS competes

most directly for staff. BCPS is constrained to offer starting teachers between \$2,000 and \$3,000 less in annual salary than has been offered to such teachers by neighboring school districts. BCPS's starting teacher salary is among the lowest in the State.

93. The relatively low teacher salaries in BCPS have had an adverse effect on the willingness of many qualified professionals to seek and to continue employment in BCPS. Many of BCPS's most qualified teachers leave BCPS for employment in other Maryland school districts.

94. Another factor that hurts the BCPS's ability to attract and retain qualified teachers is that teachers must function under uniquely difficult working conditions, including the risks associated with schools in high crime areas.

95. Still another factor that hurts the BCPS's ability to attract and retain qualified teachers is the need for BCPS teachers to overcome shortages in basic supplies -- such as paper, chalk, maps, textbooks, workbooks, and other basic instructional materials -- as discussed below. Such shortages, which result from the lack of funding available to BCPS, make the provision of an adequate education impossible and compel a substantial number of BCPS teachers to spend their own money purchasing basic supplies for their students. Particularly when considered in light of the already low teacher salaries in BCPS and other inadequacies alleged herein -- including large class sizes, low student attendance, and difficult working conditions -- such additional demands on teachers in BCPS compound the difficulty in attracting and retaining qualified teachers.

(vii) Materials of Instruction and Supplies

96. The General Assembly has directed that public schools must provide students with "sufficient quantities" of "good quality" instructional materials and supplies in a number of specified areas free of charge. Md. Code Ann., Educ. § 7-106.

The availability of sufficient quantities of such materials and supplies is essential to an adequate education.

97. BCPS does not provide all of its classes with sufficient quantities of "good quality" instructional materials and supplies. In some classes in BCPS, even the most basic of supplies, such as pencils and paper, are not available as needed.

98. From 1990 to 1993, the most recent years for which complete data are available, BCPS ranked at or near the bottom of Maryland school districts in terms of the number of dollars spent per student on materials and supplies. During that period, the statewide average for per student spending on materials and supplies was on average approximately 20% to 25% greater than that in BCPS.

99. The General Assembly also has directed that public schools must provide students with library or media center materials that are "appropriate" for their age group and reading level. The State Board has established standards for the "appropriate" materials and equipment for a school library or media center, depending upon the enrollment of the school. COMAR 13A.05.04; Standards for School Library Media Programs in Maryland (1986).

100. When measured against these State standards, only about 10% of schools in BCPS have the required number of books and quantities of other library materials and equipment. From the 1990-91 to 1992-93 school years, the three most recent school years for which complete data are available, BCPS has spent substantially fewer dollars per student on library books and materials than any other school district in Maryland. During that same period, the statewide average for per student spending on library books annually was approximately 4 times greater than the amount per student spent annually on library books and materials in BCPS.

101. The State Board and State Department further have recognized that an adequate education today requires that students be given reasonable access to, and develop basic familiarity with, computers. The availability of computers in schools

enhances learning both with respect to the operation and capabilities of computers and with respect to many academic subjects in which computers facilitate individualized delivery of instruction. See, e.g., COMAR 13A.04.06.02D(2)(e). Computers also are important tools for maintaining and using student information to promote "adequate" education for individual students. See, e.g., id. at 13A.03.01.02E.

102. BCPS does not have a sufficient number of computers to provide students with reasonable access to computers as required by State policies and standards.

(viii) School Physical Plants

103. The State Board has recognized that a physical environment conducive to teaching and learning is an important component of an "adequate" education. COMAR 13.A.03.01.02C; Md. School Bulletin, Vol. XLI, No. 2, at 101 (1965).

104. Many BCPS students attend school in buildings that are inadequate for their current educational purposes or programs. Many of these buildings are old and in a state of disrepair. Many also lack sufficient space and essential rooms, including science laboratories, art rooms, and music rooms.

105. The 1992 Master Facilities Plan for BCPS rated only 16% of the school buildings in BCPS as being in "good" physical condition. Over 20% of BCPS school buildings were rated as being in "poor" physical condition, with seriously leaking roofs or other major structural defects.

106. Even with respect to those school buildings in BCPS that are in "good" physical condition, many have architectural barriers or space layouts that are not conducive to educational needs and which render the building an inadequate or inefficient education facility.

(ix) Arts and Physical Education Programs

107. The State Board has determined that an "adequate" education includes "a comprehensive program in the arts and physical education." COMAR 13A.04.07; see also Md. Code Ann., Educ. § 7-407. The State Board and State Department further have established standards for such an adequate arts and physical education program. COMAR 13A.04.13 and 13A.04.16; MSDE Resource Paper No. 12, The Arts/Physical Education Program Requirements (May 1981).

