

The Road to Nowhere: The Illusion and Broken Promises of Special Education in the Baltimore City and Other Public School Systems

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Executive Summary

“The students need so much more than we have to give. The unspoken policy has been, do with what you’ve got even when you know it’s not really enough to help the student.”

A Baltimore City Public School System special educator

“Teachers are intimidated and afraid to speak out in their buildings; afraid to honestly describe what is lacking and what students need.”

A Baltimore Teachers Union official at a public meeting



At long last, the illusion and broken promises of special education have been publicly exposed. Under the No Child Left Behind Act of 2001 (NCLB), school systems across the country have been forced to disclose the abysmally low academic test scores of students with disabilities. *Education Week* conducted a survey reported in January 2004 that found a chasm between the performance of general and special education students in every state, with differences typically ranging from 30 to 40 percent.

The Baltimore City Public School System (BCPSS) fits this national pattern. In 2003-2004, the percentages of BCPSS special education students who scored “proficient” or above on Maryland state tests in reading were 29 percent in grade 3, 23 percent in grade 5 and 5 percent in grade 8. In mathematics, the scores were even lower. While there have been slight gains in recent years, these scores are the lowest in Maryland. Worse, the vast gap between general and special education students has widened and now averages more than 35 percentage points in reading and more than 29 percentage points in math. The longer students receive special education services, the steeper their academic decline.

This dismal record betrays the legal and moral promises of the federal Individual with Disabilities Education Act (IDEA). IDEA and similar state laws guarantee special education students a “free and appropriate education,” meaning instruction and other services that are reasonably calculated to enable them, if they are cognitively able, to meet high academic standards.

The record is especially indefensible for students classified as having a “specific learning disability” or “speech and language impairment.” These students comprise more than half of all children receiving special education services. Virtually all them have the cognitive ability to meet demanding academic standards or to achieve at higher levels than they do. Yet they lag far behind.

Public exposure of rock bottom test scores, however, is only a first step towards reform. For significant change to follow, there must be a much greater understanding

of the unlawful and inept practices that cause and conceal the system’s dysfunction. These deeply embedded practices have been hidden from parents and even policy-makers.

This report examines how and why this happens in BCPSS. I believe it digs deeper than other policy analyses or literature into the practices that must be uprooted if reform is to occur.

The blame doesn’t belong with front-line special educators. They and their students alike are set up for failure by a system that does not give teachers and other service providers the training and resources to get the job done. Rather, BCPSS administrators tie the hands of the federally mandated teams at each school, known as Individual Education Program (IEP) teams, that determine the instruction and other services that students receive. Parents are part of the teams, but team decisions are controlled by school staff, typically the school principal, teachers and “related services” specialists such as a psychologist, speech and language pathologist or social worker. Yet the professional judgment and effectiveness of these educators is severely limited by the following practices.

- IEP teams are not trained to recognize or apply research on the most effective instructional programs for students with learning difficulties. As a result, special educators vastly underestimate the academic potential of such students and violate IDEA and NCLB by failing to design and deliver appropriate instruction. Low expectations, particularly for low-income and low-IQ students, are toxic self-fulfilling prophecies.
- IEP teams fail to actually individualize IEPs as mandated by IDEA. Special education is defined under IDEA as “specially designed instruction” to meet the child’s unique needs. Yet incredibly, IEPs are silent on the most basic elements of instruction: learning programs and methods, teacher-student ratio, and teacher qualifications and training.
- IEP teams violate IDEA by failing to set sufficiently high and measurable goals for the benefit that students are expected to achieve. BCPSS takes the position that students are entitled only to services that enable them to receive any benefit, no matter how minimal or insignificant. Yet NCLB, IDEA and numerous court decisions, including two landmark Supreme Court cases, require a much higher and more exact standard: services must be reasonably calculated to enable cognitively able students to meet high academic standards for grade-to-grade promotion and graduation.
- IEP teams violate IDEA by tailoring IEPs to fit budget limits, not the individual needs of students. Even when IEP teams recognize the need for intensive instruc-

tion or other services, such as counseling for behavior and emotional problems, the services are often radically reduced because of their cost. Many special educators privately admit this unlawful practice.

- IEP teams violate IDEA and BCPSS’s own guidelines when, because they lack of time and resources, student performance is not effectively monitored and timely interventions are not provided if students fail to progress. Students fall farther and farther behind before a significant increase in services is considered. By then, it is almost always too late for effective remediation; academic deficits have deepened, and frustrated students have developed emotional and behavior barriers to learning. BCPSS typically blames the victims – the child and the family – rather than its own poor instruction for the child’s school meltdown.
- The system conceals the practices described above and the lack of student achievement. It gives the false impression that it is providing research-based instruction. It exaggerates student progress on IEP report cards and “socially promotes” the overwhelming majority of special education students. It hides the fact that some test scores, particularly in reading, are invalid and inflated. It intimidates special educators from expressing their true professional judgment about the inadequacy of IEPs and the failure of students to achieve progress. And it buries the academic underachievement of students under a mountain of excessive bureaucratic paperwork.

The harm to children with disabilities caused by these practices can hardly be overstated. At the same time, the context of the report must be clearly understood. First, as highlighted earlier, BCPSS’s deplorable academic results and unlawful or inappropriate practices are similar to nationwide patterns. The report, therefore, is intended not only to spur BCPSS reform but also to inform the long overdue NCLB-driven national debate over the quality of special education instruction.

Second, although the report is critical of instruction for students particularly with learning disorders, there have been major special education accomplishments in BCPSS and elsewhere over the past 25 years. The greatest triumph has been to end the exclusion or warehousing of children with more severe disabilities. And within BCPSS over the past decade, a federal lawsuit has spurred many necessary procedural reforms.

Third, it is clear that the fate of special education students would be even worse if not for the inspiring professionalism of teachers and other service providers. BCPSS special educators labor heroically, and some students succeed.

Still, most students don’t succeed. Teachers are overwhelmed by a system that neglects growing research on the academic potential of such students and the best instructional ways to fulfill that potential.

This report is based primarily on my recent experience as a pro bono attorney for students in BCPSS IEP proceedings and a review of research, other professional literature and federal, state and BCPSS documents. These sources of information and the findings that stem from them are reinforced by what I have learned in other recent policy analysis studies of BCPSS, on topics including diagnosis and treatment of early reading difficulties and the special education system in general.

I have represented more than 25 individual students in approximately 60 IEP team meetings. Most of the students' stories are agonizing. Despite several years of special education, elementary school children are reading about three grades below their age level and cognitive ability and falling farther behind. Stigma and frustration are causing these children to develop emotional and behavior problems that further impede their learning. Parents who try to fight the system are rebuffed and heartbroken.

The first chapter of the report further details the tragic academic performance of special education students in BCPSS and nationally. The second chapter documents the ineffective and unlawful practices that underlie the system's dysfunction and were highlighted earlier in this Executive Summary.

The third chapter of the report explores other root causes from a national perspective. Why do dedicated teachers deliver ineffective instruction? The bottom line reason is weak leadership and support from the education and political establishments. To be sure, special education instruction is underfunded. For example, more highly qualified, well-trained teachers and intensive small-group instruction will cost more money. But it is hard to rally political support for more funding when educators conceal the system's major defects. In particular, educators have been slow to embrace the research that discredits low expectations for low-income, low-IQ children. Such low expectations offer elected officials a convenient excuse for fiscally shortchanging poor children who are politically disabled as well as learning disabled.

The final chapter outlines a reform agenda for BCPSS. First and foremost, BCPSS must change its culture of denial of the painful truth about the lack of academic achievement of students with learning difficulties. It must stop exaggerating the progress made by these students. It must openly examine the special education system and raise expectations based on research showing that these students can achieve at much higher levels if research-based instruction is delivered. It must shift the focus of special education from procedural compliance to quality of instruction, undo the inappropriate or unlawful practices described in the report, and allow special educators to exercise their professional judgment in prescribing and delivering services without fear of retribution.

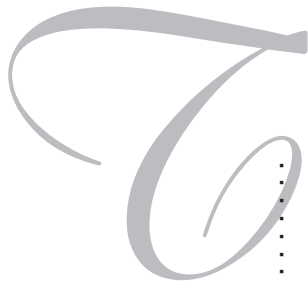
Is it fair to present such a harsh indictment of BCPSS when the failure of special education instruction for students with learning difficulties is nationwide and when trans-

forming the system will be long, hard and expensive? BCPSS officials say that it is unfair. Yet, in recent years, BCPSS – while lifting itself up and surpassing almost all urban school systems in instructional improvement – has virtually refused to examine or even acknowledge the seriousness of the underlying problems described in this report. There are signs that new leadership at BCPSS may intend to change this resistance to public review. But full exposure of problems long misunderstood and hidden will be necessary if meaningful reform is to take hold.

Just as importantly, the spotlight on BCPSS will illuminate similar issues in school districts across Maryland and the country. The good news is that under NCLB, the accountability movement has finally reached the forgotten shores of special education. The bad news is that accountability laws alone will not cause significant progress. There must be a second wave of reform that brings to light the unlawful and ineffective practices that prevent students from receiving adequate research-based instruction, and that pinpoints how the IEP process must be substantially revised. This report is an effort to help generate that second wave.

