

IN THE APPELLATE COURT OF MARYLAND

September Term, 2023

NO. ACM-REG-0209-2023

THE BRADFORD PLAINTIFFS
(KEITH A. BRADFORD, *ET AL.*),

Appellants,

v.

MARYLAND STATE BOARD OF EDUCATION,

Appellee.

On Appeal from the Circuit Court for Baltimore City (Hon. Audrey Carrion)

**BRIEF OF AMICUS CURIAE BROWN'S PROMISE
IN SUPPORT OF APPELLANTS THE BRADFORD PLAINTIFFS**

Saba Bireda
Brown's Promise
740 15th Street NW, Suite 800
Washington, DC 20005
saba.bireda@brownspromise.org

Christine Dunn
(MD Bar ID 9912140104)
Sanford Heisler Sharp, LLP
700 Pennsylvania Ave SE, Suite 300
Washington, DC 20003
Phone: (202) 400-5214
cdunn@sanfordheisler.com

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AUTHORIZATION FOR THIS BRIEF

Pursuant to Maryland Rule 8-511(a)(1), Amicus has obtained consent of all parties for leave to file this brief.

STATEMENT OF THE CASE

Amicus incorporates by reference the Appellants' statement of the case.¹

STATEMENT OF FACTS

Amicus incorporates by reference the Appellants' statement of facts.

STATEMENT OF INTEREST OF AMICUS CURIAE²

Brown's Promise is dedicated to fulfilling the promise of *Brown v. Board of Education*. Seventy years after *Brown*, educational resources remain correlated to the whiteness of a school or district's student body. Brown's Promise envisions a world where children from all backgrounds learn together in excellent, well resourced, diverse schools led by diverse educators. Brown's Promise uses research, advocacy, collaboration, and litigation to advance this vision. Brown's Promise is hosted by The Southern Education Foundation, a nonpartisan, nonprofit organization committed to advancing equitable education policies and practices that elevate learning for low-income students and students of color.

INTRODUCTION

The Maryland State Board of Education's ("MSBE" or the "State") persistent underinvestment in the Baltimore City Public School System ("BCPSS") is not only a blatant violation of its constitutional obligation to provide an adequate education to BCPSS

¹ No person other than *Amicus* and its attorneys made a monetary or other contribution to the preparation or submission of the brief.

² Advancement Project has joined this brief as a signatory. Please see Appendix A for a statement of Advancement Project's interest.

students, it also represents a failure of the State to rectify a long-standing issue of racial injustice. More than 90% of Baltimore City students are students of color, and Black students comprise about 73% of the student population.³

The children living in Baltimore City have the same incredible potential to achieve their dreams as the children in any other part of the state. And yet, for decades, due to the State’s underfunding, BCPSS student outcomes have lagged behind the rest of the state on a number of vital educational indicators. Despite this, the State has consistently abdicated its responsibility to the majority Black and Brown BCPSS students under the Maryland Constitution, Article VIII, to provide them with an education that is adequate by “contemporary educational standards.” *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 639 (1983). While the passage of the Blueprint for Maryland’s Future was an important step toward addressing historic inequities, it (1) is not scheduled to be fully funded for years⁴ and (2) calculates the poverty-based cost of educating students in each district using an outdated measure of poverty that ultimately falls short, instead of the state’s own best estimate of need, as reflected in the State’s more recent “Neighborhood Indicators of Poverty” report.⁵

³ Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools, Maryland State Department of Education (January 2023), https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023_Enrollment_ByRace_Ethnicity_Gender.pdf at 1.

⁴ Maryland State Department of Education, *Blueprint Funding: Formula and Accountability*, <https://blueprint.marylandpublicschools.org/funding-2/> (last visited Jan. 10, 2024).

⁵ Maryland State Department of Education, *Report on Neighborhood Indicators of Poverty*, https://blueprint.marylandpublicschools.org/wp-content/uploads/sites/20/2023/07/2023-Indicators-of-Poverty_Formula-Addendum.pdf.

Amicus, as an organization working to achieve racial justice in education, respectfully encourages this Court to consider that most BCPSS students attend schools and live in neighborhoods that—as a result of federal, state, and local policies—are among some of the most racially and socioeconomically isolated in the country. The fact of the racial isolation of BCPSS is not new—yet the State has repeatedly failed to adequately fund BCPSS at a level that would allow BCPSS’s predominantly Black and Brown students to have access to the resources and opportunities available to students in whiter, wealthier districts.

