Still Getting It Wrong:
The Continuing Failure of Special Education in the
Baltimore City Public Schools

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In many respects, the Baltimore City Public School System has made great progress over the past several years. Yet its Special Education program, despite massive efforts for at least a decade and prolonged U.S. District Court supervision, is still squandering too much time, attention and money on excessive paperwork and bureaucracy at the expense of better instruction. Special Education students are not coming close to achieving their academic potential.

This report is based on more than 75 interviews of persons directly involved with BCPSS Special Education, on the review of thousands of pages of documents obtained mainly under the Maryland’s freedom of information law, and on surveys of national literature on Special Education. The report focuses on elementary school children with mild disabilities, especially in reading.

The best news is the extraordinary dedication and ability of many BCPSS special educators. They are unsung heroes. BCPSS has also made commendable gains, especially in achieving compliance with procedural requirements.

But progress in improving instruction has been far too slow. Special educators are not getting the support they deserve and BCPSS has inflated its accomplishments in improving Special Education.

Most importantly, there is widespread misunderstanding – even among the BCPSS New Board of School Commissioners and the judge in the federal District Court case, Vaughn G., et al. v. Mayor and City Council of Baltimore, et al. (known as Vaughn G) – about how and why Special Education is falling short of its mission and potential.

Here are major findings that are largely unknown or misunderstood.

• The BCPSS Special Education program continues to focus on excessive paperwork and other bureaucratic procedures that are unnecessary and do very little to improve instruction. BCPSS’ rate of procedural compliance already exceeds federal and state law requirements. Moreover, experts say that BCPSS is held to far higher compliance standards than other school systems in Maryland and across the country.

• This preoccupation with procedural compliance is expensive and wasteful. A rough, conservative estimate is that $14 million is spent each year on excessive compliance measures. Only rough estimates can be made, because BCPSS does not have a unified Special Education budget and does not isolate or analyze compliance expenditures. But clearly the magnitude of the spending and misspending is immense.

• Even worse, the time and money currently spent on unnecessary paperwork and bureaucracy are desperately needed to improve academic outcomes. The excessive focus on compliance diverts attention from instruction, impedes the essential integration of Special Education and General Education, saps morale and makes it harder to recruit and retain Special Education teachers and other service providers. BCPSS has made large strides in General Education instruction under
its Master Plan, but no comparable blueprint exists for reform of Special Education instruction.

- The ugly secret of Special Education, too often ignored even by advocates for children with disabilities, is that Individual Education Plans (IEPs) are woefully inadequate. Overspending on procedural compliance obscures the underfunding of instruction and related speech and language, psychology and social work services. Many IEPs are tailored to fit budget limits, not the instructional needs of the child.

- Despite inadequate resources, BCPSS has done little to include needed Special Education services in its lawsuit against the State for adequate funding or in annual pleas to the State for additional aid. Nor have the plaintiffs and the Court in Vaughn G addressed BCPSS’ fiscal straits; they have been content to force BCPSS to siphon funds from General Education to pay for the rising costs of Special Education, without regard for the harm caused to General Education.

- BCPSS tries to avoid accountability by blaming the Court for the excessive focus on compliance. However, BCPSS’ hands are not tied as tightly as it claims. For example, the BCPSS Special Education Office has self-imposed a lot of paperwork and bureaucracy on top of the Court decrees.

Moreover, because most Court decrees are actually consent agreements that BCPSS has negotiated with the other parties in the Vaughn G case, BCPSS could take a stronger stand in such negotiations and refuse to consent to unreasonable demands. BCPSS could also seize the initiative from the plaintiffs and develop a plan for instructional reform that would help to shift the focus from compliance to instruction.

- The Vaughn G proceedings do not legally justify BCPSS’ secrecy in Special Education policy-making. The Board makes virtually all Special Education policy decisions behind closed doors, and the Special Education Office routinely withholds information from public scrutiny. When the Board publicly approved the Special Education Implementation Plan for this school year, no public document was available, and no public notice or discussion preceded Board approval.

The BCPSS Special Education program is not alone in its failings. Special Education is under attack nationally for being too focused on procedural compliance at the expense of instruction. Still, BCPSS, in view of all the years of extensive effort, should be ahead of the pack on boosting student achievement. Instead, like generals fighting the last war, top Special Education administrators are stuck in an outdated compliance mindset. In BCPSS, there has been little leadership in instructional reform.
Recommendations follow for actions by the BCPSS Board and Chief Executive Officer (CEO), including several steps that can be taken immediately without Court approval.

1. **BCPSS should take aggressive, immediate steps on its own to mitigate the excessive focus on procedural compliance and the waste of resources.**

   BCPSS should immediately seek an outside review to help determine which parts of its vast compliance machinery and procedures are needed and effective. Most of BCPSS' 350-plus compliance audit standards are not mandated by law or consent decrees, nor do they exist elsewhere in the country. BCPSS should begin immediately to strip away its self-imposed extra layers of paperwork and bureaucracy.

2. **BCPSS should develop a strategy and plan to reform Special Education instruction and improve the academic achievement of Special Education students.**

   A. **The integration of Special Education with General Education must be accelerated and strengthened. The Special Education Office should be infused with fresh instructional leadership and report to the Chief Academic Officer.**

      The key to better academic results for Special Education students lies in more closely integrating Special Education with General Education at all levels, from central offices to the classroom. Yet the Special Education Office operates with considerable autonomy. In the past, an argument could be made that a separate Special Education Office reporting to the CEO was necessary to put muscle behind the overhaul of procedural compliance. But with compliance on track and instruction off track, that justification no longer exists.

      Even if the Special Education Office is brought under the Chief Academic Officer, new instructional leadership at the top is necessary. The current top leadership appears hardworking and deserves credit for the great strides in compliance. But it lacks comparable expertise in instructional best practices. Even when *Vaughn G* ends, the Special Education Office is likely to remain fixated on procedural dictates, and its autocratic management style is unsuited to the task of building bridges to General Education.

   B. **BCPSS must develop a plan for instructional reform that prevents mild learning problems from becoming virtually irremediable disabilities. The plan must strengthen early interventions, incorporate emerging research on instructional best practices and provide more training for teachers in reading.**

      BCPSS has been slow to recognize the critical link between early reading proficiency and the persistently poor academic performance of Special
Education students. Problems in reading are the root cause of the eligibility of about half of all students receiving Special Education services. Most of these students have relatively mild learning problems that could be overcome through earlier and better instruction.

C. BCPSS must advocate vigorously for adequate resources for Special Education instruction.

The additional money needed for Special Education instruction and related psychology, speech and language and social work services appears to far exceed the possible savings from reduced compliance costs. BCPSS should develop an "adequacy" plan for Special Education based on the best available research and incorporate the plan in ongoing litigation against the state for adequate funding and in lobbying the Governor and General Assembly for more aid.

3. BCPSS must take a smarter and stronger stand in the Vaughn G case and try to accelerate the pace of disengagement from Court supervision.

A consent decree dated May 4, 2000 states that if BCPSS achieves "substantial compliance" with a series of benchmark outcomes by June 2002 and June 2003, the Court will disengage from (end) its current supervision. Yet, disengagement is not likely to proceed as quickly as BCPSS hopes. Some of the outcomes are difficult to achieve; the Court has vast discretion; the plaintiffs will continue to resist disengagement; the BCPSS Special Education Office is ambivalent about disengagement; and the case has taken on a long, litigious life of its own that fosters prolonged legal squabbling.

BCPSS must overcome these obstacles. It must do more to highlight the wasteful focus on compliance, and the chasm between Special Education and General Education caused by the Court’s micro-management. It should offer the parties and Court a new strategy and plan focused on instruction. At the same time, BCPSS must be prepared to act tougher as well as smarter. It must refuse to be intimidated into entering into unwise consent decrees and opt instead, as a last resort, to go to trial and to appeal if necessary.

4. BCPSS must end the secrecy that surrounds Special Education and ensure full public discussion about policy choices.

The Board should end its practice of holding nearly all discussions of Special Education policy behind closed doors. There should be full public disclosure of information, policy options and decision-making. For example, Special Education should no longer be shielded from the public Master Plan process under the state-legislated City-State Partnership. Confidential negotiations in Vaughn G should be limited to putting the final legal touch to policy priorities and directions set publicly by the Board. The Board Committee on Special Education should meet regularly, post notices of its meetings and invite public participation.
Because the Special Education Office tends to keep a tight grip on information and options (even the Board and high-level administrators are not kept fully informed), placing it organizationally under the Chief Academic Officer should also help to pierce the veil of secrecy.

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These recommendations are directed at BCPSS, which must shoulder primary responsibility for transforming the focus of Special Education reform from compliance to instruction. But this report is also intended as a plea to the Maryland Disability Law Center (MDLC), which represents the Vaughn G plaintiffs, and the Court to collaborate with BCPSS in the transformation. MDLC and the Court are dedicated to protecting the legal rights of children with disabilities, and deserve praise for enforcing procedural safeguards. Still, they are stuck in a kind of time warp and do not seem to realize how the needs of Special Education children have changed dramatically over the years. The tide of reform must turn from guaranteeing procedural access to assuring quality instruction, especially in reading. The legal process must take a step back and return authority and accountability where it belongs: to the New Board of School Commissioners and the CEO.

The Board and CEO have risen to other challenges. It is hoped that this report will help them to recognize the steps needed to recenter Special Education reform efforts around quality of instruction. The report is also intended to assist the community in holding the Board and CEO accountable for their action or inaction.

The report may also enable school systems across the country to benefit from the painful lessons learned in the Baltimore City schools. All of our nation’s children with special needs deserve better.
Preface

This report is intended to increase public awareness of the true nature of the serious deficiencies in the BCPSS Special Education program, to recommend specific steps to shift the focus from compliance to instruction, and to hold BCPSS more clearly accountable for the pace and effectiveness of change. Only BCPSS is analyzed in these pages, but similar issues affect Special Education programs in all large urban districts. The report aims to be instructive for reform efforts nationwide.

The impetus for the report began in the 1970s when, as a member of the Baltimore City school board, I initiated a critical review of Special Education programs. Three years ago, as an independent analyst and advocate, I studied the impact of Court supervision in the *Vaughn G* case. I criticized the Court’s micro-management and preoccupation with “procedural compliance at the expense of focus on academic outcomes and instruction” and recommended a series of corrective steps.¹

Last year I began to revisit these issues. My main policy analysis methods have been interviews, scrutiny of thousands of pages of documents and records, and surveys of national literature.

I have relied chiefly on interviews. Over the past 10 months I have interviewed more than 75 persons, including BCPSS administrators, principals, teachers and related services providers, the parties in *Vaughn G* and several national experts. Individual contacts ranged from a single telephone conversation to multiple meetings with a person totaling six hours. I have visited several schools to talk to staff and to observe, with parent permission, several team meetings at which Individual Education Plans (IEPs) were developed.

Interviews have been conducted off the record, because almost all persons connected with the BCPSS Special Education program and the *Vaughn G* case wouldn’t agree to talk otherwise. The Special Education Office discourages staff from discussing its work with outsiders and tried to obstruct my efforts. For example, I was told to submit all questions through formal requests under the Maryland Public Information Act; then the Special Education Office routinely violated the Act by providing late, incomplete and inaccurate responses. (The Maryland State Department of Education, a party in the *Vaughn G* case, was responsive to my requests for information.)

In any event, I have had access to many knowledgeable persons inside and outside BCPSS. They included a fairly representative sample of administrators, teachers, psychologists, speech and language pathologists and social workers. I did not seek out BCPSS staff known to be critics or complainers. Rather, I began with highly respected persons I knew, and received referrals to others.