We owe our children and our teachers a much better system. The legal and moral right to special education programs can be fulfilled for many more students. But these transformations will happen only if all of us – in education, the political arena and the general public – sound the alarm and advocate for change.

Preface



This report is dedicated to the parents, mainly single moms, who refuse to accept the failure of the Baltimore City Public School System (BCPSS) to educate their children who have learning disorders. Over the past year, I have represented as an advocate/attorney about 25 of these parents in special education cases, and they fight the system with a determination that makes Erin Brockovich look like a pushover.

My involvement as their representative was an outgrowth of my earlier work that resulted in two reports published by The Abell Foundation: “The Invisible Dyslexics: How Public Schools in Baltimore and Elsewhere Discriminate Against Poor Children in the Diagnosis and Treatment of Early Reading Difficulties” (2003) and “Still Getting It Wrong: The Continuing Failure of Special Education in the Baltimore City Public Schools” (2002). In the wake of those reports, I wanted to continue to study closely how the system operates and why it’s as ineffective as it is.

Almost all of my cases fit a pattern that can be found in urban school systems across the country: low-income children classified as “learning disabled” under federal and state law, 10 to 12 years old, reading at a first- or second-grade level, falling farther behind each year, beginning to show serious emotional and behavioral problems stemming from academic frustration; special educators who tended to attribute lack of progress to the child’s deficiencies rather than poor instruction; and parents who refused to give up. Only a George Orwell could do justice to the abyss between the lofty rhetoric of special education and the tragic reality.

These cases reinforced my awareness that teachers and other special educators are also victims of the system. BCPSS has not trained its teachers in the latest research showing that low-income, low-IQ students with reading difficulties can achieve at high levels if they receive research-based instruction. Moreover, the relatively few special educators who are familiar with the research and with best instructional practices are afraid to defy the system because they fear reprisals.

In detailing and analyzing the system’s dysfunction, my hands-on participation in Individual Education Program (IEP) proceedings has been supplemented by a review of research, other publications and federal, state and BCPSS documents. In addition, my understanding has been deepened and my findings confirmed by countless interactions and interviews with special educators over the past four years.

I continue to be aided and inspired by the overwhelming majority of BCPSS special educators who are extraordinarily dedicated and who do their best for children despite the obstacles. Staff were often told by special education administrators not to talk to me; many of them spoke to me anyway, sharing their experiences. About 15 of them reviewed drafts of this report. Besides BCPSS staff, I consulted with many local and national experts, a number of whom also reviewed drafts of this report.

Chapter I: Lack of Academic Achievement



Under federal and state laws, students who are eligible for special education services are generally entitled to “specially-designed instruction” and related services such as speech and language, counseling and assistive technology reasonably calculated to enable them to meet high state standards and to progress from grade to grade.¹ This statutory mandate should enable children with relatively mild learning difficulties, who are the focus of this report, to achieve at high academic levels.² Yet the academic results show this doesn’t come close to happening, locally or nationally.

A. BCPSS

1. Low test scores and high dropout rates

In the Maryland School Assessments for this year (2003-2004) in reading, the percentages of BCPSS special education students who achieved “proficient” or above were: grade 3, 28.6 percent; grade 5, 22.6 percent; grade 8, 5.4 percent; and grade 10, 4.9 percent. For mathematics, the scores were even lower: the percentages of special education students who achieved “proficient” or above were: grade 3, 24.6 percent; grade 5, 16.9 percent; grade 8, 1.7 percent; and high school geometry, 0.5 percent.

Although the third grade and fifth grade scores improved over the prior year, all scores remain very low or rock-bottom. Even more alarming, the vast gap between general and special education students has widened in recent years and now averages more than 35 percentage points in reading and more than 29 percentage points in math. Furthermore, BCPSS special education students trail far behind their counterparts in the rest of Maryland. The longer students receive special education services, the steeper their academic decline.³

Beyond low test scores, other indicators of negligible academic achievement are the high dropout and low graduation rates. In 2002-2003, the most recent year for which data were available when this report was completed, the dropout rate for special education students in grades 9-12 was 14.16 percent and their graduation rate was 37.54 percent. These figures are significantly worse than the prior year’s. Statewide the dropout rate was 4.11 percent and the graduation rate was 78.35 percent. As of the end of the 2002-2003 school year, the dropout rate for BCPSS special education students was rising while the dropout rate for BCPSS general education students was declining.⁴

2. Invalid test scores

The low test scores of many students with learning difficulties, bad as they are, are frequently even lower than reported. This happens as part of the standard practice whereby almost all of these students receive special arrangements called “accommodations” when taking tests. As an accommodation, for example, a student may be given more time to take the test, special classroom seating, repetition of directions or special equipment.⁵ Accommodations generally serve a proper purpose in enabling students to demonstrate their true learning level. At the same time, accommodations are not supposed to change the content of what’s being tested, nor to invalidate a comparison of the scores of students who have accommodations and those who don’t. But some accommodations clearly affect the validity of the test scores: most commonly, the teacher reads aloud to the student a passage that is supposed to test the student’s ability to read, or a student is allowed to use a calculator in a test of math computation. Obviously, these invalid scores should be reported and interpreted differently from valid scores.⁶ However, BCPSS has ignored directives to do so.

To illustrate, I represented two fifth-grade students classified as specific learning disabled (LD) at different schools who were reading at a first-grade level. In line with BCPSS practice, their testing accommodations allow “verbatim reading of entire test” on standardized reading tests: that is, the teacher reads the test passage aloud to the student. At the same time, state and BCPSS directives required that such scores “may NOT be compared to national norms [capitals in the original].”⁷ In other words, their scores are invalid and should not be reported because a reading test that is read aloud to a student is a test not of reading but of oral comprehension, a different skill set.⁸

Nonetheless, BCPSS reported the scores to the students and to the state as reading scores. One of the students was reported as scoring at an 8th grade level, the other at a 4th grade level, even though neither could read anywhere near these levels.

The exact number of invalid misreported scores should be determined by an audit. The number will probably be significant.⁹ Invalid scores are sometimes cited in IEP meetings to show a student’s progress in meeting IEP goals, with the result that many parents and students (as well as the general public) are deceived by reading and/or math scores that are much higher than the student’s actual command of the skills tested.

B. Nationally

BCPSS’s deplorable record is similar to the national pattern. *Education Week’s* Quality Counts edition this year focused on special education across the nation. Its survey found a chasm between the performance of general and special education stu-

dents in every state, with differences typically ranging from 30 to 40 percent.¹⁰ As one observer recently put it: “Thanks to the NCLB-generated data that’s now flowing in, we know more about the disability gap....On average, disabled students lag farther behind their non-disabled classmates than African American and Hispanic students lag behind their white classmates.”¹¹

On a standardized test given nationally in 2002, the National Assessment of Educational Progress, 29 percent of fourth-grade students without disabilities scored at or above the “proficient” level, compared to 8 percent of students with disabilities.¹²

In the 2003-2004 Maryland School Assessments in reading, differences statewide in passing scores were: in third grade, 74.7 percent for general education students versus 42.8 percent for special education students; in fifth grade, 72.9 percent versus 37.7 percent; in eighth grade, 69.8 percent versus 20.7 percent; and 10th grade 70.6 percent versus 27.1 percent.¹³

Moreover, because some students with disabilities are exempted from tests or receive accommodations that invalidate or raise concerns about their scores, even these meager scores give an unrealistically rosy picture of the actual level of achievement.¹⁴

In fact, practitioners and researchers overwhelmingly believe that students have benefited little (if at all) academically from special education services.¹⁵ This applies emphatically to students with reading difficulties. 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 gap” between themselves and other students.¹⁶ In a new book, neuroscientist and reading researcher Sally Shaywitz notes that special education programs at best “tend to stabilize the degree of reading failure rather than close the gap between a dyslexic student and his classmates.”¹⁷

In theory, special education is to be a temporary program for many students. But in practice it has become a one-way street; few students with learning difficulties improve enough academically to lose their eligibility for IEP services.¹⁸ Predictably, low academic achievement leads to low graduation and high dropout rates and other negative outcomes.¹⁹

This academic failure is not predestined. As discussed below, extensive research shows that most students with learning difficulties can, with proper instruction, achieve at much higher levels.

Chapter II: Inappropriate and Unlawful Practices That Cause and Hide Academic Failure



This chapter describes inappropriate or unlawful practices in the development and implementation of IEPs in BCPSS that are at the heart of the illusion and broken promises of special education instruction. These practices occur in varying degrees in school districts nationwide, yet they have not been exposed and analyzed fully.

This does not mean that the inadequacies of IEPs and the failure of special education instruction have gone unnoticed. As discussed below, the 1997 reauthorization of the federal Individuals with Disabilities Education Act (IDEA'97) and the No Child Left Behind Act of 2001 (NCLB) are intended to hold school districts accountable for higher expectations and better results. IDEA'97 and NCLB might be called a first wave of reform.²⁰ The accountability movement has finally reached the forgotten shores of special education. Yet accountability provisions alone will not lead to significant academic progress. There must be a second wave of reform to expose practices that prevent students from receiving adequate research-based instruction and pinpoint how the IEP process must be transformed. The four parts of this chapter attempt to help generate that second wave by detailing and analyzing current practices.