Amicus respectfully urges this Court to reverse the decision of the Circuit Court which erred in finding the State in compliance with Article VIII. The Circuit Court failed to adequately consider the substantial amount of evidence demonstrating that the State’s lack of investment has resulted in most BCPSS students experiencing a markedly inadequate education. The Circuit Court ignored precedent in defining the State’s obligation as limited to only requiring “an effort by the State to at most provide a basic education,” [3/3/23 Op. at 18], then incorrectly applied that definition, in finding the State had met its obligation..

This Court should not permit the State to fail yet another generation of Black and Brown students in Baltimore City. *Amicus* urges the Court to follow precedent finding the State’s obligation is to provide BCPSS students with an adequate education by contemporary education standards and remand to the Circuit Court to address the State’s chronic underinvestment in BCPSS students.

ARGUMENT

I. The State’s Failure to Provide an Adequate Education to Baltimore City School Students Only Exacerbates the Deep Racial and Socioeconomic Isolation of BCPSS Schools

BCPSS students live in one of the most racially isolated regions in the country. Baltimore City schools reflect the racial isolation of the city: more than two thirds of BCPSS students attend schools that are between 80% and 100% Black.⁶

A. Baltimore’s History of Racial Segregation and Present Day School Segregation

The present-day racial and socioeconomic segregation in BCPSS schools is directly related to federal, state, and local policies that concentrated Black people into segregated, often impoverished, parts of the Baltimore region.

Baltimore implemented America’s first racial housing segregation ordinance in 1911 which barred Black residents from living in certain white neighborhoods.⁷ When the U.S. Supreme Court ruled ordinances like Baltimore’s to be unconstitutional in 1917, the City moved to using city codes to cite whites who rented or sold homes to Black people.⁸

⁶ Brown’s Promise analysis of State data available at *Baltimore City: Accelerated Coursework Enrollment*, Maryland State Department of Education, <https://reportcard.msde.maryland.gov/Graphs/#!/CRDC/Index/3/17/6/30/XXXX/2023> (direct link to data:

https://reportcard.msde.maryland.gov/DataDownloads/2018/2018/CRDC/2018_30_Acc_Enroll.xlsx) (Last Accessed January 10, 2024).

⁷ Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 Md. L. Rev. 289 (1983).

⁸ Richard Rothstein, *From Ferguson to Baltimore The Fruits of Government-Sponsored Segregation*, Working Economics Blog (April 29, 2015 at 2:46pm), <https://www.epi.org/blog/from-ferguson-to-baltimore-the-fruits-of-government-sponsored-segregation/>.

Neighborhood associations also encouraged and enforced private racial covenants to restrict which homes Black people could buy. As Baltimore’s Black population increased, white families increasingly looked to move to the suburbs where Federal Housing Administration policy prohibited suburban subdivision developers from qualifying for federal construction loans unless the developers committed to excluding Black residents from newly constructed suburban communities.⁹

Baltimore’s borders were “effectively finalized” in 1948 as the result of a referendum that prohibited the further annexation of suburban neighborhoods in Baltimore County.¹⁰ White families were able to relocate to homes in areas outside of Baltimore City while Black families’ housing choices were limited by racial covenants and the inability to secure federal loans.¹¹ The increasing Black population combined with the practice of “blockbusting” then facilitated the rapid transition of neighborhoods from predominantly white to Black.¹² The well-documented use of redlining in Baltimore City, where the majority of the region’s lowest-graded—and therefore highest risk for mortgage lenders—areas were located, led to depressed property values and lower rates of home ownership.¹³

⁹ *Id.*

¹⁰ Bruce D. Baker, Matthew Di Carlo & Preston C. Green III, *Segregation and School Funding: How Housing Discrimination Reproduces Unequal Opportunity*, Albert Shanker Institute (April 2022), <https://www.shankerinstitute.org/sites/default/files/2022-05/SEGreportfinal.pdf> at 33.

¹¹ *Id.*

¹² *Id.*

¹³ *See, e.g.*, Baker, DiCarlo, Green, *supra* note 10, at 35-38; Ariella Shua & Manavi Mongia, *How has Hopkins Contributed to and Perpetuated Redlining in Baltimore?*, The Johns Hopkins News-Letter (May 3, 2021), <https://www.jhunewsletter.com/article/2021/05/how-has-hopkins-contributed-to-and-perpetuated-redlining-in-baltimore>.

Baltimore's public housing, which desegregated after the *Brown v. Board* decision, became predominantly comprised of Black residents as white public housing residents relocated. See *Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 348 F. Supp. 2d 398, 406 (D. Md. 2005). The racial isolation of Black residents in Baltimore's public housing was so apparent that Federal District Court Judge Marvin J. Garbis found the Department of Housing and Urban Development (HUD) violated the Fair Housing Act by failing to "adequately consider a regional approach to desegregation of public housing." *Id.* at 443. Rather than desegregating housing throughout the region, HUD knowingly and repeatedly confined Black families in racially isolated public housing projects in Baltimore City. *Id.* at 462.