Almost all persons I contacted were eager to share their views on a confidential basis. Their thoughts were balanced. They were torn between a feeling that the system was improving andanguished frustration at the barriers – too much paperwork.

and bureaucracy and too few resources – that cause vulnerable children to suffer permanent academic failure.

Special Education encompasses a staggering range of disabilities and complex issues. This report concentrates almost exclusively on elementary school students with mild disabilities, primarily in reading. Excessive procedural compliance at the expense of instruction afflicts the entire system, but I have not had the time to probe the more specific problems of students with "severe" disabilities and Special Education students in middle and high schools.

Still, as the report shows, the most glaring deficiency in the entire Special Education program is that so many students exhibit mild early learning problems that deteriorate into lifelong disabilities. That tragedy need not happen. The recommendations in the report are in effect the front-end solution to back-end failures in Special Education like low test scores, high dropout rates and poor transitions to higher education and the workforce.

As noted, many persons graciously contributed their time and knowledge to the report. In addition, about 25 persons, including the parties to the Vaughn G case, were sent a draft and asked for feedback. The responses from BCPSS and MSDE did not raise any specific issues or allegations of errors; each stated the report would be considered as policymaking continues in the future. Neither MDLC nor the Court (or its Special Master) responded.

The other responses expressed strong general support. Many stated that my estimates of the excessive time spent on compliance were too conservative. Many emphasized that they were forced to shortchange IEP services because of compliance duties. And many feared that the preoccupation with procedural compliance at the expense of instruction would continue after the end of the Vaughn G case if the BCPSS Special Education leadership remains the same.

I am not a special educator, and the complexity of Special Education is difficult to penetrate because of the resistance of key officials to public scrutiny and debate. There is more research and investigation to be done.

But reform cannot wait. The needs of too many children are misunderstood, misdiagnosed and unmet. Special educators deserve to be liberated as soon as possible from stifling paperwork and bureaucracy and supported with adequate resources for instruction and related services. This report gives voice to their concerns, and encourages the Board and CEO to bring them out in the open and to act upon them.

I thank The Abell Foundation for its support of this analysis and report; I welcome feedback from all readers, who may contact me in care of the Foundation or at khattlem@erols.com.
Chapter I: The Compliance Maze and Its Costs

"The situation in the city is tragic...all the emphasis is on procedure. It’s not on quality. What are they doing to improve reading in special education?"

— Susan P. Leviton, law professor and longtime Special Education activist, quoted in the Baltimore Sun

No school system in the country, experts say, is so wrapped up in paperwork and bureaucratic micro-management as BCPSS. Yet the BCPSS Division of Special Education and Student Support Services (the “Special Education Office”) and the plaintiffs and Court in the Vaughn G case continue to focus more on procedural form than instructional substance.

Such preoccupation with compliance may have made sense several years ago, but this chapter documents that it is now overkill that wastes time and money and, even more harmfully, gets in the way of instructional reform. Special education officials and the Court, according to one special educator, “think too much about numbers and too little about kids.”

BCPSS already complies with basic federal and state mandates, and is generally regarded as having a better compliance record than most other school systems in Maryland and across the country. Yet BCPSS has done little to analyze the cost-effectiveness of the “compliance maze” or reduce its excessive elements.

Moreover, many persons interviewed for this report criticized the Special Education Office for adding many burdensome procedural steps beyond those required by the Vaughn G decrees. The Court’s Special Master, according to one participant in a meeting with her, has said that the Special Education Office “had inflicted a lot of the paperwork on itself.”

A. The National Problem of Excessive Paperwork and Bureaucracy

There is a growing national outcry against excessive paperwork and bureaucracy that impedes instructional reform. The Council for Exceptional Children, after surveying a national sample of administrators and teachers in both General Education and Special Education, found “the tyranny of paperwork overshadows the thoughtful planning needed for individualized student instruction.” The paperwork, the Council stated, “is designed to keep the school system out of a lawsuit” rather than to improve the quality of the student’s education. According to a professor at Columbia Teachers’ College, Special Education teachers complain that they spend 50 to 60 percent of their time filling out forms.

Critics call for “wholesale reform.” Yet, as policy researchers Patrick J. Wolf and Bryan C. Hassel recently wrote, Special Education nationally is mired in a compliance model of accountability in which “effectiveness tends to be defined in terms of whether or not procedural regulations were satisfied, the proper steps taken, and the right paperwork processed correctly and on time.” Amendments in 1997 to the federal law governing Special Education aim to place more emphasis on academic results, but are not making much impact because of this entrenched compliance mentality.

A report recently adopted by the Maryland State Board of Education on strengthening the role of principals calls for streamlining “of all special education paperwork and meeting requirements.”

B. The Vast Wasteland of the BCPSS Compliance Maze

Though there are no official data comparing compliance procedures among school districts, experts strongly believe that the Special Education paperwork and bureaucracy in BCPSS exceed that found in almost all school systems in Maryland and probably the nation.

The compliance maze, as it is called in this report, consists of ever-proliferating procedures, forms to be filled out, micro-managed administrative functions, reports and audits – all of which far exceed reason and necessity and do not measure the quality of instruction or other services.

Core procedural requirements under federal and state law include timelines and other standards for notices to parents, eligibility assessments and evaluations, and IEPs for eligible students. But the compliance maze has mushroomed over the years, growing a mind-numbing number of legalistic and petty mandates.

For example, the manual of the BCPSS Office of Special Education Monitoring and Compliance (OSEMC) includes about 350 standards to be audited. No other school system, experts say, has such an elaborate and expensive compliance audit system. The standards are drawn from federal and state law, consent decrees in Vaughn G and additional requirements that BCPSS has imposed on itself. They are embodied in the mountains of paperwork – the dozens and dozens of forms with hundreds of data elements and reports to be written – that administrators, teachers, speech and language pathologists, social workers and psychologists must tunnel through to deliver services to students.

10 BCPSS Monitoring and Compliance Standards Reference Manual. The Manual breaks down the requirements into Standards and “Required Elements,” but the latter in effect constitute distinct “standards.”
Many of the audit standards are highly technical, and violating them causes no harm to students. For instance, last year BCPSS was 100 percent in compliance on timely start of services, but technical violations were found in 25 percent of the cases because the “[a]ctual service start date [was not documented] on the Communications Log.” It is particularly “absurd” (to use BCPSS’ word for it) that some of these technical violations, even in the case of a student later found ineligible for Special Education services, entitle the student to a “compensatory award.”

Compensatory awards are another feature of the compliance maze. Under various consent decrees in *Vaughn G*, students are entitled to compensatory services for certain violations of the consent orders. But over the years, the awards themselves have become a morass of endless litigation, paperwork, bureaucratic machinery, and waste that involved millions of dollars annually and set the table for scandal: improper awards like televisions, games and vacations, a far cry from “compensatory services,” were ignored by all the parties and the Court until media exposure halted them in 1998.

Still, despite the great progress in compliance and the fact that no other school system has such a costly scheme, compensatory awards continue. Records obtained through the Maryland Public Information Act show that 16 central positions are budgeted to administer them. Top administrators must fill out time-consuming monthly affidavits attesting that they have personally checked out the awards procedures. School-based staff are saddled with superfluous paperwork.

Micro-management and excess administrative tasks are other aspects of the compliance maze. This year’s Special Education Implementation Plan (i.e., the work plan negotiated by the parties in *Vaughn G*) contains more than 150 tightly prescribed activities for the design, development and implementation of action plans, reporting systems and corrective actions to be carried out by central, area and school-based General Education and Special Education staff. Many are worthwhile; many are excessive. Because the Implementation Plan is negotiated behind closed doors, it is impossible to tell how many of the activities were proposed by BCPSS and how many by the other parties or the Court Special Master.

Resentment also runs high against the constant waves of monitors and auditors in the schools. School principals especially cited them as an undue burden. One administrator, off the top of the head, listed the following monitors: OSEMC, Special Education Office central staff (including those assigned to Child Study Teams, Policies and Procedures and Inclusion), BCPSS area offices, the state, and the Court Special Master.

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11 BCPSS OSEMC Compliance Results Between 9/1/00 and 6/30/01, p. 7.
12 *Vaughn G* – City Defendants’ Motion for Declaratory Relief and to Modify Certain Court Orders, Aug. 24, 2000, p. 13.
15 As discussed in a later chapter, much of the work towards the inclusion of Special Education students into the General Education classroom has focused on numerical benchmarks, not the quality of inclusion instruction.
In its entirety, the compliance maze is so vast and Byzantine that it feeds on itself. Change is constant, requiring new forms and directives, and more training and retraining and monitoring. Last year, for example, a decision to assign extra procedural duties to Child Study Teams, the school-based interdisciplinary teams that determine students’ eligibility and draw up their IEPs, provoked upheaval and mass discontent among principals, teachers and related services providers. Problems and mistakes are bound to crop up given the vastness of the compliance maze; yet, when that happens, the Special Education Office (according to many persons) often overreacts and piles on more requirements, so the cycle goes on and on.16

Of course, some procedural recordkeeping is essential, and staff everywhere complain about paperwork. Still, BCPSS has apparently not analyzed the need for and usefulness of its layers and layers of requirements in the light of the many criticisms of the compliance maze and the fact, as discussed next, that substantial procedural compliance has already been achieved.17

C. Substantial Compliance Has Already Been Achieved

There is no dispute that BCPSS has already achieved very high levels of procedural compliance. This is especially noteworthy since it is widely agreed – even by the Court in Vaughn G18 – that under the various Court decrees, BCPSS must meet higher standards than those imposed by federal law or state law, or found in other school systems in Maryland and across the country.

The inordinate height to which the compliance bar has been raised in Vaughn G is not well known or understood. Federal and state laws mandate very few specific procedural timelines and documentations and do not set numerical benchmarks for compliance similar to those imposed in the Vaughn G case. The general test for possible federal or state intervention would seem to be whether a school system has made reasonable efforts and achieved reasonable compliance. The law rarely spells out what is reasonable, and as mentioned earlier, there is little or no data that compares the degree of compliance within Maryland or nationwide.

The situation was different when the Vaughn G case originated in 1984. The lawsuit alleged the failure to conduct assessments on children referred for special education within 45 calendar days after referral, and the failure to implement Special Education “Individual Education Plans” (IEPs) within 30 days after their development. BCPSS was clearly in violation of the applicable provisions of federal law.19

But the facts have dramatically changed. Last year (school year 2001), 96.9 percent of evaluations were completed on time, and 99.4 percent of IEP services were

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16 A new example is the swelling profusion of forms and procedures governing student discipline.
17 The Vaughn G “disengagement decree” holds out the promise that BCPSS will be relieved of many compliance requirements at the end of this year or next. But, as discussed later in the report, substantial relief should have already begun, and it is far from certain that disengagement will happen as quickly as hoped.
18 See, for example, Vaughn G – Memorandum and Order, June 29, 2001, p. 17.
implemented on time. Also, parents were notified of meetings and their procedural rights in 100 percent of cases. There was a high degree of procedural compliance across the board.\textsuperscript{20} And this is not a one-year phenomenon. Steady improvement has occurred over the past four or five years. As the Court stated in an Order on June 29, 2001, “BCPSS has demonstrated a marked improvement since 1997 in its timeline compliance and its record with respect to compensatory awards and interruptions in services.”\textsuperscript{21}

One law that clearly is not being heeded is the law of diminishing returns. The continuing high costs of the compliance maze are producing only marginal gains in many areas in which reasonable compliance has already been established. Over three years ago, the judge in \textit{Vaughn G} appeared to regard the compliance test as being one of reasonableness. He told a \textit{Baltimore Sun} reporter: “The whole fuss is, are they doing it at all?”\textsuperscript{22}

BCPSS is not only doing it (that is, procedural compliance) but, as shown, doing it exceedingly well. Moreover, not only do special educators inside and outside Maryland generally agree that BCPSS has to meet higher compliance standards than other school systems across the country, they also state that BCPSS’ record of procedural compliance (notwithstanding the higher standards) is probably higher than most school systems in Maryland and comparable urban districts across the country. Experts say that comparative data are not available, but base their conclusion on BCPSS’ outstanding record and their professional contacts.