A. Lack of specially designed instruction based on research

Lacking adequate training, IEP team members don't know of research on the most effective instructional programs for students with learning difficulties. The result is that IEP teams vastly underestimate the academic potential of students and don't design appropriate instruction. Incredibly, IEPs are silent on indispensable design elements: instructional content and methods, teacher-student ratio for the instruction, and teacher qualifications and training.

This analysis is divided into several sections. The first details how IEP teams fail to prescribe essential elements of adequate, research-based instruction. The second refutes BCPSS's claim that it is not supposed to prescribe research-based methods of instruction. The third section describes how BCPSS's main instructional strategies are too weak to enable students to make sufficient academic progress.

1. The absence of specially designed instruction based on research

Federal regulation defines special education as "specially designed instruction at no cost to the parents to meet the unique needs of a child with a disability."²¹As discussed later in this chapter, that instruction should be reasonably calculated to enable cognitively able students to meet high academic standards for grade-to-grade promotion and graduation. Furthermore, IDEA'97 and NCLB make clear that the instruction must incorporate research-based instructional practices. In other words, IEP teams

must know which instructional programs and practices are backed by evidence that they work, then design individualized instructional services based on them.

Yet IEP teams are not trained to understand and employ research-based instructional practices. They are not directed or expected to specify the design of essential instructional elements. The IEP process includes reams of procedural forms, but there is no form on which to spell out the design of the instruction that the student is to receive. Manuals and training for IEP team members touch upon the design of instruction in vague and superficial ways.²² Even when a student fails to make progress, IEP teams are not trained to consider the quality of instruction as one of the possible “problem sources.”²³ In fact, IEP teams almost never discuss or determine the instructional elements that determine the quality of instruction.

In addition to the lack of knowledge of research-based instructional practices, staffing shortages and extensive procedural paperwork limit the IEP development process. Because of staffing shortages, IEP teams often do not have enough time to develop truly individualized plans; the lead special educator at such meetings is often preoccupied with clerical-procedural tasks.²⁴

In one common scenario, a child classified as LD is in the fourth grade or fifth grade but reads (decodes and comprehends) at a first- or second-grade level. The IEP team first determines “measurable goals and objectives,” that is, how much progress the child is supposed to achieve over the next year. Then the IEP team determines whether the teaching is to take place inside or outside the general education classroom (least restrictive environment) and sets the number of hours of special education instruction and other services.²⁵ However, IEP teams almost never discuss or prescribe, for example, the instructional content and methods, pupil-teacher ratio and teacher training.²⁶

Failure to specify the design of essential instructional elements typically results in IEP goals and objectives that are too low and often meaningless. IEP goals and well-designed instructional plans should be interdependent. The amount of progress a student can be expected to achieve depends on the quality of his or her instruction. A student who receives research-based instruction in a small group from a highly trained teacher will progress much farther than the typical BCPSS student who doesn't receive such quality instruction.

Design of essential instructional elements: Children with learning disabilities have many common characteristics but also individual differences. So each IEP must be designed to meet, as IDEA requires, the “unique needs” of the child. At the same time, there are certain essential elements that must be addressed in any IEP instructional design. The research behind each of the essential elements is not definitive, but is clear enough to provide a reliable road map to instructional practices most rea-

sonably calculated to enable students to meet academic standards. As Shaywitz puts it: “Powerful and proven reading programs incorporating [certain] features are now bringing cutting-edge science directly into the classroom.”²⁷ An outline of the essential elements follows.

- **Content and methods.** What instructional programs appear best suited to improve the student’s skills in decoding and/or comprehension? Does the student need more time and more repetition of core reading materials (in BCPSS for example, Open Court or Direct Instruction)? And/or does the student appear to need a different program or method of instruction known to help students with reading difficulties (for example, Orton-Gillingham principles and programs such as the Wilson Reading System)?²⁸
- **Frequency and intensity.** How much extra time (frequency) does the student need? With what pupil-teacher ratio (intensity)? According to Shaywitz, these factors are “often overlooked [although they] determine the ultimate success or failure of even the best interventions.”²⁹ For example, the research on effective instructional practices for students with reading difficulties strongly supports one-to-one and small group instruction.³⁰ However, BCPSS does not follow the research; instead, the amount of time and the pupil-teacher ratio are driven mainly by the availability of staff which itself is driven by the budget.³¹
- **Teacher quality.** What is the capacity of the special education teacher (and the general education teacher where the student is placed in the general education setting) to deliver the special instruction? Are the teachers sufficiently trained and experienced in alternative reading programs and methods? Shaywitz writes that the teacher should “be a knowledgeable reading teacher or a teacher who has had recent training and experience in scientifically based methods for teaching reading.”³² Federal officials have advised that if “an IEP team determines that it is necessary for the individual providing special education or related services to a child with a disability to have specific training, experience and/or knowledge in order for the child to receive [an appropriate education], then it would be appropriate for the team to include those specifications in the child’s IEP.”³³

IEPs for BCPSS students are virtually silent on these basic design questions despite the training mantra that “special education is a service, not a place.”³⁴ In fact IEP teams do just the opposite. They focus foremost on the legal mandate that students receive their special education services in the “least restrictive environment (LRE).” LRE usually means an “inclusion” placement in a general education classroom with predominantly non-disabled students for most of the school day, rather than separation in a pull-out group, a “self-contained” classroom or a school with only disabled students.

But the LRE placement determines only *where* the services will be delivered, not *what* the essential elements of the instruction will be. As examined in more detail below, this fundamental flaw occurs in the design of IEPs nationwide. Two prominent inclusion experts have summarized the research: regardless of classroom placement, “the necessity remains to develop and implement effective instructional methods to increase the opportunities that these students have for learning important academic material, as well as for increasing the rate at which these skills are developed.”³⁵ Researchers at the University of Kansas Center for Research on Learning recently came to a similar conclusion, citing “confusion between place (that is, the general education classroom) and instructional conditions (that is, the conditions necessary to enable students to be successful...).” They found that “placement in the general education classroom is mistakenly equated with access to and success in the general education curriculum.”³⁶

In their book, *Writing Measurable IEP Goals and Objectives*, special education experts Barbara Bateman and Cynthia Herr aptly summarize the issue:

What is a parent to understand about the actual services being delivered to the child when all the IEP says is 2 hours of special education daily? Does that mean 1:1, small group, resource room with 20 students present, a combination or none of the above? Is it with an aide, a regular education teacher, a special education teacher, an “emergency” certified teacher or other? Is it discovery-based learning, direct instruction, cooperative learning or other? The range of teaching activities subsumed under “special education” is nearly unlimited. It is safe to say that many parents would be shocked to see the service their child is actually receiving in contrast to their perhaps naive belief about the service being provided.³⁷

If parents are not shocked, it is because they are kept in the dark or misled. As discussed next, BCPSS erroneously refuses to prescribe necessary methods of instruction. At the same time, BCPSS exaggerates the effectiveness of inclusion and accommodations, its two main instructional strategies.

2. Refusal to prescribe methods of instruction

At IEP meetings, BCPSS defends the absence of specific instructional plans incorporating research-based practices on the grounds that IEPs are not supposed to prescribe methods of instruction. As special educators put it, IEPs are supposed to state what goals and objectives are to be achieved, but not how to achieve them. As a result, the how – the specific instructional design – is left up to the student’s teachers, who are not trained in research-based instructional programs and practices.

· This refusal to prescribe methods of instruction where appropriate in IEPs violates federal and state regulations and BCPSS’s own directive. IDEA regulations state that “specially designed instruction means adapting, as appropriate ... the content, *methodology*, or delivery of instruction [emphasis supplied].”³⁸ The U. S. Department of Education Office of Special Education Programs, commenting on the 1997 amendments to IDEA, stated: “In light of the legislative history and case law, it is clear that in developing an individualized education plan there are circumstances in which the particular teaching methodology that will be used is an integral part of what is ‘individualized’ about a student’s education and, in those circumstances, will need to be discussed at the IEP meeting and incorporated into the student’s IEP. For example, for a child with a learning disability who has not learned to read using traditional instructional methods, an appropriate education may require some other instructional strategy.”³⁹

· Maryland regulations echo federal law: “‘Specially designed instruction’ means the adaptation of content, methodology, or delivery of instruction to address the unique needs of a student with a disability to ensure access to the general curriculum, so that the student can meet the educational standards that apply to each student within the jurisdiction of the public agency [emphasis supplied].”⁴⁰ MSDE has informed local school districts that federal law requires the IEP of each student to contain a “statement of the *specific* special education and related services to be provided [emphasis supplied].”⁴¹

· Furthermore, the BCPSS manual “Developing Quality IEPs” states that the IEP “describes the circumstances under which the student is to perform the targeted [goals and objectives] (e.g., using equipment, materials, methods, or modifications) that will enable the student to be involved and progress in the general curriculum [emphasis supplied].”⁴²