As Baltimore City's Black population steadily increased, more white families left the city for suburban communities. These demographic changes dramatically changed the racial makeup of BCPSS. A post-*Brown* analysis of the school system notes that the white population of the school system fell continuously from 1943 to 1953 from 769,000 to 715,800 while the Black population increased from 194,000 to 247,700 during the same period.¹⁴ By the 1970s, the U.S. Department of Health, Education, and Welfare (now the Department of Education) found that "109 of the 210 public schools in Baltimore 'had disproportionate minority enrollments in that they were greater than 90% minority. . .'" *Mayor & City Council of Baltimore v. Mathews*, 562 F.2d 914, 928 (4th Cir. 1977), *opinion*

¹⁴ Maryland Commission on Interracial Problems and Relations & Baltimore Commission on Human Relations, *An American City in Transition*, 99 (1955).

withdrawn and superseded on reh'g, 571 F.2d 1273 (4th Cir. 1978). The percentage of white students in BCPSS dropped from 18.5% to 11.7% to 8% in 1989, 1999, and 2010, respectively.¹⁵ Given the history of housing and school segregation in the Baltimore region, it is unsurprising that Baltimore City now serves the largest percent of Black students of the seven school districts in the Baltimore region.¹⁶

Racial isolation itself would be far less concerning if it were not so clearly connected to the concentration of poverty created by policies described above. As the State explains, in its Neighborhood Indicators of Poverty report, “[n]eighborhood poverty was found to be the most important factor explaining a lack of economic mobility among African American children, more so than parental education, employment, or marital status.”¹⁷ According to the State’s own preferred approach to measuring poverty, which is not reflected in the current, Blueprint-based school funding formula, Baltimore City is the only school district in which more than 50% of the census block groups are high poverty – compared to 20% statewide.¹⁸ Under the State’s definition, high poverty census block groups have only a \$48,000 median household income and 70% are single parent households.¹⁹ Not

¹⁵ Alicia Vooris, *Race, Racism, and Baltimore’s Future: A Focus on Structural and Institutional Racism*, Johns Hopkins Urban Health Institute (2016), <https://urbanhealth.jhu.edu/sites/default/files/2023-05/sdh-2016-summary-report.pdf> at 18.

¹⁶ Baker, DiCarlo, Green, *supra* note 10 at 35.

¹⁷ Maryland State Department of Education, Report on Neighborhood Indicators of Poverty, https://blueprint.marylandpublicschools.org/wp-content/uploads/sites/20/2023/07/2023-Indicators-of-Poverty_Formula-Addendum.pdf at 17.

¹⁸ *Id.* at 27.

¹⁹ *Id.*

surprisingly, given those statistics, BCPSS is also serving 23% of students experiencing homelessness in Maryland, despite being only 1 of 24 districts in the state.²⁰

B. State Policy Ensures that BCPSS will Continue to be a Racially and Socioeconomically Isolated School District

Maryland maintains a system of school districts with little to no opportunity for students to cross district lines to attend higher resourced schools or for students in districts with low property values to share in the resources of adjacent higher wealth districts. Maryland law, with few exceptions, requires students to “attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative.” Md. Code Ann., Educ. § 7-101. There are no large scale interdistrict transfer opportunities for BCPSS students to attend one of the neighboring higher-resourced suburban districts. It is therefore impossible for most BCPSS students to attend less segregated, higher-resourced schools outside of the district, underscoring how critical it is for the State to meet its constitutional obligation to provide a contemporary education to all students in BCPSS.

Furthermore, Maryland’s school funding formula incentivizes continued segregation of wealthy families by allowing municipalities to raise and keep local dollars for their own school districts that go above and beyond the “target” per pupil amount set by the state that is based on student need.²¹ This State policy allows local wealth to trump student need. In

²⁰*Spotlight on Students Experiencing Homelessness*, Maryland State Department of Education (December 7, 2021), <https://marylandpublicschools.org/stateboard/Documents/2021/1207/SpotlightOnStudentsExperiencingHomelessnessDecember2021.pdf> at 9.

²¹ *FundEd: National Policy Maps: A National Overview of State Education Funding Policies*, EdBuild, <http://funded.edbuild.org/national#property-tax-bounds> (Last Accessed January 10,

Baltimore City the total “wealth per pupil” (the amount of local property wealth from which to raise local revenue for education) is \$367,542 - far less than the \$568,124 statewide.²² Despite the fact that Baltimoreans contribute the highest rate of taxes to public schools²³ and the State’s attempt to “wealth equalize” school funding, the district remains significantly underfunded compared to what would adequately meet the students’ needs in the City.²⁴ Despite being an important step in the right direction, the Blueprint for Maryland’s Future is not a panacea and has not provided enough funding to resolve the State’s violation of the constitutional rights of Black and Brown BCPSS students.