Of course, some compliance percentages, among the 350 standards that are being audited, are bound to ebb and flow annually. The law of averages and human and bureaucratic nature guarantee that trouble spots will appear, particularly given the frequent changes in procedures or other circumstances that can cause slippage. For example, the Court recently noted that interruptions in services in the area of speech and language have gone up (though interruptions overall are still down) because of BCPSS’ inability to hire or retain a sufficient number of speech and language therapists.\textsuperscript{23} That inability was caused at least partially by revisions in the Child Study Team process, previously mentioned, that resulted in reducing the time that speech and language pathologists had available for direct services to children.

\section*{D. Measuring the Waste in Dollars}

The amount of money spent and misspent on the compliance maze is enormous. A rough, conservative estimate of the excessive costs is $14 million annually. Over the past five years, the cost has undoubtedly been well over $50 million. Moreover,
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despite the high degree of compliance and diminishing returns, compliance expenditures are not falling.

BCPSS may dispute the rough estimates, but many factors – several of its own making – prevent a more precise calculation.

- The Special Education Office has apparently not attempted to isolate or analyze direct or indirect compliance expenditures (or, apparently, to control them).
- The absence of a unified budget for Special Education complicates and hampers analysis; there are many Special Education expenditures that are not included in the budget accounts earmarked for Special Education.
- The format of the BCPSS budget differs in varying degrees from year to year, impeding analysis of trends.
- The task of estimating the amount of time spent on compliance, and how much of that time is excessive, is technically daunting. Compliance costs in this context are expenditures predominantly spent on developing, implementing, monitoring and litigating the paperwork and procedures in the compliance maze. But separating predominantly compliance time from predominantly instructional time is difficult. The basic goal of compliance is to improve instruction, and their purposes are intertwined.

In the final analysis, absent any effort by BCPSS to look at the cost and effectiveness of the compliance maze and in recognition of all the uncertainties, very conservative estimates have been made based on BCPSS budget documents and interviews. Rough as these estimates are, they clearly show the magnitude of the money being spent and misspent on compliance. The burden of explanation and justification rests on BCPSS. BCPSS has a duty to examine the high costs and low cost-effectiveness of the compliance maze, and to challenge the parties and Court in *Vaughn G* to join with it to end this squandering of funds.

Compliance costs were estimated in four main categories: Special Education (Central) Office; Special Education School-Based; *Vaughn G* Legal Costs; and Indirect (General Education). For each category, the cost of the time spent on compliance was estimated. Then an estimate was made of the cost of compliance that can be conservatively regarded as excessive.

24 Research has not uncovered any prior attempt, locally or nationally, to develop a methodology or undertake a comparable analysis of the costs of compliance.
Special Education (Central) Office

The time spent by staff within the Special Education Office whose duties are essentially compliance-driven has been estimated on the low side. To be further cautious, other staff within the Special Education Office who also spend a significant amount of time supporting the compliance maze have been excluded from the estimate – for example, staff in Research and Program Evaluation, Special Education Tracking System Support, Administrative Services and Pupil Services.

An estimate of $3.6 million was derived as follows:

- Office of Special Education Monitoring and Compliance: $1.0 million
- Office of the Special Education Officer: $0.1 million
- Compensatory Awards: $1.7 million
- Policies and Procedures: $0.5 million
- Inclusion Services: $0.1 million
- Support for Child Study Teams: $0.2 million
- Total: $3.6 million

Special Education School-based

Estimates of the time spent by BCPSS Special Education teachers, ARD Managers (instructional associates), speech and language pathologists, psychologists and social workers on the compliance maze vary widely from school to school, depending on caseloads and informal work-sharing arrangements. To generalize, the low range of estimates has been used.

Outside evidence confirms that these estimates are very conservative. The national Council for Exceptional Children reported last year, “A majority of special educators

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26 One Officer, one Director and one secretary, estimated at $200,000 @ 50 percent time. BCPSS Budget 2002, p. 85; see also Special Education Central Positions list, obtained September 13, 2001 from Special Education Administrative Services pursuant to a Maryland Public Information Act request (this list is hereafter referred to as “Central Positions List”).
27 BCPSS Budget 2002, p.93. It is not clear exactly how BCPSS arrived at this figure. Presumably it includes the cost of the 16 positions earmarked for Compensatory Awards (Central Positions List) and the projected cost of the actual awards. Last fiscal year, the value of the awards exceeded $1.3 million.
28 An estimated 11 positions, denoted “Policies and Procedures” or “Technical Support for Compliance” (Central Positions List), @ $50,000 per position @ 100 percent of time. All position costs used in this analysis are low.
29 10 positions (Central Position List) @ $50,000 per position @ 25 percent of time. As discussed in the chapter on “Poor Quality of Instruction,” a substantial portion of their time has been bogged down in seeking compliance with numerical quotas for inclusion of Special Education students in the General Education classroom.
30 16 positions (Central Positions List) @ $50,000 per position @ 25 percent of time. These positions have also been substantially engaged in technical compliance in the Child Study Team process – i.e., the interdisciplinary school-based team that evaluates referrals and develops Individual Education Plans.
31 Excluded are time spent on services and assessments/evaluations.
estimate that they spend a day or more a week on paperwork and 83 percent report spending from a half to one and a half days per week in IEP-related meetings. A professor at Columbia Teachers College states that Special Education teachers “complain they’re spending 50 to 60 percent of their time filling out forms.”

Dr. Carole Ann Baglin, Maryland State Department of Education director of special education, has stated in a published interview, “Paperwork is extremely burdensome, and teachers don’t feel they have enough contact hours with children to make a difference and to fully implement their IEPs.”

The estimate of $17 million was derived as follows.

- Special Education teachers (10 percent of their time): $6.8 million
- Speech and language pathologists (15 percent of their time): $1.0 million
- Psychologists (25 percent of their time): $1.4 million
- Social Workers (25 percent of their time): $1.8 million
- ARD Managers (75 percent of their time): $6.0 million

Total: $17.0 million

**Vaughn G Legal Costs**

An estimate of $725,000 was derived as follows.

Direct legal expenses, those legal and legal-related expenditures directly attributable to the Vaughn G court proceedings, were about $1 million last school year (July 2000-June 2001). Over the past five years, the Vaughn G expenses appear to have been well over $5 million. It can be conservatively assumed, based on the overwhelming compliance focus of the litigation, that 75 percent of these expenditures were spent on the compliance maze.

As best determined, BCPSS has never analyzed legal expenditures, and getting a complete picture of them is difficult. The most accessible records obtained under the
Maryland Public Information Act do not always document the exact time periods or services rendered for legal bills.\textsuperscript{40}

The trend in legal expenses is down slightly but will probably rise again when disengagement is litigated.

\begin{itemize}
\item Court Special Master: $480,000\textsuperscript{41}
\item Maryland Disability Law Center (counsel for plaintiffs): $250,000\textsuperscript{42}
\item Outside counsel for BCPSS: $175,000\textsuperscript{43}
\item BCPSS Counsel’s Office: $50,000\textsuperscript{44}
\item Plaintiffs’ Representative: $12,000\textsuperscript{45}
\item Total Legal Costs: $967,000\textsuperscript{46}
\item Legal costs of compliance @ 75 percent of legal costs: $725,000 (rounded)
\end{itemize}

\textbf{Indirect (General Education)}

An estimate of indirect compliance costs of approximately $7 million was derived as follows.

Indirect costs capture roughly the amount of time spent by General Education staff – principally administrators and teachers – on compliance. The starting point was the BCPSS budget for the current year earmarked for “General Instruction:” $362 million.\textsuperscript{47} Estimates differ greatly based upon the school level (elementary, middle or high school), the number of Special Education students in a school or classroom, the extent of inclusion and many other factors. Principals and assistant principals spend a great deal of time because one of them is supposed to attend the Child Study Team meeting for each student. The range of estimates of their time was 10 to 25 percent. The range of estimates of General Education teachers was 1 to 10 percent; the com-

\textsuperscript{40} Bills paid in one year may have been for services rendered in the prior year.

\textsuperscript{41} This includes the Special Master (approx. $200,000 based on hourly rate of $150 per hour), Deputy Master (approximately $90,000), secretary/office manager, and numerous consultants. About the same amount was spent in 1999-2000.

\textsuperscript{42} These bills have been particularly difficult to decipher. They include some work on individual cases in addition to \textit{Vaughn G}. Fees paid in 1999-2000 were $540,000.

\textsuperscript{43} Fees paid in 1999-2000 were $202,000.

\textsuperscript{44} This is a rough estimate of the cost of the time spent by salaried attorneys. No time records are kept. The estimate is based on a general understanding of the workload, plus time spent by MDLC and BCPSS outside counsel.

\textsuperscript{45} Approximately one-half of the time has been allocated to work closely related to the \textit{Vaughn G} legal proceedings, including “multi-party” meetings conducted by the Special Master.

\textsuperscript{46} Not counted are the legal costs of the Office of the Attorney General, counsel to the Maryland State Department of Education, one of the parties in \textit{Vaughn G}.

\textsuperscript{47} BCPSS Budget 2002, p. 19. “General Instruction” includes the cost of principals, assistant principals, General Education teachers and aides, and clerical employees. It does not include the costs of Special Education teachers, speech and language pathologists, psychologists, social workers and the Office of Special Education. And it does not include a wide range of other predominantly General Education cost centers such as Support Services, Information Technology, Career and Technology, Alternative Education and Central Administration, including Area Offices.
The compliance maze will eat up more of their time in the future as the inclusion of Special Education students into General Education classrooms increases. After taking all factors into account, a conservative estimate of the indirect costs is 2 percent.

Thus, the total indirect compliance costs are 2 percent of $362 million, or $7.2 million.

**Summary of compliance costs**

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Education (Central) Office</td>
<td>$3.60 million</td>
</tr>
<tr>
<td>Special Education School-based</td>
<td>$17.00 million</td>
</tr>
<tr>
<td><strong>Vaughn G Legal Costs</strong></td>
<td>$0.75 million</td>
</tr>
<tr>
<td>Indirect (General Education)</td>
<td>$7.20 million</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$28.00 million (rounded)</td>
</tr>
</tbody>
</table>

**Estimating the percentage of compliance costs that is excessive**

Finally, the amount of the time and money spent on the compliance maze that is excessive is conservatively estimated here at 50 percent. This takes into account the analysis in this chapter as well as interviews of staff showing that much of the compliance maze is unnecessary and wasteful. Excess appears to be a standard operating procedure.48

Fifty percent of the total of all compliance estimates of $28 million is $14 million. Two indisputable facts about the estimates bear repeating.

- These rough estimates are necessitated by BCPSS’ failure to do its own analysis of the costs and cost-effectiveness of the compliance maze.

- The estimate of $14 million is conservative, but regardless of whether a more precise accounting would yield a higher or lower figure, the magnitude of time and money that could be better spent on instruction is immense.