· Mandates aside, it makes no common sense for IEPs to prescribe only the ends (goals and objectives) and not the means (essential elements of instructional services) to achieve them. Teacher flexibility is indispensable. However, without the proper instructional tools and training, flexibility is undermined, and teachers wind up being scapegoated for student failure. As Shaywitz points out: “All teachers want their students to learn to read, but many simply do not have a source of good, reliable information about effective research-based reading programs.”⁴³ Therefore, particular designs and methods of instruction should be specified when they are known to be particularly appropriate in meeting a child’s reading difficulties. An example is given by Bateman and Herr: “Small group (2-4) instruction daily for 45 minutes in Corrective Reading (SRA) ...”⁴⁴ The Anne Arundel County public school system in Maryland publishes a menu of strategies and methodologies for students who exhibit significant reading difficulties, and often specifies methodologies in IEPs.⁴⁵ The Lovaas autism treatment program is frequently specified in IEPs in Maryland and elsewhere.⁴⁶ Private specialists in reading and speech and language and lawyers who participate in

IEP cases throughout Maryland say that BCPSS lags behind other Maryland school districts in specifying instructionally validated programs and practices.⁴⁷

Bateman also observes that not including methodology in the IEP denies parents the right to participate in planning a key part of the instructional services for their child.⁴⁸

Instead of prescribing methods of instruction, BCPSS relies almost exclusively on broad strategies of inclusion and accommodations. But these, as researchers at the University of Kansas Center for Research on Learning recently concluded, "are grossly inadequate for many students with LD Typical attempts to help them lack the intensive focus on teaching the skills and strategies to transform these students into learners."⁴⁹

3. Inclusion and accommodations: necessary but not nearly sufficient

In lieu of instructional services that reflect proven and promising programs and practices, IEP team members are trained to rely almost exclusively on two broad and complementary strategies: inclusion and accommodations. Both strategies are legally required, have merit in principle, and can help students if well designed and implemented. But when all is said and done, much more is said than done. As discussed next, experience in Baltimore and elsewhere shows that they have not been nearly sufficient to boost academic achievement.

Inclusion: The co-authors of *The American Dream and the Public School* review the history of inclusion of students with disabilities in regular classrooms and schools.⁵⁰ Inclusion, also known as mainstreaming, is meant to ensure that children with disabilities are not segregated and denied the social, emotional and academic benefits of education with their peers. This lofty goal is embodied in the federal mandate that special education students be taught in the "least restrictive environment" (LRE). That is, "to the maximum extent appropriate," children with disabilities are to be educated with children who are not disabled and are to be separated "only when the nature or severity of the disability of a child is such that education in regular classes with the use of ... supplementary aids and services cannot be achieved satisfactorily."⁵¹ For most students with learning difficulties, LRE/inclusion means they are taught in a general education classroom for most of the school day, rather than receiving most of their instruction in a "pull-out" setting or a "self-contained" classroom with only other special education students.⁵²

Inclusion is widely supported in principle, but it has been oversold and under-delivered. Few national or local data show its effectiveness.⁵³ To the contrary, after many years of different starts and stops, BCPSS and other school districts across the country are short on results and successful inclusion models. The expert panel to study inclusion convened by the Special Master in the *Vaughn G.* case conducted a series of

studies that are harshly critical of inclusion as implemented in BCPSS schools.⁵⁴ In the second of its studies, the panel found many placements, while supposedly inclusive, “are, in fact, more like segregated or self-contained classes.”⁵⁵ In what might be called the devastating bottom line, the panel stated: “Students with reading difficulties in inclusive classes are particularly at-risk for poor outcomes.”⁵⁶

Some reasons for the lack of success of inclusion are well recognized. Inclusion can’t succeed without substantial resources devoted to teacher training, low teacher-student ratios and other supports, yet the supports are not there, as repeatedly recognized by outside evaluators of BCPSS.⁵⁷

The problem is compounded because BCPSS has addressed inclusion primarily as a matter of numerical quotas rather than instructional quality. Under *Vaughn G.*, BCPSS schools are under great pressure to meet arbitrary numerical requirements set for the number of students taught mainly in the general education classroom.⁵⁸

Nationally and locally, inclusion is usually viewed as an end in itself, rather than a means to an instructional end, while essential elements of instruction have been overlooked. As cited above, researchers at the University of Kansas Center for Research on Learning found that “placement in the general education classroom is mistakenly equated with access to and success in the general education curriculum. The confusion between place (that is, the general education classroom) and instructional conditions (that is, the conditions necessary to enable students to be successful ...) has led to a dramatic narrowing of how services are conceptualized on behalf of students with LD.”⁵⁹

Shaywitz recently concluded: “Studies examining ‘inclusive classrooms,’ where children receive special reading help with their own regular classes show [that these children] demonstrate little change in their reading ability relative to their classmates. On the other hand, studies show that children receiving the new scientifically based programs made large and lasting reading gains, far surpassing their previous rate of growth.”⁶⁰

The result is that while the BCPSS fills its inclusion quotas, the cup of academic achievement is left empty.

Accommodations: Like LRE/inclusion, instructional accommodations are an integral part of the development and implementation of IEP instructional services. The term accommodation is used broadly and sometimes overlaps, in confusing ways, with “modifications” and “differentiated” instruction for “diverse learners.” Basically it refers to “changes in how a student accesses information and demonstrates learning,” and it applies to both instruction and testing.⁶¹ BCPSS gives instructional accommodations a high priority in teacher training, manuals and IEP forms. Examples are fre-

quently categorized, for example: instructional strategies such as repeated or rephrased directions and immediate feedback; classroom organization and management techniques such as scheduling time breaks and extensions and special seating; and study aids such as taping lessons, typing assignments and access to technology.⁶²

However, accommodations, even when they are well implemented, are themselves rarely powerful enough to prevent or remediate most reading difficulties. For the most part, accommodations amount to good teaching techniques that should be in the repertoire of all good teachers.⁶³ They don't add up to the kind of research-based instructional programs and practices discussed in this report.

Second, accommodations are rarely implemented faithfully. General education and special education teachers are often too untrained, inexperienced and overloaded to implement them effectively. In particular, the role of general education teachers gets increasingly difficult as the number of inclusion students rises. The *Vaughn G.* panel that gave BCPSS low marks on inclusion also flunked the system on accommodations. The panel found that IEP accommodations are prescribed in broad, generic ways that constitute "mere technical compliance," are not tied to instruction, and are poorly delivered and monitored. The panel also noted that teachers have little training and that "a large percentage (25-35%) of common accommodations (e.g., adjusted methods/materials, adjusted workload/time, testing and behavioral/social) are not being provided as specified by students' IEPs."⁶⁴ The Special Master in *Vaughn G.* noted that "many administrators and school staff" view staffing allocations "as simply inadequate to support the delivery of special education instructional and related services in inclusive settings."⁶⁵

B. Too low a legal standard for appropriate services to students with learning difficulties

Under BCPSS policy, driven by IDEA, students are entitled to services that enable them "to be involved in and progress in the general curriculum."⁶⁶ But that policy prescription is notoriously vague. For students to receive the "free and appropriate education" guaranteed them under IDEA, exactly what is the legal standard for the level of services and progress that should be provided under IEPs?⁶⁷

BCPSS IEP teams say that the applicable standard is "some educational benefit," which derives from the landmark 1982 Supreme Court decision, *Board of Education v. Rowley*.⁶⁸ But BCPSS practice erroneously interprets "some educational benefit" to mean virtually any benefit, no matter how minimal or insignificant.

Court decisions including *Rowley* itself and the later Supreme Court case of *Florence County School District Four v. Shannon Carter* and Congressional action under the IDEA'97 and NCLB unmistakably point to a much higher and more objective legal

standard than BCPSS follows. The higher standard, as summarized by two experts in special education law and civil rights, is: special education instruction and other services must “*be reasonably calculated to enable the child to achieve passing marks, achieve passing scores on high-stakes exams, and advance from grade to grade, eventually meeting state and district graduation requirements* [emphasis in original].”⁶⁹ Implicit in this standard is the precondition that the child have the cognitive capability to progress to this high level.⁷⁰

This report is not intended to be a full legal brief on this subject. But the evolution and elevation of the legal standard is outlined below to show how far BCPSS has strayed from what the law requires.

The Supreme Court and Fourth Circuit Court of Appeals decisions

Rowley was the first Supreme Court decision to interpret the Education for All Handicapped Children Act of 1975 (now IDEA). The Court overruled the award of a full-time signlanguage interpreter to a deaf first grade student, emphasizing congressional intent to provide access to the most severely handicapped children who, at that time, were largely excluded from public schools. The federal statute, the Court held, did not require that schools “maximize the potential” of students; it guaranteed only access to a “basic floor of opportunity” and “some educational benefit.”