108. BCPS does not meet State standards with respect to arts and physical education. In fact, as a result of the inadequacies with respect to professional staff, materials and supplies, and physical facilities summarized above, many BCPS students receive inadequate instruction at all in arts and physical education.

109. BCPS employs only 2.1 physical education teachers for every 1,000 students enrolled, the lowest number for any school district in Maryland. The typical BCPS elementary student does not receive adequate physical education instruction, and the limited instruction students do receive is often provided without adequate equipment and facilities.

110. BCPS employs only 2.2 music teachers for every 1,000 students enrolled, the lowest number for any school district in Maryland. The typical BCPS elementary student does not receive adequate music instruction, and the limited instruction students do receive is often provided without adequate equipment and facilities.

111. BCPS employs only 1.8 art teachers for every 1,000 students enrolled, the next to lowest number for any school district in Maryland. The typical BCPS elementary student does not receive adequate art instruction, and the limited instruction students do receive is often provided without adequate materials, supplies, and facilities.

C. Factors Affecting Education In BCPS

112. The students in BCPS come to school with far greater educational needs than do most students in other school districts in Maryland. BCPS must meet the disproportionately greater needs of its students if they are to receive an adequate education. BCPS receives fewer dollars per student than most other school districts in Maryland, and devotes significantly fewer dollars per student to regular instruction than any other school district in the State.

113. The combination of unparalleled high student needs and inadequate resources described below contributes to BCPS's failure to provide an adequate education to the schoolchildren of Baltimore City.

(i) Student Needs in BCPS

114. A substantial portion of all schoolchildren in BCPS live in poverty, and an even greater portion can be characterized as "at risk" as defined in paragraph 8.

115. As the State of Maryland has recognized on numerous occasions, providing an adequate education in schools to significant numbers of children from low income families requires a commitment of resources greater than that required in other schools. As early as 1968, a State Commission on School Law Revision concluded:

The evidence is clear. It costs significantly more to educate a disadvantaged child from an impoverished environment than it does to educate a child from the middle socio-economic class suburb. More professional personnel -- teachers, specialists in learning disabilities, guidance counselors, psychologists, social workers -- are required in order to individualize instruction.

116. More recently, the Governor's Commission concluded that the single best predictor of a Maryland public school's average performance on state-administered tests is the percentage of students attending that school who are eligible for free or reduced price lunch. The higher the concentration of students eligible for free or

reduced price lunch in a school, the greater the chance that a significant proportion of students in that school will perform poorly on state-administered achievement tests of basic skills.

117. The Governor's Commission also concluded that "through its policies and resources, the state must focus on ensuring success in school for each child, regardless of the conditions in which the child lives." "To assure that each child living in poverty has a real and meaningful opportunity to learn rigorous content, a continuum of services needs to exist in the school and community from birth to secondary schools to reduce or eliminate the barriers to their learning."

118. In the 1992-93 school year, the most recent year for which complete data are available, 67.7% of BCPS students were eligible under federal poverty guidelines for free or reduced school breakfasts and lunches. Approximately 21.4% of students in the State's remaining 23 school districts were eligible for free or reduced school meals. No other school district in Maryland has a student population that is even close to that in BCPS with respect to poverty levels.

119. Also in the 1992-93 school year, virtually all of the State's schools in which over 70% of the students are eligible for free or reduced price lunch are located in BCPS. In addition, no school district other than BCPS has schools in which over 90% of the students in attendance are eligible for free or reduced price lunch.

120. Moreover, virtually all of Baltimore City's schools have 30% or more of their students eligible for free or reduced price meals. The 30% level is especially significant, because this is the point at which education experts say concentrations of poverty begin to have negative affects on overall student achievement.

121. Providing an adequate education to a student population that has a high rate of mobility among schools and a high rate of homelessness also requires special programs and a commitment of resources greater than that required for other student populations.

122. The "student mobility" rate -- i.e., the rate at which students enter, withdraw from, or transfer between schools -- is higher in BCPS than in any other school district in the State. The mobility rate in BCPS is approximately 2 times higher than the rate in the remaining 23 school districts in Maryland.

123. In addition, BCPS is responsible for educating a disproportionate share of the State's homeless school-aged children. Although Baltimore City has approximately 15% of the State's public school students, it has approximately 53% of the State's homeless school-aged children. Baltimore City's homeless school-age population is approximately 2 times as large as that in any other school district in the State.

124. The proportion of BCPS students in need of special education services also is much greater than that for the State as a whole. In the most recent year for which complete data are available, 14.5% of BCPS students participated in some form of special education program, compared with 10.9% of students in the remaining 23 school districts in Maryland. BCPS had a larger proportion of its students in special education programs than any other school district in the State.