**E. How the Compliance Maze Impedes Instruction**

The price paid by students and teachers for the compliance maze is far greater than just the waste of money. It diverts focus from instruction, saps morale, harms recruitment and retention of Special Education teachers and related services providers, and impedes integration of General Education and Special Education.

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48 A small but telling example: At a meeting held by the Board Committee on Special Education on May 17, 2001 and attended by around 10 parents or community representatives, the author observed approximately 15 Special Education staff who evidently were required to attend, including a BCPSS attorney.
**Diversion of focus from instruction**

Briefly stated, the compliance maze drains time and attention from instruction. This is discussed in more detail in the report’s next two chapters, “Poor Quality of Instruction” and “An Agenda for Instructional Reform.” Special Education staff feel robbed of the time they need to mount a frontal assault on the learning problems of their students, primarily in reading and language arts.49

**Morale and the supply of teachers and related services providers**

The preoccupation with paperwork causes a serious loss of morale, which contributes to problems in recruitment and retention of Special Education teachers and related services providers.

The teacher supply problem exists nationally and locally. Nationwide, Special Education teachers are deserting the profession in droves.50 The Council for Exceptional Children reports that they “leave at almost twice the rate of their general education colleagues. In fact, four out of every ten entering special educators have left before their fifth year.”51 “The job is so stressful,” says a professor at Columbia Teachers’ College, “that the average shelf life of special ed teachers is three years.”52

A story in the *Baltimore Sun* on May 14, 2001 was headlined: “Md. Schools face crisis over special education: A shortage of teachers qualified in the field compounds the problem, especially in Baltimore City.”53 Ms. Gayle Amos, the BCPSS Special Education Officer, estimated the city shortage at 70 to 80 teachers.54

The compliance maze isn’t the only reason for the difficulty in recruiting and retaining teachers, but BCPSS staff cite it frequently as a major factor. Dr. Carol Ann Baglin, the Maryland State Department of Education director of special education, stated in a published interview: “Paperwork is extremely burdensome, and [Special Education] teachers don’t feel they have enough contact hours with children to make a difference and to fully implement their IEPs. Because teachers are so overloaded, it creates a problem of them leaving the field, resulting in a huge turnover rate.”55

A director of special education in another state put it this way: “Teachers aren’t going into special education anymore because they . . . study all these years, and then they get a Ph.D. in paperwork.”56

BCPSS psychologists, speech and language pathologists and social workers claim that turnover rates are climbing because new procedures last year piled more admin-

49 Hereafter the report uses “reading” as synonymous with reading/language arts.
51 Council for Exceptional Children, p. 6.
52 Worth, p. 38.
54 Bowler and Schoettler.
55 A Special Edition, p. 64.
56 Duff in *Rethinking Special Education for a New Century*, p. 154.
istrative tasks on the interdisciplinary teams that develop IEPs, causing a decrease in time available for services.\textsuperscript{57} After a furor erupted, the new procedures were scaled back a little. Still, these service providers believe that the compliance maze burden will continue to accelerate the exodus of experienced staff.\textsuperscript{58}

Though many dedicated and able special educators, at all levels, stay on, the sad fact is that much of their education talents are buried in the compliance maze.

**Lack of integration of Special Education with General Education**

A third significant element of the damage done by the compliance maze is its corrosive effect on the integration of Special Education with General Education that is the key to boosting the academic achievement of Special Education students.\textsuperscript{59} Such integration – particularly the inclusion of Special Education students in the General Education classroom – is difficult to achieve under the best of circumstances.\textsuperscript{60} The compliance maze and the compliance mindset of the Special Education Office compound the problem. General Education administrators and teachers who were interviewed resent not just the paperwork and bureaucracy, but what they regard as the overbearing demands imposed on them.\textsuperscript{61}

**F. Recommendations**

BCPSS should seek an immediate, expert outside review to determine the necessity and cost-effectiveness of the various compliance procedures. Even pending the outside review, it can find ways that do not conflict with Court decrees in the *Vaughn* case to eliminate or to reduce self-imposed excessive paperwork, duplicative monitoring, and compliance overstaffing.

Funding should be re-directed to instruction as part of a shift in the focus of Special Education reform from compliance to improving student achievement. More detailed recommendations are in the chapter “An Agenda for Instructional Reform.”

\textsuperscript{57} The Special Education Officer wrote in a memo to the CEO dated Oct. 5, 2001: “Our data shows that we did not have any more related service providers (Speech/Language Pathologists, Social Workers, Psychologists) leaving the system in SY 00/01 than 99/00.” However, requests under the MPIA have not so far produced any data to support this assertion which is generally contradicted by speech/language pathologists, social workers and psychologists.

\textsuperscript{58} A survey in Dec. 2001 by the Baltimore City Association of School Psychologists showed that a large majority of psychologists felt that they spend more time on process than the delivery of services to children. The survey also showed that a large majority were “actively seeking employment elsewhere.”

\textsuperscript{59} The issue of integration of Special Education and General Education is discussed in more detail in the chapter on An Agenda for Instructional Reform.

\textsuperscript{60} See more detailed discussion in the chapter, “Poor Quality of Instruction.”

\textsuperscript{61} In addition, Special Education appears to receive preference over the rest of BCPSS in Central Office salaries and Central and school-based non-personnel budget items.
Chapter II: Poor Quality of Instruction

"The question usually is, ‘how much time do we have?’ – not ‘how much time does the child need?’"
— Special Education teacher

The quality of instruction for Special Education students is poor in BCPSS and across the country. As a result, most Special Education students fall behind and never catch up; they drop out in tragic numbers and fail to achieve their potential in school, workplace and community.

Yet despite the valiant efforts of teachers, BCPSS does not seem to be on the right track towards significant instructional improvement. Instructional leadership is lacking. Special Education instruction in reading is both too little and too late, as cutting-edge research shows. Correctable, mild learning problems deteriorate into permanent “disabilities.” Yet Special Education teachers receive too little training in how to teach reading. IEPs are typically boilerplate prescriptions that fail to provide adequate instructional and behavior-related services.

In particular, special educators have failed to sound the alarm on the discredited concept of “specific learning disabilities,” the largest disability classification. Students do not become eligible for assistance until they are too far behind for effective remediation.

These are national issues, and calls for instructional reform are escalating. BCPSS does not appear at the forefront of this movement. BCPSS has made large strides in General Education, guided by a master plan, but no comparable vision and blueprint exists for reform of Special Education instruction.

Instead, the Special Education Office has put almost all of its instructional eggs in the basket of “inclusion,” the worthy and legally mandated requirement that students receive their Special Education services in the General Education classroom to the fullest extent possible. But inclusion has become entangled in the compliance maze, and too much emphasis has been placed on the classroom place where the students are taught, rather than on the quality of the instruction.

This chapter explores these issues, with a strong concentration on elementary school students with mild (as opposed to severe) disabilities. What is the evidence of poor academic performance? What are its causes, particularly for students with “specific learning disabilities” and other generally mild learning problems? What is an alternate reform plan that encompasses earlier and better instruction and other services? And how and why is BCPSS stuck behind the learning curve in developing such a plan?

A. Evidence of Poor Academic Performance

BCPSS Special Education students generally perform far below General Education students on state tests (Maryland Functional Tests and Maryland State Functional Skills Tests).
Performance Assessment Program) and standardized national tests (Comprehensive Test of Basic Skills).

For example, on the MSPAP reading tests for school year 1999, the satisfactory percentage for third grade was 16.2 percent for General Education students, 8.2 percent for Special Education students; for fifth grade, 17.4 percent to 4.2 percent; for eighth grade, 8.5 percent to 0.3 percent (no, the .3 percent satisfactory rate is not a typo). On the CTBS reading tests for school year 2000, the percentages passing were, for example: first grade, General Education 48.9 percent, Special Education 37.8 percent; third grade, 43.7 percent to 28.8 percent; fifth grade, 44.3 percent to 25.3 percent.

The Vaughn G disengagement decree targets a reduction of 10 percent over three years in the disparity between the achievement scores of General Education and Special Education students on Maryland Functional Tests, MSPAP and CTBS. For school year 2000, the disparities narrowed. But the Court Special Master in Vaughn G found the data to be unreliable. Special Education CTBS scores rose significantly, but there was a “sharp drop” – 32.5 percent in grades 1 through 5 – in the number of Special Education students who were tested.

BCPSS stated that results for last school year (2001) would be publicly released in December 2001. But that has not occurred, so it is not possible to measure recent progress.

BCPSS is not alone in its long history of woeful academic achievement. The gap between Special Education and General Education is wide in almost all Maryland school districts (though far wider in BCPSS).

Nationwide, while comparative test data are generally unavailable, Special Education has produced meager academic progress for mildly and severely disabled students. Pre-eminent reading expert G. Reid Lyon and co-authors conclude that instruction “gains are so small that [Special Education] children are not closing the

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55 The disengagement decree requires BCPSS to “report annually on whether [it has] accomplished ‘signifi-
cant progress’ towards reducing the disparity between the [achievement] scores of special education
and general education students on MFT, CTBS, and MSPAP.” Significant progress is defined as a reduc-
tion in the disparity of at least 10 percentage points over three years.
gap” between themselves and other students. While intended as a temporary program for many students, Special Education “has become a one-way street” and students rarely improve enough to lose their eligibility status. Low graduation and high dropout rates persist.

B. The Link to Learning Problems in Reading

Special educators nationally and locally have failed to respond to the growing body of research that calls for radical change in the way most Special Education “disabilities” are diagnosed and treated, particularly in the area of reading. Most Special Education students start off with “mild” reading problems that turn into more severe disabilities. Yet, the BCPSS Special Education Office has mainly addressed the problem by trying to reduce the Special Education rolls through stricter technical compliance with Special Education eligibility criteria. The better course is to find ways to assure that all low-performing students get adequate early interventions.

Waiting too long: The flawed concept of “specific learning disabilities”

A large part of the problem lies in the “specific learning disabilities” (LD) classification. Nationally, about half of all students receiving Special Education services are found eligible as LD. They account for most of the skyrocketing Special Education rolls over the past 25 years. In 1976 LD students were 22 percent of the national Special Education population; by 1998 the percentage ballooned to 46 percent.

In BCPSS, last year 35.24 percent of 16,679 Special Education students were classified LD. The basic flaw lies in the so-called discrepancy gap test that is primarily used to determine eligibility. Under this test, students should be classified as LD if they exhibit a “severe discrepancy” between cognitive ability and school achievement. For about

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71 Finn, et al., p. 338. A 5 percent return-to-General Education rate has been cited by Lyon et al., p. 275 and Himowitz, p. 28.


74 Lyon and Fletcher, p. 27.

75 Horn in Rethinking Special Education for a New Century, p. 28: “Indeed, in contrast to an extraordinary 233 percent growth since 1976-77 in the number of children diagnosed with [LD], the number of children served in all other disability categories combined increased only 13 percent during the same time period.”

76 MSDE Special Education Census Data, Dec. 1, 2000, Revised June 25, 2001. The data include students in the three schools contracted to Edison Schools, Inc.

77 BCPSS Special Education Manual of Operating Procedures, Module 7-6.
80 percent of LD students, as well as for a large number of students who are found eligible through the Speech and Language and Emotional Disturbance classifications, the principal learning problem is in reading.\textsuperscript{78}

However, there is widespread agreement in the scientific community that the discrepancy test is unreliable and causes most LD students to receive instruction that is too little, too late.\textsuperscript{79}

The National Research Council Committee on the Prevention of Reading Difficulties in Young Children, in its famous 1998 report, assailed the discrepancy test as "quite arbitrary."\textsuperscript{80} The Committee explained that "a child with a standard reading score of 75 and an IQ of 90 is likely to show similar benefits from remedial instruction when compared with a child who has a reading score of 75 and an IQ of 100, but only the latter child would have a sufficient aptitude-achievement discrepancy to be eligible for special education services in most states."\textsuperscript{81} Maryland is one of those states.