The State has facilitated a system that isolates the predominantly Black and Brown students of BCPSS into schools of concentrated poverty and then, to add insult to injury, has failed to provide students with the resources needed to overcome the challenges of going to such schools. Today, Maryland is neither funding education adequately in the system it has facilitated nor is it taking steps to dismantle and desegregate the system. The State must meet its obligation to provide an adequate education to all the students living in Baltimore City by infusing sufficient resources to the district, including resources to allow

2024), showing that Maryland has no requirement to share additional education funding raised above the adequacy target the state has calculated in its funding formula.

²² *Selected Financial Data Part 1 – Revenue, Wealth, and Effort*, Maryland State Department of Education (May 2023), <https://marylandpublicschools.org/about/Documents/DBS/SFD/2021-2022/SelectedFinancialDataMarylandPublicSchools2021-2022Part1.pdf> at 23.

²³ *Id.*, at 26 and 27.

²⁴ *Visualization: District Spending Adequacy Profiles*, Albert Shanker Institute <https://www.schoolfinancedata.org/dcdviz1/> (within “Maryland” select “Baltimore City Public Schools,” using 2020 data) (Last Accessed January 10, 2024).

for the deconcentration of poverty and meaningful and equitable opportunities for integration between BCPSS students and students from other districts in the region.²⁵

II. The Failure to Adequately Fund BCPSS Schools Translates to Meaningfully Inferior Classroom Experiences for the System’s Predominantly Black and Brown Students

When measured by contemporary education standards, including the State’s own, the State is failing to provide BCPSS’s majority Black and Brown students with an adequate education. *See* [Appellants’ Brief at 17]. The State’s persistent refusal to adequately fund BCPSS has resulted in significant deficiencies in the quality of education offered to BCPSS students.²⁶ Despite efforts by BCPSS leadership and teaching staff to do more with less, the education BCPSS students receive is manifestly different from that being offered to students in the State’s whiter and wealthier districts.

BCPSS’s ability to attract and retain excellent teachers is directly related to its ability to pay teachers a competitive salary while also providing them with the supports needed to be successful in the classroom.²⁷ Without adequate funding, BCPSS can provide

²⁵ For example, the settlement in the *Sheff v. O’Neill* case, 45 Conn.Supp. 630 (March 3, 1999), allows nearly 40,000 students to attend interdistrict magnet schools. *See, e.g.*, School+State Finance Project, “A Guide to Connecticut’s Magnet Schools,” available at <https://schoolstatefinance.org/resource-assets/Guide-to-CTs-Magnet-Schools.pdf> at 5. In addition, funding could be provided to existing, under-enrolled neighborhood schools to offer new universal enrichment programs while expanding attendance zones/boundaries for those schools to include a more diverse student body.

²⁶ *See, e.g.*, Liz Bowie & Nick Thieme, *Is Maryland Hiding Test Scores From Failing Schools?*, The Baltimore Banner (April 27, 2023 at 5:39 PM), <https://www.thebaltimorebanner.com/education/k-12-schools/is-maryland-hiding-test-scores-from-failing-schools-O4XAC6REWFCQFF2WK4JF7TRDOE/>.

²⁷ Anne Podolsky, Tara Kini, Joseph Bishop & Linda Darlin-Hammond, *Solving the Teacher Shortage: How to Attract and Retain Excellent Educators*, Learning Policy Institute (September 2016), <https://files.eric.ed.gov/fulltext/ED606766.pdf>.

neither at scale across the district leading to an inability to hire and keep experienced and effective teachers and an overreliance on novice and emergency credentialed teachers. For example, 23.1% of BCPSS teachers are inexperienced²⁸ compared with an overall State rate of 17%,²⁹ and BCPSS has an emergency credential rate that is more than double that of Maryland (13.1% v. 6.5%).³⁰ Unsurprisingly, BCPSS struggles to recruit and retain Maryland’s highest credentialed teachers, those with National Board Certification (“NBC”). Baltimore City employs only 48 NBC teachers while neighboring Anne Arundel and Howard Counties employ 244 and 181 NBC teachers, respectively.³¹

BCPSS serves a high number of students who need additional educational support yet underfunding makes it difficult for the district to hire sufficient school support staff. According to the United States Department of Education’s Civil Rights Data Collection, in

²⁸ *Baltimore City: Educator Qualifications (2022)*, Maryland State Department of Education (August 8, 2023), <https://reportcard.msde.maryland.gov/Graphs/#/Demographics/EducatorQuals/30/XXXX/2022>.