125. Providing an adequate education to students in need of special education services most often requires a commitment of resources greater than that required for other students. Students in need of special education services in BCPS are entitled to and do receive those services pursuant to federal and State requirements.

126. The State divides special education services into five intensity levels, with "intensity I" representing the least intensive services and "intensity V" the most intensive services. In general, the additional cost of providing special education services is greater for higher levels than for lower levels. In the most recent year for which complete data are available, BCPS had 61.8% of its special education students in the relatively high-cost intensities IV and V (as compared with 32% of special education students in the remaining 23 school districts in the State), and only 20.0% of its special

education students in the relatively low-cost intensities I and II (as compared with 47.5% for the remaining 23 school districts).

127. As a result of the greater need for special education services among BCPS students, as well as the greater need for more intensive services among special education students in BCPS, BCPS's per student expenditures for special education are higher than those for any other school district in Maryland and approximately 32.2% higher than the statewide average. As a result of the significant proportion of resources necessarily devoted to special education programs in BCPS, fewer resources are available to meet the needs of students who are not in those programs.

128. To provide an adequate education to pregnant students, a school district must provide or assure that such students have access to "proper medical, psychological, and social services before termination of pregnancy and for as long as needed after that." COMAR 13A.08.06. As a result, providing an adequate education to a student body with a high rate of teenage pregnancy requires a commitment of resources greater than that required for other student populations. Baltimore City has an extremely high rate of pregnancy among teenagers, nearly 2 times higher than the statewide rate and among the highest for any city in the United States.

129. Baltimore City is the only school district in Maryland which, by statute, has its own "school police force." Md. Code Ann., Educ. § 4-306. This police force is needed to address the large number of serious discipline problems that exist in BCPS. In 1991-92, for example, BCPS suspended more than 400 students for incidents involving weapons. Providing an adequate education in schools located in an urban environment where such serious problems exist requires a commitment of resources greater than that required elsewhere.

130. As a result of demographic and environmental conditions in Baltimore City, schoolchildren in BCPS also have other special needs and place other special

demands upon BCPS which require that special resources and services be available to provide an adequate education in BCPS.

(ii) Current BCPS Expenditures

131. Despite having the greatest needs of any school district in Maryland, for at least the past two decades BCPS has received less-than-adequate funding. As a result, overall educational conditions in BCPS have deteriorated, and BCPS does not maintain an adequate system of education sufficient to meet the basic education needs of schoolchildren in Baltimore City, including in particular BCPS's at-risk student population.

132. In 1992-93, the most recent year for which complete data are available, the total per student spending on education in BCPS from all sources was among the lowest of any school district in Maryland. The total amount spent per student for the State as a whole was \$5,823, over 11.0% higher than the \$5,182 per student spending in BCPS.

133. Funding for regular instruction is further reduced in BCPS because of its high levels of students with special education needs. As a result, BCPS cannot devote as great a share of its resources to regular instruction as do other school districts.

134. In 1992-93, BCPS spent only \$2,437 per student on current instructional expenses (less adult education), the lowest of any school district in Maryland. The statewide average for current instructional expenses was \$2,926, nearly 20% higher than that in BCPS. As a result of BCPS's below-average spending, a classroom of 30 students in BCPS received approximately \$17,000 less to spend on current instructional needs than a similar size classroom in an average-spending school district in Maryland.

135. BCPS cannot reallocate its overall low level of funding to increase significantly funding available for regular instruction. With the exception of special education, where BCPS by necessity leads the State in spending per student, BCPS ranks in the middle or toward the bottom of Maryland school districts on most categories of

current expenditures. With respect to spending for administration, in 1992-93, BCPS ranked 14 among the State's 24 school districts, spending about the same per student on administration as the statewide average.

D. The Need For Additional Resources and Programs

136. Pursuant to its obligations under the Education Clause of the Maryland Constitution, the General Assembly has established a mechanism for funding elementary and secondary education from a combination of State and local appropriations.

137. The principal cause of the inadequate education available to plaintiff schoolchildren, which results in the constitutional violation set forth above, is the lack of adequate resources. Under the constitution, the State is legally responsible for ensuring that the combination of state and local funding is adequate to meet the needs of BCPS's school population, and the State's failure to assure such funding adequacy violates their constitutional duty.

138. To the extent that misuse of available funds or other mismanagement, at any level of government, contributes to the failure of BCPS to provide an adequate education to plaintiff schoolchildren, the State is legally responsible for those failures as well.