The discrepancy test, therefore, leads to a tragic result: Most LD students (as well as other slow learners) are denied timely interventions and doomed to lifetimes of poor achievement. Psychologist-researcher Daniel J. Reschly explains why:

Eligibility based on the intelligence-achievement discrepancy hampers early intervention efforts because kindergarten, first and many second-grade children with very poor reading skills often do not have sufficiently large discrepancies to meet the [LD] eligibility requirements. Assistance for these children ... is then delayed until the discrepancy is large enough to meet eligibility requirements, with valuable time lost and unnecessary failure experienced by children.\textsuperscript{82}

Dr. Lyon puts it more succinctly: the LD discrepancy test is a "'wait-to-fail' model: we wait until they fail."\textsuperscript{83} And the lost ground is almost never recovered.\textsuperscript{84}

\textit{Missing the point about “over-identification”}

Special Education officials, both nationally and in BCPSS, have missed the big picture. Instead of addressing the "wait to fail" flaw in the LD classification, they have

\textsuperscript{78} Lyon and Fletcher, p. 24; \textit{Preventing Reading Difficulties in Young Children}, p. 89.
\textsuperscript{80} \textit{Preventing Reading Difficulties in Young Children}, p. 91.
\textsuperscript{81} Ibid, p. 268. Other experts agree. "There is no separate knowledge base for teaching children classified as mildly retarded or learning disabled, as there is for students who are blind or deaf, have speech problems, or are severely disabled." Margaret C. Wang, et al., "Serving Students at the Margins," \textit{Educational Leadership}, Dec. 1994/Jan. 1995, p. 13. See also Reschly, pp. 235-236; Lyon et al.; Swerling and Sternberg.
\textsuperscript{82} Reschly p. 236. See also Lyon and Fletcher, p. 24.
\textsuperscript{83} Lyon and Fletcher, p. 26.
\textsuperscript{84} \textit{Preventing Reading Difficulties in Young Children}, p. 268; Lyon and Fletcher, pp. 24, 27.
been preoccupied with the compliance issue of over-identification. They claim that many students in LD and other classifications do not meet the legal eligibility criteria.

They may be right, from a technical compliance perspective. The LD, Speech and Language, Emotional Disturbance and “Other Health Impaired” classifications are vague and easily manipulated. One prominent researcher has estimated that 80 percent of all students could qualify under the loose LD standards.

This vagueness enables BCPSS Special Education staff to interpret the criteria loosely in order to find students eligible, a practice sometimes called “compassionate coding.” One extensive in-house study concluded that about half of the students who were found eligible in the LD classification “were either over-identified or misidentified.”

The study is part of a concentrated effort by BCPSS in recent years to eliminate “over-identification.” Numerous staff members report pressure to apply eligibility criteria more strictly. The degree of pressure seems to vary considerably by Areas and schools, but it is felt systemwide, particularly in the LD classification.

The effect of the crackdown is difficult to gauge. The number of Special Education students dropped from 18,859 in 1998-99 to a projected enrollment of 16,424 this year. But several significant factors, in addition to stricter determinations of eligibility, contribute to the decline. One is the steep drop in the school system’s total enrollment. Others are exemplary initiatives that prevent referrals to Special Education, notably stronger early reading programs and school-based interdisciplinary Student Support Teams that help teachers with academic and behavior interventions.

On the surface, BCPSS has good cause to insist on a tight, technical application of eligibility criteria. The conventional wisdom is that General Education and Special Education practitioners, nationally and locally, take advantage of loose criteria to inflate Special Education rolls and costs. In this view, General Education teachers want to “dump” slow students and troublemakers, and Special Education teachers and service providers want to preserve their institutional turf.

But these criticisms largely miss the reality of what two experts call the “genuine need . . . of a large group of youngsters” for additional help, particularly in large urban

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89 From 106,540 in 1998-99 to 96,110 projected this year. Ibid.

districts. In fact, BCPSS administrators, General Education and Special Education teachers, psychologists, speech and language pathologists and social workers tend to bend the Special Education eligibility rules because they think “compassionate coding” is in the best interests of failing students. Despite its shortcomings, Special Education is often seen as the best practical, or least harmful, available option.

In one way, loose interpretation of eligibility criteria on behalf of BCPSS students can be viewed as a matter of “equal rights.” LD and other classifications are manipulated in wealthy school districts by parents who see Special Education as a way to get their children extra instruction and favored treatment (for example, on tests). At the national level, the LD explosion has been set off by affluent parents.

A recent report by the Wisconsin Policy Research Institute captured the essence of the issue:

One response to the problems of vagueness and inconstancy besetting special education placements is to focus on over-identification as a technical problem – one to be addressed by closer attention to legal or medical criteria…. We suggest, however, that for many children and many instances of the problem, this let’s-improve-our-classification-procedures response encourages educators to move in the wrong direction. They would do better to focus instead on how they teach early reading in the first place.

In this light, the door to Special Education eligibility for BCPSS students shouldn’t be shut on technical compliance grounds until the instructional needs of poor students in need of “special” assistance are addressed in other ways, as proposed in the next chapter. Special Education officials and advocates should be doing more to spur policymakers to recognize and meet this challenge. For now, within reasonable limits, eligibility criteria should remain flexible enough to take into account professional and parental judgment about the best interests of students.

91 Spear-Swerling and Sternberg, p. 37.
92 Interviews. See also Palmaffy, p. 16. The Special Education Office refers frequently to data showing that BCPSS has a higher percentage of students in Special Education than most other urban districts, but the larger issue is the needs of the students and whether (in General or Special Education) they are being addressed better or worse than in other districts.
C. Inclusion: Going Too Far, Too Fast Without Sufficient Support

National background and general obstacles to inclusion

To improve instruction, BCPSS has relied mainly on the strategy of inclusion. This is consistent with national trends. Federal law mandates that all Special Education students, no matter how severe their disability, receive Special Education services in the “least restrictive environment:” that is, they must be included and taught to the “maximum extent appropriate” in the General Education environment and classroom.

Thus, the most severely disabled students traditionally served in separate public and nonpublic schools should be served whenever possible in General Education schools. And all Special Education students in General Education schools should be served whenever possible in General Education classrooms.

There is wide agreement on the value of inclusion and on general principles for implementing it effectively. However, despite good efforts in BCPSS and many other districts across the country, the barriers are formidable. There is little research that shows the effectiveness of inclusion on academic achievement. And there are fears in BCPSS and elsewhere that it is being pushed too far too fast, without enough attention to its impact on the quality of instruction.

Inclusion cannot succeed unless substantial resources to enhance both academics and behavior management follow Special Education students into the General Education classroom. Special Education teachers, speech and language pathologists, psychologists and social workers must be supported with low student-teacher ratios and caseloads, collaborative planning time for Special Education and General Education teachers, and extensive technical assistance and training. This support is expensive; though the law requires that the funding be made available, it rarely is.

IEPs frequently shortchange needed instructional and support services, as discussed in more detail in the next chapter. And the burdens on General Education classrooms are taken too lightly. Albert Shanker, the famed former president of the

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97 See note 95.

98 See, e.g., Salend and Duhaney, p. 11; McLesky and Waldron. See later discussion of Special Master’s Final Report on Achievement of Outcome #8 Benchmarks and Activities Under the 2000/01 School Year Implementation Plan, Nov. 30, 2001 (hereafter referred to as Special Master’s Inclusion Report)
American Federation of Teachers, charged that inclusion was being used to save money, which happens when not enough resources follow the Special Education child into the General Education classroom.\textsuperscript{99}

Another formidable obstacle to inclusion is the mixed and sometimes hostile reaction from parents and teachers. Many parents, who see their own and other children failing in General Education, are looking for something really “special,” meaning different and extra. A 1999 review of the literature for the Educational Resources Information Center (ERIC) database of the U.S. Department of Education found that teachers, while generally supportive, are skeptical about sufficient resources. The review also noted that General Education teachers worry about their ability to meet the often severe behavioral and medical (as well as instructional) needs of Special Education students; and some Special Education teachers fear loss of control over the classroom environment and that children will lose truly specialized services.\textsuperscript{100}

Controversy has been stoked by the highly polarized battles over the past three decades waged over “full inclusion.” In the mid-1990s, the then-superintendent of the Baltimore County school system got mortally wounded in the crossfire over his plans for large-scale inclusion.

Resistance and controversy over inclusion are likely to persist without research that shows its effectiveness. Research is confounded by almost infinite variations in inclusion teaching structures (e.g., collaborative teaching models), instructional practices, resources and student needs. At best, the empirical evidence is weak and inconclusive.\textsuperscript{101} The ERIC review, for example, found mixed impacts on the academic performance and social development of Special Education students, no interference with the academic performance of General Education students, and varying attitudes on the part of Special Education and General Education students and teachers.\textsuperscript{102}

In the face of the issues of resources, resistance and lack of evidence of effectiveness, has the pendulum swung too far in the direction of Inclusion, as some national observers suggest?\textsuperscript{103} The BCPSS experience to date is instructive and troubling.

\begin{flushright}
100 Salend and Duhaney, p. 14. \\
102 Salend and Duhaney. \\
103 See, e.g.: Lawrence M. Lieberman, “The Death of Special Education,” Education Week, Jan. 17, 2001, p. 60; Worth, p. 40; Shanker. \\
104 This discussion is limited to the inclusion of Special Education students in General Education classrooms in General Education schools (Ultimate Measurable Outcome 8 in the Disengagement Decree). It does not consider the number of newly identified Special Education students maintained in the General Education schools they would attend if not receiving Special Education services (Ultimate Measurable Outcome 9). Inclusion settings under UMO 8 include General Education classrooms and resource rooms for pull-out, typically small group, instruction.
\end{flushright}
The Continuing Failure of Special Education in the Baltimore City Public Schools

The BCPSS inclusion experience

Inclusion is one of the key outcomes in the Vaughn G disengagement decree, and BCPSS is exceeding numerical benchmarks: last year, 51.6 percent of Special Education students in General Education schools were served in inclusion settings, an increase of 9.4 percent over two years.

However, this indicator is misleading in several respects. First, the increase was achieved mainly, as BCPSS admits, by changing the way inclusion hours are counted, rather than by actual changes in students’ classroom settings.

Second, and much more importantly, the rate of inclusion says nothing about the appropriateness of the setting or the quality of instruction. Inclusion benchmarks are not based on empirical research or standards related to the quality of instruction. The Special Education Office and the parties and Court in Vaughn G cite data showing that BCPSS has a larger percentage of non-inclusion students than other urban and Maryland districts. Yet, these data do not compare or control for the different degrees of disability, the innumerable variations in inclusion teaching structures and practices, and especially the appropriateness or effectiveness of inclusion services.

In fact, both General Education and Special Education staff in BCPSS who were interviewed expressed serious concerns about the rate of inclusion. Though they almost uniformly support the goal of inclusion, many feel pressured to meet the numerical targets, sometimes regarded as quotas, even if the necessary supports are not in place.