²⁹ *Maryland: Educator Qualifications (2022)*, Maryland State Department of Education (August 8, 2023), <https://reportcard.msde.maryland.gov/Graphs/#/Demographics/EducatorQuals/99/XXXX/2022>

³⁰ *Supra*, note 28; *supra*, note 29.

³¹ *National Board Certified Teachers and Low Performing Schools*, Maryland State Department of Education (January 2022), <https://marylandpublicschools.org/stateboard/Documents/2022/0125/NationallyBoardCertifiedTeachersAndLowPerformingSchoolsRev1282022.pdf> at 10.

2020-21, BCPSS had a 600 students to 1 school counselor ratio³² compared to a Maryland statewide ratio of 340 to 1³³ and national recommendations of 250 to 1.³⁴

Another indicator of underinvestment is the lack of availability of advanced coursework in BCPSS. In 2018, nine of the 37 traditional high schools in BCPSS offered no Advanced Placement (AP) courses and five schools offered only one³⁵ compared to neighboring Anne Arundel County where each of the district's 12 traditional high schools offered at least 10 AP courses.³⁶ Only 45% of schools in Maryland serving high percentages of students of color (96% to 100%) offered calculus compared to 95% schools serving low percentages of students of color (3% to 24%);³⁷ more than two-thirds of

³²*Baltimore City Public Schools (2020-21)*, U.S. Department of Education, https://civilrightsdata.ed.gov/profile/us/md/baltimore_city_public_schools?surveyYear=2020&nces=2400090.

³³ *Maryland (2020-21)*, U.S. Department of Education, <https://civilrightsdata.ed.gov/profile/us/md?surveyYear=2020>.

³⁴ American School Counselor Association, "School Counselor Roles and Ratios," <https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios#:~:text=Student%2Dto%2DSchool%2DCounselor,for%20which%20data%20is%20available>).

³⁵ See Talia Richman, *Thousands of Baltimore Students Have Lacked Access to Advanced Placement. That's About to Change*, The Baltimore Sun (July 22, 2019 at 5 AM), <https://www.baltimoresun.com/2019/07/22/thousands-of-baltimore-students-have-lacked-access-to-advanced-placement-thats-about-to-change/?clearUserState=true>. BCPSS has since committed to offer at least one Advanced Placement course at every traditional BCPSS high school.

³⁶ *AP Data: AACPS Exam Scores by Year*, Anne Arundel County Public Schools <https://www.aacps.org/Page/2254>, (direct link to data: <https://www.aacps.org/site/handlers/filedownload.ashx?moduleinstanceid=5258&dataid=57832&FileName=2019%20AP%20Scores.pdf>) (Last Accessed January 10, 2024).

³⁷ Melanie Leung, Jessica Cardichon, Caitlin Scott & Linda Darling-Hammond, *Inequitable Opportunity to Learn: Access to Advanced Mathematics and Science Courses*, Learning Policy Institute (May 2021), https://learningpolicyinstitute.org/sites/default/files/product-files/CRDC_Course_Access_REPORT.pdf.

students in BCPSS attend a school that is 80% to 100% Black making it very likely that those students attend a school where they are unable to take calculus.³⁸

Excellent teachers, the availability of school support staff, and access to advanced courses are not “extra” educational amenities. These are essential elements to an adequate education in Maryland that the State has knowingly denied BCPSS students. Given this, the outcomes the system is producing for BCPSS’s students, the vast majority of whom are Black and/or Latino, are foreseeable. Only 7% of BCPSS students were proficient on the state’s 2022 math assessment for grades 3 through 8 - the lowest in the state and less than one-third of the proficiency rate of the state overall.³⁹ Only 21% of BCPSS students were proficient on the state’s 2022 English Language Arts assessment for grades 3 through 8 - the lowest in the state and less than half the statewide average of 44%.⁴⁰ BCPSS, despite the lack of adequate funding, is striving to improve these and other student outcomes but progress is difficult to maintain without sufficient and consistent resources.

III. The State Has Failed to Provide Black and Brown Students in BCPSS with an Education that is Adequate When Measured by Contemporary Educational Standards As Required by the Maryland Constitution

The Circuit Court erred in finding that Article VIII of the Maryland constitution requires the State “at most provide a basic education.” [3/3/23 Op. at 18]. As Appellants

³⁸ Maryland State Department of Education, *supra* note 5.