At the same time, the *Rowley* Court stated that instruction and other services must be related to the state’s educational standards and “if the child is being educated in the regular classrooms of the public education system [the instruction and other services] should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”⁷¹ The Court highlighted the fact that Amy Rowley performed “better than the average student in her class and is advancing easily from grade to grade.”⁷²

The Court was plainly laying out a crucial test in determining the meaning of “some educational benefit” – namely, whether the services were reasonably calculated to enable the student to pass from grade to grade.⁷³ This test was strongly reinforced by the Supreme Court in its 1993 *Carter* decision.⁷⁴

In *Carter*, the student, Shannon, was diagnosed as having learning disabilities (LD). In unanimously affirming the Fourth Circuit Court of Appeals ruling that the school system had denied Shannon an appropriate education and should reimburse her parents, who had enrolled her in a private school, the Supreme Court compared the “wholly inadequate” public school IEP to the significant progress she made at the private school. The Court approvingly quoted the U.S. District Court’s finding that the private school’s plan “allowed Shannon to receive passing marks and progress from grade to grade.”⁷⁵

The Fourth Circuit Court of Appeals *Carter* opinion cited *Rowley*'s reference to "the achievement of passing marks and advancement from grade to grade."⁷⁶ At the same time, the Fourth Circuit cited another Fourth Circuit decision, *Hall v. Vance*, as follows: 'clearly, Congress did not intend that a school system could discharge its duty...by providing a program that produces some minimal academic advancement, no matter how trivial.'⁷⁷

In the *Vance* case⁷⁸ the Fourth Circuit affirmed the district court, which had overturned an administrative ruling denying a nonpublic placement to an LD student. The Court found that the student had shown little overall improvement over several years and had been "socially promoted" several times. The Fourth Circuit held: "The district court did not err in discounting James' promotions in light of the school's policy of social promotion... Nor was the district court compelled by a showing of minimal improvement on some test results... *Rowley* recognized that a [free and appropriate education] must be tailored to the individual child's capabilities and that while one might demand only minimal results in the case of the most severely handicapped children, such results would be insufficient in the case of other children. Clearly, Congress did not intend that a school system could discharge its duty ... by providing a program that produces some minimal academic advancement, no matter how trivial...."⁷⁹

The U.S. District Court for Maryland in *Fritschle v. Andes*⁸⁰ cited the more-than trivial language from *Vance* and a Third Circuit Court of Appeals opinion that stated: "IDEA 'calls for more than a trivial educational benefit' and requires a satisfactory IEP to provide 'significant learning'.... and confer 'meaningful benefit.'⁸¹

The Supreme Court in *Rowley* also alluded to "meaningful" benefit. The Court noted that "Congress did not impose upon States any greater substantive education standard than would be necessary to make such access meaningful."⁸² And Justice White in his dissent disagreed with the majority's conclusion that the student "was receiving a meaningful and therefore appropriate education."⁸³

There are Fourth Circuit Court of Appeals decisions that uphold IEPs and appear to take a more narrow view of "some educational benefit." But these cases on closer analysis – as discussed in the footnote below -- are still consistent with the passing from grade to grade and meaningful benefit standards in the *Rowley*, *Carter*, *Vance* and *Andes* cases.⁸⁴

Thus, there is compelling legal precedent that defines "some educational benefit" as requiring that the student be enabled to meet grade-level academic standards or at least receive some significant or meaningful benefit.

The IDEA Amendments of 1997 and the No Child Left Behind Act

Congress left no doubt in IDEA'97 and NCLB in 2001 of its intent to lift substantially the level of academic benefit to which students receiving special education services are entitled.

A principal purpose of IDEA'97 was to overcome "low expectations" for student achievement and to correct "an insufficient focus on applying replicable research on proven methods of teaching."⁸⁵ Federal regulations specify that special education students must be enabled to "meet the educational standards . . . that apply to all children."⁸⁶ As one commentator put it, the IDEA'97 amendments "elevated the purpose of the IDEA from extending full educational access to promoting improved educational results and student performance."⁸⁷

NCLB is even more explicit in mandating that students with disabilities be held to the same high academic standards as their non-disabled peers and be given full opportunity to meet those standards. Students, almost without exception, must take the same state tests as their peers, their test scores must be separately reported, and they must meet the same "annual yearly progress" targets as all other students.⁸⁸ Furthermore, their instruction must be based on "scientifically based research," with reading receiving particular emphasis.⁸⁹

An executive order by President George W. Bush in 2001 summarizes the new, higher expectations: "It is imperative that special education operate as an integral part of a system that expects high achievement of all children, rather than as a means of avoiding accountability for children who are more challenging to educate or who have fallen behind."⁹⁰ In other words, the legal standard has been raised from access to full opportunity for success.⁹¹

Despite these federal mandates, as well as the compelling rulings in *Rowley*, *Carter* and other cases, BCPSS has not raised its legal standard for student services and progress. Special education administrators refuse to reexamine their outdated interpretation of the meaning of "some educational benefit."⁹² IEP teams continue to insist that any student progress, no matter how insignificant, is sufficient. As a result, IEP goals and services continue to be set without regard for a student's legal right to research-based instruction that is reasonably calculated to allow the student, if cognitively able, to meet grade-level standards.

C. Unlawful cost limits

Under IDEA, public school systems are mandated to pay the costs of the "free and appropriate" services to which students are entitled. Even prior to IDEA'97 and NCLB,

the Supreme Court recognized the “significant financial burden on states and school districts” that IDEA requires.⁹³ In upholding a nonpublic placement for a child with dyslexia in *Carter* and nursing services for a paralyzed child in *Garret F.*, the Court made clear that additional costs are no excuse if the expenditures are necessary to fulfill the child’s legal rights. As the Court stated in *Garrett F.*: “The [school district] may have legitimate financial concerns, but our role in this dispute is to interpret existing law.”⁹⁴

BCPSS violates these legal principles. IEPs are often illegally tailored to fit budget limits, not the individual needs of students. Even when IEP teams recognize the need for intensive instruction or other services such as counseling for behavior and emotional problems, the services are frequently denied because of their cost.

As noted earlier, the Special Master in *Vaughn G.* recently observed that “many administrators and school staff” view staffing allocations “as simply inadequate to support the delivery of special education instructional and related services in inclusive settings.”⁹⁵ But that’s just the tip of the iceberg. Staffing shortages restrict the quality of instruction in self-contained classrooms as well as inclusion settings. And IEP teams almost invariably resist costly nonpublic placements and supplemental services such as tutoring.

Typical comments made openly in IEP meetings in which I’ve participated are: “We don’t have the time.” “We don’t have the money.” “If we gave your student what he needed, we’d have to give it to lots more students, and we don’t have the money.” “We don’t have the resources.” “We can’t do that.” “You’ll have to appeal.” Or “go fight with the Area [regional office] or North Avenue [BCPSS headquarters].” One conscientious and experienced special educator went as far to say that if an IEP required one-on-one tutoring for a student, it “would be a disservice to the school” by forcing budget cuts elsewhere.⁹⁶ Such comments show that IEP teams are uninformed about the law’s mandate on costs or ignore it under pressure from fiscally-strapped administrators.

BCPSS is short of funds. More money for special education services will force, at least in the short run, more painful budget choices. Still, over the years, the inadequacy of funding for special education services has been neglected by the BCPSS board and top administrators and by the Court in *Vaughn G.*⁹⁷ No apparent effort has been made to develop a program and budget plan for adequate funding of special education instruction.

D. Lack of monitoring and timely review of student progress

BCPSS violates special education laws and its own guidelines when IEP teams, because of lack of time and resources, don’t effectively monitor student performance

or provide timely interventions when students fail to make progress. Students fall farther and farther behind before a significant increase in services is considered. By then, it is almost always too late for effective remediation; academic deficits have deepened, and frustrated students have developed emotional and behavior barriers to learning. At that point, BCPSS often blames the victims – the child and family – rather than its own poor instruction for the child’s school meltdown.

Special education laws require IEP teams to review “the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved,” and to “[revise] the IEP as appropriate to address [any] lack of expected progress”⁹⁸ To assure timely periodic review, IEP goals are to be supplemented by measurable “short-term objectives.”⁹⁹ Short-term objectives “enable the student’s teacher, parents and others . . . to gauge, at intermediate times during the year, how well the student is progressing toward achieving the annual goals.”¹⁰⁰ Federal law also requires parents to be “regularly informed (through such means as periodic report cards)” of their child’s progress.¹⁰¹

BCPSS guidelines state what is supposed to happen if progress is lagging: “If progress is not sufficient to enable the student to achieve the goals in the IEP time frame, the IEP team must reconvene in a timely manner.”¹⁰²

However, these safeguards exist only on paper. Students receive quarterly IEP progress report cards, but the report cards are sometimes filled out in a perfunctory way and progress is exaggerated. IEP grade inflation starts with the fact that many special educators, as discussed throughout this report, view progress through the lens of low expectations. Moreover, marking codes allow subjective grading; there is no requirement that marks be specifically linked to measurable short-term objectives.¹⁰³ Inflated report card marks reflect the reality that IEP teams don’t want to admit failure, and poor marks reflect badly on the teacher and principal.

Even when lack of a student’s academic progress is accurately reported, IEP teams almost never reconvene before the annual review to revise the IEP unless a parent takes the initiative or, more commonly, the student’s behavior deteriorates. IEP team members don’t have time. The *Vaughn G.* Special Master reported recently that she and the Deputy Special Master in the course of their visits to schools “rarely met [IEP team] members and teaching staff who had sufficient time and structured opportunity for discussion and review of the progress or impediments to progress of specific students, except in the course of an annual IEP meeting.”¹⁰⁴

However, even at annual reviews, the pattern is for IEP teams to gloss over lack of progress. IEP teams tend to reject or put off requests for more services, especially instruction, by adopting a “wait and see” approach. Lacking knowledge of research-

based instructional practices as well as resources, they say, in effect, “Let’s give what we’ve got more of a chance. We can always come back and re-evaluate.”