Evidence abounds that the necessary supports and resources are not available. A very detailed study involving classroom observations and surveys, carried out last year by a team of researchers working closely with the Court Special Master, concluded that the quality of instruction and related services in inclusion settings is quite low. The study found weak IEPs, too high a ratio of Special Education to General Education students in inclusion settings, and a diminished direct-service role for Special Education teachers and related services providers. Though many students are placed in General Education classrooms, “a sizable number are not receiving many of the elements that made a special education special.”

The Special Master, in her own findings, highlighted the lack of sufficient technical assistance, planning time, professional development and other supports. “[N]either teachers nor students were being given sufficient resources to enable the

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104 Vaughn G – City Defendants’ Fourth Set of Compliance Statements, Sept. 20, 2001. BCPSS also far exceeded the benchmark for UMO 9 – the rate was 95.3 percent compared to the benchmark of 74.9 percent. Vaughn G – City Defendants’ First Set of Compliance Statements, July 18, 2001.


108 Michael S. Rosenberg, et al., “Ultimate Outcome 8: An Evaluation of Inclusive Education Service Delivery for LRE A and B Students in the Baltimore City Public School System” (hereafter referred to as “Rosenberg Inclusion Study”). The study is found in the Special Master’s Inclusion Report.

110 Rosenberg Inclusion Study, p. 48.
success of inclusionary student assignments," she stated.111

Even BCPSS reported last year, " Teachers are often in need of support that exceeds the available time of specialists. "112 Last year, in a rare public comment on Special Education, then-Board president Tyson Tildon expressed skepticism about the effectiveness of inclusion.113

As this mass of evidence shows, the preoccupation with inclusion quotas and the compliance maze has taken its toll. Inclusion will continue to be oversold and under-delivered until the quality of instruction becomes the primary focus.

The recommendations to improve the quality of instruction are the subject of the next chapter.

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111 Special Master’s Inclusion Report, p. 8. See also the recent Report on the Final Evaluation of the City-State Partnership, Westat, Dec. 3, 2001 (“Westat Report”), pp. 66–67: fewer than half of the teachers who were surveyed agreed that they received the necessary supports for Inclusion.

112 Vaughn G – Notice of Filing Status Report, Feb. 2, 2001, p. 19; see also pages 17 and 18 for references to lack of time for planning Inclusion. The assistance is provided by central Curriculum Specialists and Inclusion Services Specialists, and Area Instructional Support Specialists.

113 He also called for “random audits” of IEPs. Attendance by the author at the meeting of the Board Special Education Committee on May 17, 2001.
Chapter III: An Agenda For Instructional Reform

“Teachers don’t get nearly enough training in how to teach reading, and most of the training they get for Special Education students is nebulous.”

—BCPSS reading expert

BCPSS must do more than just shift its focus from compliance to instruction. It needs a fresh vision of how to meet the learning needs of Special Education students, particularly in reading. This chapter details actions that can raise the quality of instruction and student achievement: integration with General Education; better training for teachers in how to teach reading; more adequate IEPs; and earlier prevention and intervention. The emphasis is on the majority of Special Education students with mild learning problems. But the thrust applies as well to improving the academic performance of severely disabled students.

A. Integration with General Education

There is widespread agreement that the key to improving academic outcomes in Special Education is closer integration of Special Education and General Education.114

As a first step, the Special Education Office should be placed under the Chief Academic Officer. Instruction, not compliance, must become the center of attention and reform. Greater coordination of curriculum and instruction must occur.

The Special Education Office now operates with considerable autonomy that is not mandated under the Vaughn G decrees. In the past, the argument could be made that a separate Special Education Office reporting to the CEO was necessary to put muscle behind the overhaul of procedural compliance. But now, with compliance on track and instruction off track, that possible justification no longer exists.

A modest step forward was taken last year when Special Education instructional support specialists were placed under the joint supervision of the Special Education Office and the Division of Instructional Services under the CAO.115 However, joint control can be confusing and weak. Moreover, compliance and instruction cannot be effectively separated; compliance, as this report shows, greatly impacts instruction. The instructional support specialists under joint control are only a small part of the Special Education domain, so the Special Education Office continues to dominate how Special Education students are taught.

As a second step, whether the Special Education Office remains separate or is brought under the CAO, fresh instructional leadership at the top is essential. The current leadership has worked hard and done what it was charged to do. But new priorities are in order.

114 In a letter to key legislators dated Feb. 22, 2001, State superintendent Nancy S. Grasmick wrote, “I continue to worry about unevenness in the integration of special education and general education across the system, whether at the classroom level or in the administrative structure of the central office.”

115 BCPSS Special Education “Organizational Chart” received Nov. 6, 2001 pursuant to a request under the Maryland Public Information Act. The instructional support specialists function in the areas of Special Education inclusion, curriculum and instruction and “Special Populations.”
The current leadership lacks the requisite skills and experience in instructional best practices, particularly in reading. Its compliance mindset and autocratic management style (which may have been necessary several years ago to whip the system into procedural compliance) are unsuited to building bridges to General Education. Many BCPSS staff who were interviewed fear the focus will never shift to instruction under the present leadership, even if the Court were to withdraw.

B. Training Special Education Teachers as Reading Teachers

Special Education teachers, especially in the elementary grades, must first and foremost be reading teachers. They aren’t. Reading researcher G. Reid Lyon has characterized many Special Education students as “teacher-disabled.”

Yet, BCPSS has been slow to adopt training that is heavily focused on reading programs. Instead, its training appears stuck on generic instructional practices that are good as far as they go, but don’t go nearly far enough.

The Special Education Office has been guided by the principle that Special Education students should receive the same basic instruction as General Education students. Good teaching is good teaching, special educators say. It includes “accommodations” or “differentiated instruction” necessary to meet the needs of “diverse learners.” These terms are used loosely to encompass a wide range of instructional strategies, including presentation, length of assignments, equipment or materials, multi-sensory approaches, and classroom organization and management.

The cornerstone of training has been the large investment in a training package, “STEPS For Instructing Diverse Learners,” developed by BCPSS with assistance from an outside consultant and MSDE. But STEPS describes a process, not a set of best instructional practices. STEPS “does not prescribe how [teachers] should teach, but it does assume that teachers will know and use effective strategies for enhancing teaching and learning in diverse classrooms. …[It also] assumes the existence of a sound
classroom management system. As a result, as many staff observed, training is so general and vague that its value is limited.

Enhanced training must begin with basic reading programs, like Open Court, Houghton Mifflin and Direct Instruction. Then it must extend to supplementary research-proven reading programs and practices, like Orton-Gillingham, Lindamood Bell and Wilson Reading. These supplementary programs are additional tools, to use the common educational metaphor, that must be in the toolbox of Special Education (and General Education) teachers. A full exposition of how this should be done – and it is no easy thing to do – is beyond the scope of this report. The supplementary reading programs must complement the basic reading curriculum; therefore, curriculum development must go hand in hand with training. An additional dimension is whether neurologically based dyslexia, which is sometimes regarded as a distinct reading disability within the LD classification, is detected and treated sufficiently.

C. Inadequate Individual Education Plans

While many millions of dollars are being squandered on the compliance maze, classroom instruction and related services like behavior counseling are being shortchanged. Federal law is supposed to guarantee that Special Education services will meet each student’s individualized needs, usually without regard to cost.

But that isn’t happening. The ugly secret of Special Education – too often ignored by special educators and advocates – is the gross inadequacy of instruction and services received by Special Education students.

First, the instruction and other services that are prescribed in IEPs are often not sufficient to enable Special Education students to meet grade-level academic standards or achieve substantial remediation. Special Education teachers and other service providers report that they have been conditioned (or in some instances subtly coerced) by Special Education administrators to tailor IEPs to an essentially static level of funding. The frequency (how often? how long?) and the intensity (what group size for instruction and other services?) of IEP services are based more on customary practice than unfettered professional judgment about the extra assistance that students truly need.

120 STEPS For Instructing Diverse learners, Grades 4-5, p. 3. (STEPS manuals are somewhat customized for different grade clusters, but the basic process is the same.)

121 See also the Westat Report, p. 69, and the extensive criticism of the quality of instruction in the Rosenberg Inclusion Study.


Consequently, low expectations become the norm, and IEPs frequently address minimum needs. IEPs don't ensure individual interventions—most of which, like intensive tutoring and counseling, are expensive—that can enable failing students to catch up or avoid falling farther behind.

Second, to make matters worse, students frequently don't receive all the services prescribed in their IEPs. Several teachers and other providers who were interviewed admitted they were forced to cut short the delivery of services to attend to procedural duties. Dr. Baglin, state director of special education, made this point in the published interview cited earlier. In a survey conducted by the Baltimore City Association of School Psychologists, many psychologists admitted to “manipulating the data” to report more services than they actually provided. The Rosenberg Inclusion Study raised concerns about the absence of required services.

BCPSS has not addressed these fundamental issues. In response to a request under the Maryland Public Information Act, the Special Education Office said it has not analyzed or evaluated the adequacy of instruction and other services.

What’s more, the Special Education Office has tended to disregard the issue of adequate IEPs. The Office claims that its staffing levels for teachers and related services providers are high compared to other systems in Maryland. Assuming this is true, it begs the larger point: If staffing levels are high, but service levels prescribed in IEPs are low, students’ needs are underserved.

The tragic fact is that BCPSS, the Court and the other parties in Vaughn G have largely abdicated their responsibility to address the issue of adequacy of funding for Special Education services. For example, virtually no funding earmarked for Special Education has been included in the city’s recent Remedy Plan requests for additional state aid.

D. Early Prevention and Intervention

The steps discussed so far to improve the quality of instruction can go a long way to improve the academic achievement of Special Education students. At the same time, the best ultimate solution is to prevent students from falling behind and qualifying for Special Education in the first place.

124 See, e.g., Vaughn G – Summary Minutes of Multi-Party meeting on March 27, 2001, p. 10.
125 Special Education students, like other students, are unable to meet standards under the BCPSS Student Promotion Policy and are retained because of the absence of adequate interventions for students at risk of retention. See, e.g., the BCPSS Report of the Committee on Elementary School Interventions (Draft), May 30, 2000.
128 Rosenberg Inclusion Study, p. 23.
129 The state recently deleted staffing standards.
130 Neither the Rosenberg Inclusion Study nor the Special Master’s Inclusion Report analyze the adequacy of IEP services.
The challenge for policymakers is to assure all students the right to services that will, to the fullest extent possible, prevent mild learning problems from growing into permanent disabilities – especially for the students who, as described in the previous chapter, must “wait to fail” in reading before getting special assistance.

Fortunately, this formidable undertaking is a leading priority in the education reform movement sweeping the country. Virtually every state and local district is undertaking high-visibility initiatives to assure early intervention, particularly early literacy. A prominent feature of President George W. Bush’s education bill, just enacted by large bipartisan majorities in the Congress, is the “Reading First” program targeted at kindergarten through third grade.131

A full discussion is beyond the scope of this report, but the task corresponds closely to blueprints for “reading by nine.” The priorities include a wide range of preventive and remedial interventions. Preventive programs include education for all at-risk 3- and 4-year-olds, all-day kindergarten, more preschool developmentally appropriate language and literacy instruction, smaller class sizes, and classroom-based reading coaches. Remedial interventions include summer school, tutoring, after-school programs, and reading specialists and school-based interdisciplinary teams that assist classroom teachers to develop individual diagnostic and prescriptive plans for failing students.132

BCPSS has been in the forefront of this national movement. The results show in BCPSS’ remarkable reading gains in the early grades. Special Education programs for preschool children also merit acclaim, including the movement to broaden outreach to children who are “developmentally delayed.” Still, Special Education has not carried its weight in this movement, nationally or in BCPSS.