³⁹ *Spring 2022 English Language Arts and Mathematics Assessment Results Part 2*, Maryland State Department of Education (January 24, 2022), <https://marylandpublicschools.org/stateboard/Documents/2023/0124/MCAPAssessmentResultsPart2.pdf> at 12.

⁴⁰ *Id.* at 6.

note, this finding is inconsistent with “Supreme Court precedent, the Circuit Court’s prior rulings, the original understanding of the ‘thorough and efficient’ clause, and persuasive authority from other jurisdictions, all of which demonstrate that Article VIII mandates the State to provide an education that is adequate by contemporary educational standards.” [Appellants’ Brief at 12].

The Circuit Court’s finding and the State’s position in this litigation are also inconsistent with the MSBE’s own statements on the type of education it has committed to provide to all Maryland students. The MSBE’s mission states: “We will ensure a rigorous and world-class educational experience for every Maryland student, in every neighborhood, that prepares each to be college and career ready...”⁴¹ In introducing the MSBE strategic plan, the MSBE Chair and State Superintendent commit to “transform public education” and claim that the Blueprint for Maryland’s Future presents an opportunity to provide an “excellent and equitable education” to all Maryland students.⁴² A “rigorous,” “world-class,” and “excellent” education that prepares students for college and career is a far cry from the “basic” education the Circuit Court found and the State now asserts is all that is required.

Upholding the Circuit Court’s decision would be particularly disastrous for the Black and Brown students in BCPSS. The State has already recognized it is under-serving Black

⁴¹ *About the Maryland State Department of Education*, Maryland State Department of Education, <https://marylandpublicschools.org/about/Pages/default.aspx> (Last visited January 10, 2023).

⁴² *Maryland Transformation*, Maryland State Department of Education (June 2023), marylandpublicschools.org/stateboard/Documents/2023/0627/MarylandTransforms-StrategicPlanGuidebook.pdf at 7.

and low-income students in Maryland—many of whom attend BCPSS schools. The MSBE Chair and State Superintendent have acknowledged that “Educational experiences in Maryland before the COVID-19 pandemic did not prepare all students for postsecondary success nor did they meet our workforce needs.”⁴³ As evidence of this, pre-pandemic, “75% of Black/African American boys were not proficient in math in 3rd grade, and 76% of students eligible for Free and Reduced Price Meals were not proficient in English language arts in 3rd grade.”⁴⁴ BCPSS serves about 19% of the state's 291,416 Black students,⁴⁵ and about 72% of the district’s students are eligible for Free and Reduced Priced Meals.⁴⁶ The State has admitted that “urgent,” “bold,” and “transformative” action is needed⁴⁷ to improve education for Maryland’s historically underserved students. Yet the Circuit Court’s decision essentially gives the State permission to do no more than it is already doing, which amounts to a continuation of its failure to provide an adequate education to BCPSS students.

The causes of BCPSS’s persistently disparate student outcomes are not a mystery; they are the direct result of (1) the creation and the State’s facilitation of BCPSS as a racially isolated district of concentrated poverty and (2) the State’s refusal to ameliorate the effects of concentrated poverty by adequately funding the district according to student

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Maryland State Department of Education, *supra* note 2.

⁴⁶ *Baltimore City: Student Group Populations Data (2023)*, Maryland State Department of Education (September 8, 2023), <https://reportcard.msde.maryland.gov/Graphs/#!/Demographics/StudentPopulation/1/1/30/XXXX/2023>.

⁴⁷ *See supra*, note 42.

need. In order to provide an adequate education for BCPSS students, the State must provide BCPSS with sufficient funding and resources to address the specific needs of students in the district.

CONCLUSION

The State has had multiple opportunities to cure the constitutional violation raised by the Plaintiffs-Appellants but has failed to do so time and time again. *See* [Appellants' Brief 3-6]. The Circuit Court had the authority to enforce compliance with the Maryland Constitution by ordering the remedy sought by the Plaintiffs-Appellants and should be required to do so here where the impact of the constitutional violation is being primarily felt by Black and Brown students. This Court can clear the way for the Circuit Court to order the State to finally provide adequate funding to BCPSS and therefore take a significant step towards achieving justice for BCPSS's Black and Brown students.