But this “wait to fail” delay causes students to sink academically and behaviorally to the point where additional services, years later, are too little and too late.¹⁰⁵ At that point, IEP teams typically fall back on two harmful courses of action. First, they dumb down goals and objectives for the student, rather than raise the quality of instruction. Second, IEP teams deflect the focus away from instruction toward emotional, behavioral and family support factors. These factors can be formidable. But almost invariably, as students fall farther and farther behind their peers, emotional and behavioral problems are caused or worsened by their academic frustrations. It is not far-fetched to say that schools “drive kids crazy.” In almost every case in which I represented an elementary school student who was 2 to 4 years behind grade level in reading, the student’s behavior went rapidly downhill in the fourth and fifth grades. No one could expect otherwise. As vulnerable children become “dummies” to others and themselves, they are taunted by peers, lose motivation, act out in class, become daunting “discipline” cases, go truant and eventually drop out.¹⁰⁶ In the *Carter* case in which the Supreme Court spelled out the instructional rights of students with learning difficulties, the frustrated and alienated student became suicidal.¹⁰⁷

All in all, the system is quick to blame the victims – the child and family -- rather than holding itself accountable for the damage to children caused by its failure to monitor and revise IEP services in a timely way.¹⁰⁸

Chapter III. Root Causes of Poor Special Education Instruction



Why do dedicated teachers so often deliver ineffective instruction? There are many interwoven reasons, almost all of which are beyond the control of front-line educators who are asked to do too much with too little training, time and other resources. Instead, the root causes of the failure of special education instruction reflect weak educational and political leadership.

The field of education has been slow to encourage and respond to research on best instructional practices. There has been a culture of low expectations and denial of responsibility for abysmal student performance, which has allowed elected officials to escape their duty to provide needed resources.

The children who have probably suffered the most are low-income and low-IQ students with learning difficulties. The specific root causes of their vulnerability and ultimate academic failure are outlined below.

A. Poor general education instruction, especially the lack of early diagnosis and treatment

The only sure way to solve most of the problems of poor special education instruction is to prevent most students with learning difficulties from entering special education in the first place. As analyzed in my prior report, “The Invisible Dyslexics: How Public Schools in Baltimore City and Elsewhere Discriminate Against Poor Children in the Diagnosis and Treatment of Early Reading Difficulties,” most mild learning disabilities could be avoided through research-based early interventions. When these interventions are not provided in general education, children fall behind quickly, and special education is then asked to bear the burden of remediation. But remediation is much harder to achieve than early prevention.¹⁰⁹

B. Special educators’ lack of knowledge about research-based instructional programs

Special educators nationwide have done little to incorporate recent research on reading into classroom teaching. The field of special education has been a backwater of misinformation about reading difficulties including dyslexia. Like their counterparts in general education, special educators have neglected the findings of reading scientists and too often have blamed their students’ early reading difficulties on IQ (a dubious construct to begin with) and family background, rather than on unsuitable instruction.¹¹⁰ The National Research Council Committee on the Prevention of Reading Difficulties in Young Children has pointed out that scientific findings about the causes

and cures of early reading difficulties have “been embraced by most researchers, although not yet by a majority of educators.”¹¹¹

The lack of knowledge pervades BCPSS from the top. Special education administrators state that they have begun “ a review of empirically based studies” but so far show almost no awareness of the growing body of instructional best practices.¹¹² Not surprisingly, neither do teachers. Teachers have not been trained in Orton-Gillingham methods or other well-known programs for children with reading difficulties, nor have specialists in such methods been hired.¹¹³

Instead, as discussed earlier, the system has relied too heavily on inclusion and accommodations. What’s more, key administrators have hyped way out of proportion the effectiveness of a teacher training program called STEPS.¹¹⁴

C. Low expectations for low-income and low-IQ children

Because they lack knowledge of effective research-based programs and practices, educators have low expectations for low-income children which become self-fulfilling prophecies. This syndrome affects all areas of public schooling but is especially toxic in special education. As the Southern Disability Law Center observed: “For years, schools have held low expectations for certain student populations, including students with disabilities, based on false assumptions about their capabilities.”¹¹⁵ Rachel F. Quenemoen of the National Center on Educational Outcomes has written: “For many educators, special education labels have become code words that say ‘this child can’t learn.’ What is frightening is that over the past 30 years that belief has become engrained even among parents, advocates, and policymakers.”¹¹⁶

As already discussed, IDEA’97 and NCLB recognize that such low expectations are unfounded and destructive. Research-based instruction can enable students, including those with low IQs, to overcome their learning disabilities.¹¹⁷ Ms. Quenemoen quotes the findings of her colleague, Dr. Kevin McGrew, one of the authors of the widely used Woodcock-Johnson III tests of achievement: “For most children with cognitive disabilities (those with below average IQ scores), it is NOT possible to predict individual levels of expected achievement with the degree of accuracy that would be required to deny a child the right to high standards/expectations [capitals and underlines in original].”¹¹⁸ This is particularly true in the light of the growing research on best instructional practices.

Within BCPSS, IEP team members do not know the research and therefore harbor extremely low expectations for what students with even mild learning difficulties can be taught. Conventional attitudes about family background and IQ lead them to blame the child and family, not poor instruction, for poor academic progress.¹¹⁹ As a consequence, IEP goals, which are supposed to measure how much progress a stu-

dent “can be reasonably expected to accomplish within a twelve-month period,” are typically set too low or are not set at all.¹²⁰

D. Misrepresentations about services and progress

Another reason for poor instruction is that parents are lulled into believing that their children with learning difficulties are receiving far better instruction than they actually are. This plays out in BCPSS in numerous ways described throughout this report. BCPSS frequently misrepresents standardized test scores, sets goals and objectives far below students’ potential, inflates progress on IEP report cards, socially promotes students from grade to grade, and misrepresents the number of hours of service and the effectiveness of various instructional strategies such as inclusion, accommodations and STEPS training. Parents are deluded, and probably BCPSS has been deluding itself as well.

E. Lack of resources

A strong argument can be made that lack of resources should top the list of causes for special education students’ lack of academic achievement. Most instructional essentials for preventing and remediating learning difficulties are expensive: for example, low pupil-teacher ratios, tutoring, teacher training, and nonpublic placements. Of course, the earlier the intervention, the lower the long-term costs to schools and to the nation’s social and economic well-being.

Still, the case for more funding can only be strengthened by making the public aware of the failings of special education instruction. To rally political and public support for revenue increases, the education establishment must be more willing than in the past to admit the current inadequacies of instruction and take ownership of better, often more costly, instructional programs and practices.

Increased funding for special education instruction must compete with other pressing needs of fiscally beleaguered school districts like BCPSS. But the illusion and broken promises of special education instruction must be brought to the table when budget priorities are set. BCPSS must begin to assure that special education gets its fair share of the large infusion of additional state aid expected in the next few years.¹²¹

F. Preoccupation with procedure and paperwork at the expense of instruction

BCPSS has made exemplary progress in technical compliance with procedural safeguards under the *Vaughn G.* case. But, as I documented in an earlier report, that accomplishment reached a plateau several years ago.¹²² Since then, BCPSS has squan-

dered too much attention and money on excessive paperwork and bureaucratic red tape while neglecting the quality of instruction. This is a national problem, but it has been particularly acute under *Vaughn G.* The excessive focus on procedural requirements diverts time and resources from instruction, impedes the critical integration of general education and special education, saps morale and hampers recruitment and retention of special educators. As confirmed by requests made under the Maryland Access to Public Records Act, BCPSS has done almost nothing under *Vaughn G.* or otherwise to audit or analyze dismal academic results, or to do anything about them.

G. The "political disability" of parents of children with learning difficulties

In the final analysis, our society has not pushed harder to raise the academic performance of students with learning difficulties because these children are disproportionately from low-income families and communities with little political power.

Obviously, the struggle for equality of opportunity continues across a wide battleground of education issues. In that broad context, special education laws dating from the 1970s have been "a triumph" for millions of children with disabilities.¹²³ But most of the accomplishments have afforded access to children with severe disabilities who were previously barred from or warehoused in public schools. As this report documents, BCPSS and other school districts have been much less successful in enabling students with milder learning difficulties to meet high academic standards within their cognitive reach.

It is true that finding exact instructional prescriptions for learning difficulties remains – despite advancing research – an arduous, expensive work in progress. Yet this effort is slowed by the fact that low-income, low-IQ, predominantly minority children make up the largest proportion of students with learning difficulties. The loudest and most influential voices in the special education political arena are those of relatively affluent parents of children with severe disabilities; some of them fear, understandably, that scarce resources may be diverted to children with less severe disabilities. At the other end of the scale, low-income parents have the least know-how to advocate for their children and the least ability to afford a private attorney or private school.¹²⁴

Chapter IV. Recommendations



The Baltimore City Public School System has a duty to act urgently to reverse many years of neglect of the quality of special education instruction. Many children with disabilities and their families have suffered because of denial of the basic civil right to a “free and appropriate” special education.

Reforming the system will not be easy, inexpensive or quick. The problems are complex and deeply entrenched. Reform must be done incrementally, but it can be done. In doing so, BCPSS can be a model for the nation. Recommendations for action follow.