CLAIMS FOR RELIEF

Count I
Education Clause

139. Plaintiffs adopt and incorporate herein the above paragraphs 1 through 138.

140. Article VIII of the Maryland Constitution, which provides that the General Assembly shall "maintain a thorough and efficient system of public schools throughout the State," imposes upon the General Assembly and the State of Maryland an obligation to offer an adequate education to all schoolchildren in the State.

141. Defendants have failed to fulfill or discharge that obligation with respect to the plaintiff schoolchildren in Baltimore City.

142. As a result of defendants' violations of their constitutional obligations, the plaintiff schoolchildren have been denied their right to an adequate public school education and otherwise injured as alleged above.

Count II
Due Process Clause -- Equal Treatment

143. Plaintiffs adopt and incorporate herein the above paragraphs 1 through 142.

144. Article 24 of the Maryland Declaration of Rights embodies within its requirement of due process an obligation that the State afford equal treatment to its citizens.

145. Because all schoolchildren have a right to an adequate education in Maryland, the State cannot deny an adequate education to one or more citizens, or fail to provide for an adequate education system in one or more subdivisions of the State.

146. No compelling or even rational reason exists to justify defendants' failure to provide for a system of public education adequate to meet the needs of the plaintiff schoolchildren in Baltimore City.

147. As a result of defendants' violations of their constitutional obligations, the plaintiff schoolchildren have been denied their rights to an adequate education and to equal treatment under the laws and otherwise injured as alleged above.

Count III
Due Process Clause -- Property and Liberty Interests

148. Plaintiffs adopt and incorporate herein the above paragraphs 1 through 147.

149. The State and defendants have created and conferred upon the plaintiff schoolchildren a justifiable expectation that they will have access to and be provided with an adequate public education as measured by contemporary education standards. That expectation is protected by the due process clause of the Maryland Constitution.

150. The State and defendants thereby have conferred upon the plaintiff schoolchildren a property interest, protected by the due process clause of the Maryland Constitution, in having access to and being provided with an adequate education that offers all students a reasonable opportunity to obtain at a minimum the competency standards established by defendants, to progress through grade levels, and to receive a State diploma.

151. Plaintiff schoolchildren further have a liberty interest, protected by the due process clause of the Maryland Constitution, in having access to and being provided with an adequate education. Plaintiffs also have a constitutionally protected liberty interest in not being confined for substantial portions of their lives or otherwise compelled to be in public schools that are inadequate to their needs as measured by contemporary education standards.

152. By compelling plaintiff schoolchildren to attend school, by establishing criteria and standards that those schoolchildren must meet to make progress in and graduate from school, and by failing to provide for the maintenance of an adequate public school system in Baltimore City that allows plaintiff schoolchildren a fair and reasonable opportunity to meet those established criteria and standards, defendants

have improperly denied plaintiff schoolchildren their due process property and liberty rights.

153. As a result of defendants' actions, the plaintiff schoolchildren have been denied due process of law and have otherwise been injured.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that this action may properly be maintained as a class action on behalf of all at-risk children who attend or will attend public schools in Baltimore City, and certify such action as a class action under Rule 2-231 of the Maryland Code of Civil Procedure;

2. Declare that Article VIII of the Maryland Constitution requires the State of Maryland and defendants to provide for an adequate system of public schools in every area and subdivision of the State;

3. Declare that all public schoolchildren throughout Maryland have a right pursuant to Article VIII of the Maryland Constitution to an adequate education consistent with contemporary education standards;

4. Declare that the State of Maryland and defendants have failed to fulfill their constitutional obligation to provide for a system of public schools adequate to meet the needs of the plaintiff schoolchildren in Baltimore City;

5. Declare that the State of Maryland and defendants have violated and are violating plaintiffs' right to an adequate education, right to equal treatment, and right to due process of law as guaranteed by Article VIII of the Maryland Constitution and Article 24 of the Maryland Declaration of Rights;

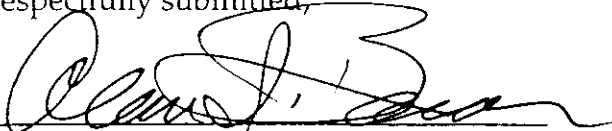
6. Order defendants to work with the plaintiffs and Baltimore City to develop a plan to improve the public schools in Baltimore City so that they provide an adequate education that conforms to contemporary educational standards;

7. Order defendants to take all steps necessary to implement the educational improvement plan referred to in the preceding paragraph;

8. Retain jurisdiction over this case to monitor and ensure full compliance with the injunctive provisions of the Court's decree;

9. Award plaintiffs their attorneys' fees and reasonable costs to the extent permitted by law; and
10. Grant all and such other relief to the plaintiffs as this Court may deem proper.

Respectfully submitted,



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