Respectfully submitted,

/s/ _____

Christine Dunn
(MD Bar ID 9912140104)
Sanford Heisler Sharp, LLP
700 Pennsylvania Ave SE, Suite 300
Washington, DC 20003
Phone: (202) 400-5214
cdunn@sanfordheisler.com

Saba Bireda
Brown's Promise
740 15th Street NW, Suite 800
Washington, DC 20005
saba.bireda@brownspromise.org

APPENDIX A

STATEMENT OF INTEREST OF SIGNATORY ADVANCEMENT PROJECT

Advancement Project is a national multi-racial civil rights organization with a long history of racial justice work in the field of education. Rooted in the great human rights struggles for equality and justice, the Advancement Project exists to fulfill the United States' promise of a caring, inclusive, and just democracy. For over twenty years, Advancement Project has worked to dismantle the "school-to-prison pipeline" and to ensure a quality public education for all children.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,880 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

SO CERTIFIED, this 12th day of January, 2024.

/s/ _____

Christine Dunn
(MD Bar ID 9912140104)
Sanford Heisler Sharp, LLP
700 Pennsylvania Ave SE, Suite 300
Washington, DC 20003
Phone: (202) 400-5214
cdunn@sanfordheisler.com

Saba Bireda
Brown's Promise
740 15th Street NW, Suite 800
Washington, DC 20005
saba.bireda@brownspromise.org

TEXT OF RELEVANT STATUTES AND RULES

Maryland Constitution Article VIII.

SECTION 1. The General Assembly, at its First Session after the adoption of this Constitution, 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.

SECTION 2. The System of Public Schools, as now constituted, shall remain in force until the end of the said First Session of the General Assembly, and shall then expire; except so far as adopted, or continued by the General Assembly.

SECTION 3. The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education.

MD Code, Education, § 7-101

§ 7-101. Eligibility for public schools; kindergarten programs

Admission of individuals between 5 and 21 years old

(a) All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.

Children to attend public school in county where domiciled with parent, guardian, or relative providing kinship care

(b)(1) Except as provided in § 7-301 of this title and in paragraph (2) of this subsection, each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care, as defined in subsection (c) of this section.

(2)(i) Upon request and in accordance with a county board's policies concerning residency, a county superintendent:

1. May allow a child to attend school in the county even if the child is not domiciled in that county with the child's parent or guardian; and

2. Shall allow a dependent child of a service member who is relocating to the State on military orders to enroll in school in the county in accordance with § 7-115.1 of this subtitle.

(ii) Regardless of where the child is currently domiciled, a county superintendent shall allow a child to remain at the school that the child is attending, if:

1. The child is a child who is:

A. In the custody of, committed to, or otherwise placed by a local department of social services or the Department of Juvenile Services; and

B. Subject to the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 and the Every Student Succeeds Act of 2015;

2. The child is not in any of the following placements:

A. A detention facility;

B. A forestry camp;

C. A training school;

D. A State-owned and State-operated facility that accommodates more than 25 children; or

E. Any other facility operated primarily for the detention of children who are determined to be delinquent;

3. The local department of social services or the Department of Juvenile Services determines, in consultation with the local school system, that it is in the best interests of the child to continue at that school; and

4. The local department of social services or the Department of Juvenile Services pays for the cost of transporting the child to and from school.

(iii) 1. The Department of Human Services and the Department of Juvenile Services each shall adopt regulations establishing factors that shall be considered in determining the best interests of a child under this section.

2. The Department shall adopt regulations to implement the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 and the Every Student Succeeds Act of 2015.

(3) If a child fraudulently attends a public school in a county where the child is not domiciled with the child's parent or guardian, the child's parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) Nothing in this section alters the requirements for out-of-county placements contained in § 4-122 and Title 8, Subtitles 3, 3A, and 4 of this article or in any other State or federal law.

Definitions

(c)(1)(i) In this subsection the following words have the meanings indicated.

(ii) “Informal kinship care” means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship.

(iii) “Relative” means an adult related to the child by blood or marriage within the fifth degree of consanguinity.

(iv) “Serious family hardship” means:

1. Death of a parent or legal guardian of the child;
2. Serious illness of a parent or legal guardian of the child;
3. Drug addiction of a parent or legal guardian of the child;
4. Incarceration of a parent or legal guardian of the child;
5. Abandonment by a parent or legal guardian of the child; or
6. Assignment of a parent or legal guardian of a child to active military duty.

(2)(i) A county superintendent shall allow a child who is a resident of this State to attend a public school in:

1. A county other than the county where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the county and the relative verifies the informal kinship care relationship through a sworn affidavit; or

2. A school attendance area other than the school in the school attendance area where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the school attendance area and the relative verifies the informal kinship care relationship through a sworn affidavit.

(ii) 1. After allowing a child to enroll under subparagraph (i) of this paragraph, subsequently a county superintendent may require that the affidavit be accompanied by supporting documentation of one or more serious family hardships and, where possible, the telephone number and address of any authority who is legally authorized to reveal information which can verify the assertions in the affidavit.