- A working committee representing the BCPSS board and staff, outside experts, parents and community advocates would be a good way to begin, with an agenda that includes close examination of the issues raised in this report and other recommendations below.
- BCPSS must end its culture of denial and defensiveness about lack of academic achievement of special education students and commit to transparent review and reform. As part of this new openness, the BCPSS board and top administrators must stop hiding behind the closed doors of the *Vaughn G.* case, open the special education decision-making process to public scrutiny, stop making false claims of progress, end the climate of resistance to parents and advocates, and, most of all, allow special educators to exercise their professional judgment in prescribing services without undue pressure from administrators.¹²⁵ David Stone, a BCPSS board commissioner whose background is in special education, has shown leadership in these matters.
- BCPSS must educate itself from the boardroom to the classroom about research-based instruction that can both prevent referrals to special education through early diagnosis and treatment and greatly improve instruction for students in special education. In line with this research, general education and special education must be much more closely integrated.
- BCPSS must end the inappropriate and unlawful IEP practices described in this report, and develop manuals and training to ensure that IEP teams:
 - apply a higher and more exact standard for the level of academic progress that students are capable of achieving if they receive research-based instruction;
 - set proper goals and expectations for students;
 - design IEPs for students that include essential instructional elements;
 - not limit necessary instruction based on school budgets; and
 - properly monitor student progress and revise IEPs when necessary.

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- BCPSS must train teachers intensively and continuously to use instructional programs and practices that research has shown to improve student outcomes.
 - BCPSS must reallocate resources from procedural and paperwork compliance to instruction and advocate for adequate funding of special education instruction.
 - BCPSS should design demonstration projects in which adequate IEPs are developed and implemented and seek outside funding for these projects.

As the adage goes, a journey of a thousand miles begins with a single step. BCPSS, with support from the community, must take long overdue steps to fulfill the legal and moral right of every child with disabilities to an adequate education. If BCPSS leads, other school systems across the country may follow in its footsteps.

Endnotes

- 1 The legal standard for the quality of services is discussed in detail in a later section of this report. The kinds of services that students with disabilities are entitled to can be divided into three overlapping categories: special education instruction; “related services” such as speech and language, counseling and occupational therapy; and supplemental aids and services, a catch-all term that spans modified curriculum, behavior management strategies, technology, one-on-one aides and a wide range of other supportive services. For the applicable federal laws and some discussion, see BCPSS “IEP/Child Study Team Decision Making Guide,” 2002, pp. 108-120.
- 2 As used in this report, students with “learning difficulties” or “mild learning difficulties” means children who are mainly eligible under the disability classifications of Specific Learning Disabilities (LD), Speech and Language, and Other Health Impaired (mainly students with Attention Deficit Hyperactivity Disorder). Nearly two-thirds of BCPSS special education students fall into these three classifications. Maryland State Department of Education, “Maryland Special Education/Early Intervention Services Census Data & Related Tables, Dec. 1, 2002 (Maryland Census Data). Nationally, the percentage of students in the three classifications is nearly 75 percent. U. S. Department of Education, Twenty-fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, 2002. This report focuses on these students’ difficulties in learning to read in elementary school grades. Reading disabilities are generally estimated to comprise 80 percent of all learning disabilities. Sally Shaywitz, *Overcoming Dyslexia* (NY: Alfred A. Knopf, 2003) (hereafter cited as Shaywitz) p. 29. The academic potential of such students is discussed in Kalman R. Hettleman, “The Invisible Dyslexics: How Public School Systems in Baltimore and Elsewhere Discriminate Against Poor Children in the Diagnosis and Treatment of Early Reading Difficulties,” The Abell Foundation, Baltimore, Md., Feb. 2003 (The Invisible Dyslexics), pp. 9-13. The research on instructional best practices for such students is discussed later in this report.
- 3 This data is found at www.mdreportcard.org. For similarly dismal results on the last nationally standardized tests given to BCPSS students through 2002-2003, see BCPSS “Student Performance on the TerraNova: 1998-99 to 2002-2003,” June 10, 2003; BCPSS “Student Performance on the TerraNova: 1997-98 to 2001-2002,” June 25, 2002. The issue of academic achievement has been largely neglected in the long-running litigation begun in 1984 in the U.S. District Court of Maryland case, *Vaughn G. et al. v. Mayor and City Council of Baltimore et al.* (*Vaughn G.*), in which the Court supervises the BCPSS special education program. The Court found recently, citing a report by the Special Master in the case, that there has not been “sufficient and consistent progress either in trend line improvement, or alternatively, in reduction of the performance gap with regular education students” to warrant a finding of compliance with a May 4, 2000 Consent Order. *Vaughn G.*, Memorandum and Order re Ultimate Measurable Outcome 8, July 2, 2004. For an extensive study of the impact of *Vaughn G.*, see Kalman R. Hettleman, “Still Getting It Wrong: The Continuing Failure of Special Education in the Baltimore City Public Schools,” The Abell Foundation, Baltimore, Md., Feb. 2002 (Still Getting It Wrong).
- 4 www.mdreportcard.org. Dropout data is notoriously confounding and often irreconcilable. See, for example, the complicated, technical discussion of BCPSS graduation and dropout rates in *Vaughn G.*, Special Master’s Final Report on Implementation of Outcome #4 Activities under the 2001/02 Implementation Plan,” May 7, 2003.
- 5 Testing accommodations are supposed to parallel the accommodations given in instruction, as discussed later in this report.
- 6 For general background on the complex and vexing subject of test exemptions and accommodations, see a series of reports by the National Center on Educational Outcomes (NECO): John Bielinski, et al., “Varied Opinions on How to Report Accommodated Test Scores: Findings Based on CTB/McGraw-Hill’s Framework for Classifying Accommodations,” April 2003; Sandra Thompson, et al., “A Summary of Research on the Effects of Test Accommodations: 1999 through 2001,” Dec. 2002; Martha L. Thurlow et al., “2001 State Policies on Assessment Participation and Accommodations,” July 2002. See also: CTB McGraw-Hill, “Guidelines for Inclusive Test Administration,” 2001, www.ctb.com. For a thorough review of the research on the general validity of various test accommodations, see Gerald Tindal and Lynn Fuchs, “A Summary of Research on Test Changes: An Empirical Basis for Defining Accommodations,” Mid-South Regional Resource Center, Lexington, Ky., July 1999, revised March 2000 (Tindal and Fuchs). See also: The Southern Disability Law Center, “The No Child Left Behind Act of 2001,” paper presented at the National Assoc. of Protection and Advocacy Systems, May 28-31, 2003, Washington, D.C (Southern Disability

Law Center); Lynn Olsen, "Agency Documents Clarify Spec. Ed. Assessment Leeway," *Education Week*, March 26, 2003, p. 20; Tamar Lewin, "In Testing, One Size May Not Fit All," *New York Times*, March 18, 2003; U.S. DOE Office of Special Education Programs, "Questions & Answers About IDEA, Students with Disabilities and State and District-Wide Assessments," Aug. 24, 2000 (www.wrightslaw.com/law/osep/faqs.idea.assessment.htm).

- ⁷ The BCPSS IEP Testing Accommodations Worksheet states that certain accommodations require that "all or parts of the test may NOT be compared to national norms [capitals in the original]." This is consistent with state requirements. Maryland State Department of Education, "Requirements for Accommodating, Excusing, and Exempting Students in Maryland Assessment Programs," revised Dec. 20, 2002, pp. 12-17; MSDE Memorandum, "Providing verbatim reading accommodations for Grade 3 and Grade 4 students who have that accommodation in their IEP," Revised Feb. 13, 2003. See Jonathan D. Rockoff, "Hairston says test guidelines were met," *The Baltimore Sun*, March 7, 2003.
- ⁸ See NECO reports cited earlier; also Kim Moherek Sopko, "The IEP: A Synthesis of Current Literature Since 1997," Project FORUM, National Association of State Directors of Special Education, Feb. 2003, p. 10.
- ⁹ The starting point would be data in the BCPSS Special Education Information System that include the testing accommodations of all students with IEPs. Nearly 5,000 BCPSS students are classified as LD. Maryland Census Data, p. 3. Over 80 percent of BCPSS special education students who took the 2001-2002 TerraNova test received accommodations, but this data is not broken down by disability or type of accommodation. BCPSS "Student Performance on the TerraNova: 1997-98 to 2001-2002," p. 6.
- ¹⁰ "Count Me In – Special Education In an Era Of Standards," *Education Week*, Jan 8, 2004, p. 13.
- ¹¹ Andy Smarick, "A special ed focus on people, not process," *The Education Gadfly*, Feb. 19, 2004, p. 2 (www.edexcellence.net). See also Connie Langland, "Schools lagging in special education," *The Philadelphia Inquirer*, Nov. 23, 2003, p. 1. In an earlier national study citing disaggregated scores in 17 states, the percentage of students meeting performance standards in reading ranged between 5 percent and 87 percent, and the differences in passing rates between all students and students with disabilities ranged from 12 to 49 percentage points. Twenty-third Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, U.S. Dept. of Education, 2001 (Twenty-third Annual Report), p. I-9.
- ¹² U.S. Department of Education, "No Child Left Behind, A Desktop Reference," 2002, p. 13.
- ¹³ www.mdreportcard.org.
- ¹⁴ Huge differences occur among the states in the percentage of students participating in state assessments; for example, from 23 to 100 percent for elementary grade tests. Twenty-third Annual Report, p. I-7. See also Kathleen Kennedy Manzo, "NAEP Exclusion Rates Increase For Disabled and LEP Children," *Education Week*, July 9, 2003, p. 10.
- ¹⁵ Data is limited because, until IDEA'97, special education students were "overwhelmingly excluded from standardized tests." Jane K. Babin, Comment, "Adequate Special Education: Do California Schools Meet the Test?" 37 *San Diego L. Rev.* 211, Winter 2000, p. 269. Still, the picture seems clear. A group of researchers concluded that "extraordinarily little evidence has accumulated about the effectiveness of special-education programs in raising achievement." Eric A. Hanushek, et al., "Inferring Program Effects for Special Populations: Does Special Education Raise Achievement for Students with Disabilities?" *The Review of Economics and Statistics*, Nov. 2002 (Hanushek), p. 584. See also: Donald D. Deshler, et al., "Ensuring Content-Area Learning by Secondary Students with Learning Disabilities," *Learning Disabilities Research & Practice*, Vol. 16 (2), 2001, pp. 96-108 (Deshler), at pp. 96-97; G. Reid Lyon and Jack M. Fletcher, "Early Warning System," *Education Matters*, Summer 2001, p. 24; Twenty-first Annual Report, p. IV-73. See also: Diane Ravitch, "Student Performance," *Brookings Review*, Winter 1999, p. 15; Louise Spear-Swerling and Robert J. Sternberg, *Off Track – When Poor Readers Become "Learning Disabled"* (Boulder, Colo: Westview Press, 1996) (Spear-Swerling and Sternberg), p. 7; Kay S. Hymowitz, "Special Ed: Kids Go In, But They Don't Come Out," *City Journal*, Summer 1996 (Himowitz); Twenty-first Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, U.S. Dept. of Education, 1999 (Twenty-first Annual Report), p. IV-73; and a commentary citing declining reading scores for special education students on New York State tests (www.educationnews.org/The-scram-in-New-York-Schools-continues.htm, May 21, 2003). For some