For example, special educators and advocates have been slow to call attention to the work of G. Reid Lyon and others who propose sweeping changes in federal law that would change the criteria for LD.133 The proposals would broaden eligibility by eliminating the discrepancy gap test (discussed above at page 30) for classifying students as LD and allowing deficits caused by socio-economic and environmental circumstances to be taken into account.

Regardless of Special Education classifications, every child who does not meet high academic standards should receive, as reading experts Louise Spear-Swerling and Robert J. Sternberg say, “an effective, individually tailored instructional program.”134 Call it Special Education or something else. But much Special Education funding needs to be redirected into a “single, unitary funding system, which supports the varied learning needs and abilities of all students.”135

131 First Lady Laura Bush has made early literacy her signature mission.
133 Lyon and Fletcher.
134 Swerling and Sternberg, p. 400.
135 Dorothy Kerzner Lipsky and Alan Gartner, Inclusion and School Reform (Balt., Md.: Paul H. Brookes, 1997), p. 114. See also: Reschly, p. 236; Wang et al., p. 16; Preventing Reading Difficulties in Young Children, p. 93.
E. The Narrow Vision of Special Education Policymakers and Advocates

As noted, Special Education policymakers and advocates, nationally and locally, have been slow to take up the challenge of a reform agenda for instruction. In part, their vision has been obstructed by the blinders of compliance requirements. But they have also been reluctant to act for reasons deeply ingrained in the history of Special Education practice and politics.

Historically, federal and state laws governing Special Education originated because severely disabled (not mildly disabled) children lacked access to public education. The laws were rooted in procedural safeguards, which are easy to set and to measure. The Vaughn G litigation and the compliance maze typify this emphasis.

Academic goals for Special Education students have only recently come to the forefront of policy concerns. The 1997 amendments to federal law require assurances of greater integration of Special Education with General Education instruction and high academic expectations for children with learning disabilities.

Because Special Education developed primarily as a procedural safeguard of the rights of children with severe disabilities, it was never intended or equipped to address the causes and cures of the mild learning problems that are causing the current crisis. Today, unlike 30 years ago, most students receiving Special Education services do not have severe learning disabilities.

This changed reality plays out politically as well as instructionally. Many Special Education advocates in Maryland and across the nation are parents of children with severe disabilities. Some perceive the movement for instructional reform, focused primarily on students with milder problems, as a threat to the quality of services for their children. This is in one sense an oversimplification; disabilities and needs run along a continuum. But in practice – as seen in the issues involving “specific learning disabilities” and reading instruction – there are big differences between the mass of Special Education students who can thrive in a General Education setting, and the much smaller number who need a more restrictive environment and alternative curriculum and instruction.

Even upper-income families with children having LD or other mild conditions identify little with the huge number of inner city and other low-income children with mild learning problems who suffer the most from inadequate instruction. Low-income students typically lose out in the political competition for scarce instructional resources; the Special Education program is no exception.

Consequently, there has been little too little political advocacy for instructional reform. Chester Finn, Jr. and co-authors recently wrote that, “despite vigorous efforts by some in the special education and disability communities, prevention and early intervention remain low priorities.”

136 They are concentrated and insulated in wealthier school districts with better services, and they are far better able to advocate and litigate to obtain such services for their children. Cottle, p. 15.

137 Finn et al., p. 339.
F. Recommendations

BCPSS must articulate a fresh vision and strategy to integrate Special Education and General Education and to transform the main focus of Special Education from procedural compliance to quality instruction. As part of the blueprint:

1. The Special Education Office should lose its considerable autonomy and be placed under the Chief Academic Officer.

2. The Special Education Office should receive fresh, instruction-oriented leadership at the top.

3. Special Education teachers must receive much more training in reading.

4. BCPSS must evaluate the adequacy of IEPs and develop an “adequacy” plan for sufficient resources for Special Education instruction and related services. The adequacy plan should be incorporated in litigation against the state over funding and in lobbying the Governor and General Assembly for additional aid. The plan must align the request for additional funds with proven and promising best instructional practices.

5. BCPSS must do even more than it has done to enhance early prevention and intervention initiatives that can prevent mild learning problems from becoming disabilities; implementation of the recommendations of last year’s BCPSS Reading By Nine Task Force must be accelerated.
Chapter IV: The Prospects For Disengagement

“Of course the disengagement decree is an improvement over what came before, but will they ever really let go?”
— BCPSS staff member

“We keep hearing that the judge wants to punish us for what was done wrong in the past. When is enough enough?”
— BCPSS special educator

The BCPSS Special Education Office and the parties and Court in Vaughn G respond to criticisms like those in this report by claiming that disengagement from Court supervision is attainable under the conditions set in the disengagement decree. Meeting the terms of the disengagement decree, they say, would reduce the compliance maze and reduce or end the Court proceedings.

Yet others express doubts that are grounded in the legal history and dynamics of the Vaughn G case.

Who’s right? What is the likely course of disengagement, and should BCPSS be doing more to accelerate it?

A. The Structure and Requirements of the Disengagement Decree

The disengagement decree, consented to by BCPSS and the other parties and signed by the Court on May 4, 2000, is itself a relatively complex document. It specifies a series of “ultimate measurable outcomes” or conditions for disengagement that apply through the end of June 2003. The outcomes are numerical targets, and BCPSS must achieve “substantial compliance” in meeting them.

Substantial compliance is to be determined based on three factors: (1) “progress toward the outcome;” (2) effective “institutional mechanisms” for achieving the outcomes; and (3) student achievement. Substantial compliance also appears to take into account BCPSS’ performance in carrying out the annual Implementation Plan, to be negotiated by the parties, which spells out the institutional mechanisms, activities and numerical benchmarks that move BCPSS toward meeting the outcomes. BCPSS is expected to implement each plan “on a diligent, reasonably planned, timely, and good faith basis.”

The outcomes fall into two main categories: two-year compliance outcomes (called compliance targets) and three-year instructional outcomes (called instructional goals). The decree provides: “A finding of substantial compliance with respect to a
particular outcome will relieve [BCPSS] of any further obligation with respect to that outcome.” In addition to these outcomes, the decree sets three-year targets for improvement in student test scores.

**Compliance targets and the likelihood of meeting them**

The compliance targets are to be met over a two-year period – school years 2000-01 and 2001-02. They focus on procedural requirements, including timely assessments and evaluations, timely delivery of IEP services, disciplinary actions and efficient operation of SETS, the special education management information system.\[140\]

BCPSS is held to a higher standard on the compliance targets than on the instructional goals.\[140\] Still, the many years before and since the disengagement decree of extraordinary focus and expense on procedural compliance appear to have paid off. (As the old saying goes, nothing succeeds like excess.) Almost all seem reachable.\[142\]

**Instructional goals and uncertainty about meeting them**

The principal three-year instructional goals are to raise the rates for inclusion in the General Education classroom, high school completion and graduation.\[143\] Progress is shown by achieving numerical benchmarks and putting in place “institutional mechanisms” for monitoring and sustaining the progress in future years. The inclusion rate in General Education settings is to increase from 42 percent to 58.8 percent; the school completion rate from 50 percent to 57 percent and the high school graduation rate (with diplomas) from 32 percent to 41.6 percent.

The Special Education Office initially opposed the instructional goals for two reasons. One, discussed below in more detail, is that the goals go far beyond the limits of the original Vaughn G complaint and federal and state legal mandates. Whereas there is a long history of BCPSS non-compliance on procedural requirements, the instructional goals embody a relatively recent focus under federal law, and BCPSS has not failed to comply in any comparable sense.

Second, BCPSS has in the past expressed doubt about its ability to meet some of the instructional goals. One person who was interviewed reported that the Court

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\[140\] SETS is a precondition for overall procedural compliance, because the data must be collected and reported through it. Further, good SETS data will eliminate the need for some of the expensive and burdensome audits by the Office of Special Education Monitoring and Compliance. Other compliance targets relate to dropouts, parent complaints, post-secondary transitions and interruption in IEP services.

\[141\] Implementation Plan for School Year 2001-2002, p. 1: “two year Outcomes …which require ‘actual compliance’ will be assessed on a more strictly quantified ‘meet the numbers’ basis, given the two year time line for achievement of these Outcomes under the [disengagement] Decree.”


\[143\] Other instructional goals include inclusion of severely disabled students into neighborhood schools and participation in vocational programs.
Special Master said four or five years may be more a realistic timetable than three years for some of the goals. The underlying concern of the Special Education Office is that progress on instruction is significantly beyond its control. To a much greater extent than procedural compliance, the ability to meet the instructional goals depends heavily on integration with General Education instruction and resources.

The prospects of meeting the inclusion goal appear good. The doubts are apparently highest on high school graduation rates and transition services, in which progress, officials say, is particularly difficult to predict. The goals partially reflect national data, but the comparability of the data, even among urban districts, is suspect. In any event, BCPSS achieved significant progress last year.

Improvement in test scores

The disengagement decree requires BCPSS to “report annually on whether [it has] accomplished ‘significant progress’ towards reducing the disparity between the [achievement] scores of special education and general education students” on various achievement tests. Significant progress is defined as closing the performance gap by at least 10 percentage points over three years.

This provision obviously complements the instructional goals and uses test scores to measure the academic bottom line. The Special Education Office was strongly opposed because, even more than the instructional goals, the test score benchmarks hold BCPSS up to a standard that exceeds the mandates of federal and state law and also depends on many General Education factors. Yet, according to persons who were interviewed, after pressure from a Court mediator, the Board did what it has done very rarely: It overruled the Special Education Office, forced a further compromise and consented to improvement in test scores as a measure of performance.

The compromise was to couch the condition as a “reporting requirement,” not an “outcome” like the targeted compliance and instructional goals. The judge was quoted by one of the interviewees for this report as saying that no consequences will follow if the 10 percent benchmark is not achieved. Still, there is lots of room in the disengagement decree for the Court to give considerable weight to test score results. As noted in an earlier chapter, the picture on academic progress so far is murky.

B. Doubts about Prospects for Disengagement

Notwithstanding the commendable progress towards meeting the conditions in the disengagement decree, there are many reasons to discount the optimism on the part of BCPSS that the decree will lead soon to an end to the Vaughn G case.

144 However, as discussed in an earlier chapter, compliance with this Goal does not mean that Inclusion has been effectively implemented.
146 Beyond the disparity-reduction benchmark of 10 percent, “student achievement” is spelled out as a factor in determining whether substantial progress has been made in meeting the instructional goals.
The decree is a vast improvement over the prior Long Range Compliance Plan (LRCP), but almost anything would be, because the LRCP was gargantuan in its demands, to the point where it was ridiculed by national experts and collapsed of its own weight. The decree and annual implementation plans are still massive in the specific, micro-managed demands placed upon BCPSS and do nothing to relieve the compliance maze. And uncertainty remains about BCPSS’ ability to meet all the disengagement outcomes.

Ultimately, the Court retains considerable discretion. The judge is said to desire disengagement, but there are formidable forces to overcome, even assuming that BCPSS continues to show good faith effort and considerable progress under the decree.

First, after 17 years of litigation, *Vaughn G* has taken on a legal life of its own, far removed from the original goals of the lawsuit and the real needs of students and teachers in the classroom. The lawyers on all sides, including the judge and Special Master, are extremely dedicated to helping children. Yet, they know very little about how to educate children with special needs. Rather, by professional training and habit, they are adversarial and prone to making legal mountains out of procedural molehills. The history of *Vaughn G* bears this out. The consent of the parties to the disengagement decree has not stopped the endless legal battles over a variety of issues, including the scope of disengagement itself.