2. If supporting documentation is required under subsubparagraph 1 of this subparagraph, the documentation shall be consistent with local, State, and federal privacy and confidentiality policies and statutes.

(3) The affidavit shall include:

(i) The name and date of birth of the child;

(ii) The name and address of the child's parent or legal guardian;

- (iii) The name and address of the relative providing informal kinship care;
- (iv) The date the relative assumed informal kinship care;
- (v) The nature of the serious family hardship and why it resulted in informal kinship care;
- (vi) The kinship relation to the child of the relative providing informal kinship care;
- (vii) The name and address of the school the child previously attended;
- (viii) Notice that the county superintendent may verify the facts given by the relative providing informal kinship care in the affidavit and conduct an audit of the case after the child has been enrolled in the county public school system;
- (ix) Notice that if fraud or misrepresentation is discovered during an audit, the county superintendent shall remove the child from the public school or county public school system roll; and
- (x) Notice that any person who willfully makes a material misrepresentation in the affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) The affidavit shall be in the following form:

(i) I, the undersigned, am over eighteen (18) years of age and competent to testify to the facts and matters set forth herein.

(ii) _____ (name of child), whose date of birth is _____, is living with me because of the following serious family hardship: (check each that is applicable)

___ death of father/mother/legal guardian

___ serious illness of father/mother/legal guardian

___ drug addiction of father/mother/legal guardian

___ incarceration of father/mother/legal guardian

___ abandonment by father/mother/legal guardian

___ assignment of a parent or legal guardian of a child to active military duty

(iii) The name and last known address of the child's parent(s) or legal guardian is:

(iv) My kinship relation to the child is _____

(v) My address is:

Street Apt. No.

City State Zip Code

(vi) I assumed informal kinship care of this child for 24 hours a day and 7 days a week on _____ (day/month/year).

(vii) The name and address of the last school that the child attended is:

(viii) The county superintendent may verify the facts contained in the foregoing affidavit and conduct an audit on a case-by-case basis after the child has been enrolled in the county public school system. If the county superintendent discovers fraud or misrepresentation, the child shall be removed from the public school or county public school system roll.

(ix) I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

Signature of affiant

(Day/month/year)

(x) Any person who willfully makes a material misrepresentation in this affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(5)(i) Instructions that explain the necessity for both an affidavit and, when appropriate, the supporting documentation of the serious family hardship resulting in informal kinship care shall:

1. Be attached to affidavit forms that comply with paragraph (4) of this subsection; and

2. Include language encouraging the relative providing informal kinship care to submit the affidavit and, when appropriate, the supporting documentation prior to September 30 of each year.

(ii) The affidavit forms, with attached instructions, shall be made available free of charge at the offices of each county board of education, each local department of social services, and each local area agency on aging.

(6) If a change occurs in the care or in the serious family hardship of the child, the relative providing informal kinship care for the child shall notify the local school system in writing within 30 days after the change occurs.

(7)(i) An informal kinship care affidavit may be filed during a school year.

(ii) The relative providing informal kinship care shall file an affidavit annually at least 2 weeks prior to the beginning of the school year for each year the child continues to live with the relative because of a serious family hardship.

(8) Unless the court appoints a guardian for the child or awards custody of the child to someone other than the relative providing informal kinship care, the relative providing informal kinship care shall make the full range of educational decisions for the child.

(9) The relative providing informal kinship care shall make reasonable efforts to inform the parent or legal guardian of the child of the informal kinship care relationship.

(10) The parent or legal guardian of a child in an informal kinship care relationship shall have final decision making authority regarding the educational needs of the child.

Education funding of child in informal kinship care relationship

(d) Section 4-122.1 of this article shall apply to the education funding of a child in an informal kinship care relationship if the fiscal impact of the requirements of subsections (b) and (c) of this section exceed 0.1% of a county board's total operating budget for a fiscal year.

Full-day kindergarten programs

(e)(1) By the 2007-2008 school year, each county board shall provide full-day kindergarten programs for all kindergarten students in that county.

(2) In the comprehensive master plan that is submitted under § 5-401 of this article, a county board shall identify the strategies that will be used in that county to ensure that full-day kindergarten programs are provided to all kindergarten students in that county by the 2007-2008 school year.

CERTIFICATE OF SERVICE

I, Christine Dunn, certify that, on January 12, 2023, the foregoing **Brief of Brown's Promise in Support of Appellants** was served via the MDEC system on all counsel of record.

/s/ _____

Christine Dunn
(MD Bar ID 9912140104)
Sanford Heisler Sharp, LLP
700 Pennsylvania Ave SE, Suite 300
Washington, DC 20003
Phone: (202) 400-5214
cdunn@sanfordheisler.com