In this legalistic environment, disengagement is likely to drag on for years beyond 2003. A long, drawn-out disengagement process is the national pattern in Special Education and other litigation in which the federal courts have taken over control of local and state governmental functions.

*Vaughn G* also presents countless opportunities for delay. Under the disengagement decree, most outcomes will probably be met, but some won’t. The Court Master recently noted: “The school district [last year] clearly achieved positive success with certain outcomes, while it struggled with other, more substantively difficult outcomes.

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147 The history of *Vaughn G* is too long and complicated to try to tell, and perhaps no one is still around who knows the full history. There appear to have been three main stages. In the first, lasting perhaps to the early to mid-1990s, BCPSS was swept up, like other large urban school systems, in the wave of lawsuits across the country that sought timely access to Special Education services, primarily for severely disabled children. Vigorous advocacy by the plaintiffs, and what several observers regard as weakness and incompetence by BCPSS and its attorneys, led to a series of consent decrees and other Court orders creating a massive compliance structure that went far beyond the original legal complaints, federal requirements and court rulings elsewhere.

In the second stage, for several years prior to 1997, the Court became visibly enraged at what it viewed as willful disobedience of its orders by the Board and then Superintendent. Additional compliance measures, some of them patently punitive, were put in place, including a Management Oversight Team dominated by the plaintiffs that in effect governed the Special Education program. The Court threatened to take over the entire school system, and Special Education figured prominently in the legislative creation in 1997 of the City-State Partnership which rooted out the Board and Superintendent.

In the third and current stage, after the New Board took over under the City-State Partnership, the consent disengagement decree was put in place.

148 See, e.g., *Vaughn G* – City Defendants’ Motion for Declaratory Relief and to Modify Certain Court Orders, Aug. 24, 2000.
such as those involving compliance with the legal requirements of student discipline under IDEA [the Individuals with Disabilities Education Act] (Outcome 7) and school completion (Outcomes 3, 13)."

The decree states: "A finding of substantial compliance with respect to a particular outcome will relieve [BCPSS] of any further obligation with respect to that outcome [emphasis supplied]." This language suggests the possibility or probability of a slow outcome-by-outcome disengagement approach.

Moreover, the plaintiffs and the Court seem to regard compliance as a moving target. For example, several strict and arbitrary outcomes (such as those relating to student discipline) were incorporated in the disengagement decree based largely on 1997 amendments to the federal law, despite the lack of evidence that BCPSS, especially under the credible management of its New Board, was unwilling or unable to respond reasonably to them; the amendments and federal regulations do not impose the kind of numerical standards that are in the decree.

Also, plaintiffs have been encouraged in the past to push every possible point to the extreme. One incentive is the instinct of the Court Special Master, who largely plays the role of mediator, to try to reach a compromise no matter what the plaintiffs are demanding.

Another is the Court’s punitive attitude toward BCPSS. The unprecedented sweep of the disengagement decree and the draconian compliance maze stem in part from the Court’s ill-disguised intent to punish BCPSS for past acts of incompetence and disobedience of Court orders. BCPSS negotiates “consent” agreements knowing the Court’s disposition to come down hard on it. Though the judge recently applauded BCPSS’ progress, it’s not clear that he is ready to abandon his embrace of extremely demanding and punitive Court orders as “compensation” to Special Education students for past BCPSS wrongdoing.

Progress, fatigue and criticism of exorbitant legal costs all appear to be contributing to the Court’s wish to disengage, but plaintiffs seem likely to want the legal struggle continue, to preserve what they see as the benefits of continuing Court supervision and their own influence over the course of Special Education.

C. The Case for Accelerated, Complete Disengagement

Many of the disadvantages of Court supervision have been documented in earlier parts of this report: the wasteful focus on the compliance maze at the expense of instruction; the micro-management beyond the expertise of the Court; existing procedural compliance far in excess of legal mandates and probably standards anywhere in Maryland or nationwide; and the likely possibility that disengagement could drag on for years unless there is a fast and clean break. It is beyond dispute that the violations that prompted the original Vaughn G lawsuit have been remedied many times over.

In addition, there are other factors that strengthen the case for accelerated and complete disengagement.
**Avoiding the danger of BCPSS relapsing into procedural violations**

Understandably, the Court wants to protect against the possibility that BCPSS will revert to its old, noncompliant ways. To prevent backsliding, the disengagement decree emphasizes the creation of institutional mechanisms, that is, “management accountability processes” like training, technical assistance, monitoring and an accurate Special Education management information system. The aim, says the Special Education Office, is to “institutionalize” the course and culture of recent progress. Fair enough. But the excessive, wasteful compliance maze could still be pared down considerably.

Even if some drop-off in compliance occurs, the institutional mechanisms – especially the Special Education Tracking System (SETS) – will facilitate prompt detection. Advocates like the plaintiffs can remain vigilant and can seek appropriate redress, first, from the CEO and Board and then, if necessary, from the Court.

In the final analysis, it is simply time for the Court to trust the New Board, CEO and the City-State partnership and to put Special Education on the same footing as General Education. The New Board has amply demonstrated its management strengths. But as matters now stand, under *Vaughn G*, the Board neither has clear authority over, nor can it be held accountable for, Special Education.

**Clearing the air on authority and accountability**

Accountability may be the most compelling argument for rapid disengagement. It is now impossible to pinpoint who – among the Board, the CEO, the Special Education Office, the other parties and the Court – is primarily responsible for onerous policies and procedures. The so-called consent decrees are negotiated behind closed doors. Afterwards, the Special Education Office blames the plaintiffs and the Court for the severity of the terms. But this is partially self-serving.

The Special Education Office regards some aspects of the disengagement decree and compliance maze as excessive and infringing on its management prerogatives. But it also uses the *Vaughn G* case as both sword (to force the CEO and Board to go along with the Office’s policy and budget priorities and virtually autonomous operating authority) and shield (to deflect accountability).

Since the Special Education Office does most of the secret negotiations, neither the Board and CEO nor the public can tell the true extent to which the Office was pressured to accept various mandates.

The public interest in transparent authority and accountability would be served if the buck were passed back where it belongs: to the New Board, CEO and the City-State partnership.

**The questionable legal posture of Court supervision**

Finally, there is a legal perspective on the *Vaughn G* case that should help to persuade the Court to approve disengagement sooner rather than later. If BCPSS had not consented (unwisely) to many Court decrees, the entire scheme of Court supervision
– the extent to which the Court dictates policies and procedures that exceed the original *Vaughn G* complaint and the mandates of federal and state law – might be ripe for reversal on appeal to the very conservative Fourth Circuit Court of Appeals.149

Still, the Court should recognize the dramatic “change of circumstances” over the years, including the substantial compliance that has already occurred and the urgent need to shift the focus to instruction.150 The case, as the judge himself implied in 1998, should return to the basic judicial issue of whether BCPSS is complying reasonably with federal and state laws.151

In this context, the Board must not only act smarter; it must be more willing than in the past to act tougher. It must refuse to be intimidated into consent agreements that go beyond legal mandates and reasonableness, and should opt instead to go to trial and to appeal, if necessary.

**D. Recommendations**

BCPSS must take a smarter and stronger stand in the *Vaughn G* case and try to accelerate the pace of disengagement from Court supervision. It should do more to document and highlight the excessive, wasteful focus on procedural compliance. And it should offer the parties and Court a new vision and plan of action focused on instruction. If this strategy fails, it must refuse to be intimidated into entering into unreasonable and counterproductive consent decrees, and prepare to go to trial and to appeal to the Fourth Circuit Court of Appeals as a last resort.

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149 Several lawyers who were interviewed in 1998 said that BCPSS would have had a good chance of winning appeals of earlier Court orders, particularly given the conservative bent of the Fourth Circuit Court of Appeals.

150 The Court has been slow to recognize the “change in circumstances” that merits relief under legal precedents.

151 Debbie M. Price, et al.
Chapter V: Secrecy And Lack Of Public Information And Decision-Making

“...The Special Education Office controls information and doesn’t want to let anybody in on it...”

— BCPSS administrator

A. The Absence of Public Information and Decision-making

It is inconceivable that Special Education would have drifted so far from its original Vaughn G moorings and gotten so lost in the compliance maze if the public had known what was going on. But information has been confined mainly to inaccessible legal documents. The Special Education Office has tightly minimized public disclosure, and policy decisions have been made in secret.

For example, when the Board approved the Special Education Implementation Plan for this year, no public document was available, and no public notice or discussion preceded approval. The Board did not ask a single question in public.

BCPSS generally defends its closed-door policy by claiming that most Special Education decisions are made through confidential negotiations in the Vaughn G case. But this blanket justification for secrecy is unjustified. There is no legal reason why the Board, CEO and the Special Education Office cannot or should not publicly discuss and debate major policy issues such as the effectiveness and cost of the compliance maze, instructional reform, and policy and budget priorities. Within policy boundaries set publicly by the Board, lawyers for BCPSS can then go behind closed doors to negotiate final details.

As discussed in the preceding chapter, BCPSS alleges that consent decrees, although onerous, are not nearly as bad as what the Court would order in the absence of negotiated consent. But who’s to say whether that’s true, when the entire flow of information and options is shrouded in secrecy?

If there is one point of nearly unanimous agreement among those interviewed for this report, it is the Special Education Office’s heavy-handed control style, including not very subtle threats to retaliate against any staff who question its actions. Some observers wonder whether the Board and CEO are presented with all the facts they need to know, or just what the Special Education Office wants them to know.152

The straightforward course for the Board is to treat Special Education like any other major policy area, with public disclosure of information and decision-making.

152 Early during the research that went into this report, the Special Education Office insisted that all questions had to be asked through the Maryland Public Information Act, which requires, among other things, that all questions be submitted in writing. Information supplied in response to MPIA requests was repeatedly late, often incomplete and in several instances misleading. Moreover, Special Education staff were generally instructed not to meet or to cooperate with the author.
B. Recommendations

1. The Board and CEO should publicly discuss and debate Special Education policy and ensure full public disclosure of information.

2. The Board and CEO should include Special Education in the Master Plan process, rather than just incorporating by reference the *Vaughn G* documents. The largely impenetrable legalisms should be translated into clear policy and budget choices, involving instruction as well as compliance.

3. The Board Committee on Special Education should meet regularly as a forum for public input, publicize its meetings and invite public participation.

   Placing the Special Education Office under the Chief Academic Officer, as recommended in a prior chapter, should also increase the flow of information.

About the Author

Kalman R. Hettleman is an independent education analyst and advocate in Baltimore, Maryland with extensive experience at the intersection of public school policy, program administration and politics.

He is a former member of the Baltimore City school board, executive assistant and education aide to two mayors of Baltimore City, and executive director of RAISE, Inc., a demonstration project designed to reduce drop-out rates among inner city Baltimore students.

He has served as an education consultant to the Baltimore City school system and numerous community organizations and foundations. His recent work has included studies for the city schools on student promotion policy and “reading by nine.” Other current areas of interest include special education, school finance and research and development of instructional best practices. In 1986, he helped to initiate the “Success for All” school reform program.

He has also served in other capacities in the field of social welfare. He was Maryland Secretary of Human Services and Director of the Baltimore City Department of Social Services and taught social policy at several campuses of the University of Maryland. As a public interest lawyer, he has worked in national and local legal services programs.

His publications include many articles on education in the *Baltimore Sun*, *Education Week* and *The Nation*. His article, “The Time Has Come: A Federal Guarantee of Adequate Educational Opportunity,” was included in the publication *Passing the Test* (Center for National Policy, Washington, D.C., 2000).

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