evidence to the contrary, one research report cites gains in mathematics. Hanushek. And a recent book refers to two analyses that have “contradicted one another on the value of special education.” Jennifer Hochschild and Nathan Scovronick, *The American Dream and the Public Schools* (NY, NY: Oxford University Press, 2003) (Hochschild), p. 143. As discussed in more detail in a later part of this report, there is extensive literature comparing the benefits of mainstreaming (i.e., inclusion in general education settings) to instruction in separate classrooms for special education students; however, the research by and large does not examine the gains, if any, in either kind of placement compared to non-disabled peers or grade-level standards.

¹⁶ G. Reid Lyon et al., “Rethinking Learning Disabilities” (Lyons et al.) in Chester E. Finn, Jr. et al., eds., *Rethinking Special Education for a New Century*, The Thomas B. Fordham Foundation and the Progressive Policy Institute, May 2001 (Rethinking Special Education), p. 272.

¹⁷ Shaywitz, p. 28. Dyslexia is often broadly defined as encompassing a continuum of mild and severe reading difficulties. Shaywitz p. 28; *The Invisible Dyslexics*, pp. 9-13. Reading scientist Joseph K. Torgesen and colleagues conclude that “although the reading instruction provided by special education is more effective than general education classroom instruction for children with reading disabilities, current instruction in many special education placements is not sufficient to *accelerate* reading growth so there is reasonable hope for these children to achieve average-level skills in a reasonable period of time [emphasis in the original].” Joseph K. Torgesen et al., “Intensive Remedial Instruction for Children with Severe Reading Disabilities,” *Journal of Learning Disabilities*, Feb. 2001, p. 34. The authors of a noted book on reading disabilities find that special education instruction may cause even less growth than regular instruction: “poor readers in special education may be particularly likely to suffer decreases in practice, to benefit less from direct instructional interaction with a teacher, to engage in unmotivating instructional activities, and to draw maladaptive conclusions about what reading is.” Spear-Swerling and Sternberg, p. 132. Many of these children are “invisible dyslexics” who receive instructional assistance that is almost invariably too little, too late. See generally *The Invisible Dyslexics*.

¹⁸ Chester E. Finn, Jr. et al., “Conclusions and Principles for Reform,” in *Rethinking Special Education*, p. 338. A 5 percent return-to-general education rate has been cited by Lyon et al., p. 275 and Himowitz, p. 28. But compare Maryland State Department of Education, “Census Data & Related Tables,” Dec. 1, 2002, p. 36.

¹⁹ Researchers at the University of Kansas Center for Research on Learning found: “Not only does a disproportionate percentage of students with LD drop out of school compared to the general education population, but many of these students evidence a broad array of performance and adjustment problems such as (1) higher rates of absenteeism, (2) lower grade-point average, (3) higher course failure rates, (4) more prevalent feelings of poor self-esteem ...and (5) higher rates of inappropriate social behaviors ...than the student population in large.” Deshler 96. See also Lisa Fine, “More Disabled Students Graduating, Ed. Dept. Report Says,” *Education Week*, Dec. 6, 2000; Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, p. IV-15.

²⁰ For general background on the evolution of IEPs, see: Sandra J. Thompson et al., “Addressing Standards and Assessments on State IEP Forms,” National Center on Educational Outcomes, April 2001; Tindal and Fuchs.

²¹ C.F.R. 300.26 (a)(1)-(2)iii. See IEP/CST Guide pp. 108, 109.

²² See, for example the absence of discussion or guidelines on developing services plans in: Developing Quality IEPs Training Module, including the Quality IEP Standards Checklist (pp. 100-105); IEP/Child Study Teams Decision Making Guide (pp. 163-164); BCPSS Standard Operating Procedures Manual (BCPSS SOPM), Working Draft 7/00 Module 8, p. 8. IEP forms include spaces for listing accommodations and “supplementary aids and services,” but the forms do not call for specific details on essential instructional elements.

²³ IEP/Child Study Teams Decision Making Guide, p. 112.

²⁴ See generally the critical findings found in the *Vaughn G.* Special Master’s Final Report on Implementation of the Child Study Team, Sept. 16, 2003.

²⁵ IEP/Child Study Teams Decision Making Guide, p. 108.

²⁶ IEPs list the number of weekly hours of “direct” instructional services, but when students receive part of their instruction in the general education classroom and part outside of it, there is confusion and inconsistency in determining how many hours of special instruction actually takes place

and which teacher – the general education or special education teacher – delivers it. There is also evidence that students frequently do not receive the hours of services in their IEPs. Still Getting It Wrong, p. 36.

²⁷ Shaywitz, p. 262. Shaywitz, through her recent best-selling book *Overcoming Dyslexia*, has become perhaps the best known national authority on reading difficulties; as noted earlier, she and others often define dyslexia to include a range or continuum of reading difficulties. The discussion in this section of the report describes the essential instructional elements. But no attempt has been made to fully review the research and literature on the specific instructional best practices within each element. For a fuller review, see Shaywitz, Ch. 19 and *The Invisible Dyslexics*, Ch. III. One paramount point to be kept in mind is that the best possible instructional practices for students with learning difficulties involve early diagnosis and treatment that prevent referrals to special education and the need for remediation.

²⁸ The prevention and remediation of early reading difficulties depend on the quality of instruction in both the system-wide core reading program for the whole class as well as supplemental instruction for individual students. As a general rule, core instruction for children with reading difficulties does not differ from core instruction for other early readers. The bedrock – as prescribed by many research studies including the National Reading Panel – is systematic, direct instruction in phonological awareness and phonics, early language and vocabulary development and meaningful exposure to literature and pathways to comprehension. Still, many students will require additional help, and research is growing on the relative effectiveness of different intervention models. Shaywitz, Ch. 19; *The Invisible Dyslexics*, p. 19; Sharon Vaughn et al., “Response to Instruction as a Means of Identifying Students with Reading/Learning Disabilities,” *Exceptional Children*, Vol. 69, No. 4, 2003, pp. 391-409. See the exemplary manual published by the Anne Arundel County Public Schools, “Alternative Reading Strategies, Preparing Students with Disabilities to Read in the 21st Century,” Aug. 1999 (Anne Arundel County Alternative Reading Strategies).

²⁹ Shaywitz, p. 257.

³⁰ Shaywitz, p. 258; Joseph K. Torgesen, “Lessons Learned from Research on Interventions for Students Who Have Difficulty Learning to Read,” in Peggy McCardle and Vinita Chhabra, eds., *The Voice of Evidence in Reading Research* (Balto. MD: Paul H. Brookes, 2004), p. 363.

³¹ See discussion of budget limits in part three of this chapter.

³² Shaywitz, p. 259.

³³ The U.S. Department of Education Office of Special Education and Rehabilitative Services letter of advice to G. Emerson Dickman, Esq. dated April 2, 2002. As summarized in one treatise, “An education cannot be appropriate without qualified teachers and other personnel to provide it;” *Special Education Law and Litigation Treatise*, LRP Publications, 2002 (Special Education Law and Litigation Treatise), p 12; judicial decisions on point are cited at p. 35. The NCLB Act requirements for “highly qualified teachers” underscore this crucial instructional element. Southern Disability Law Center, pp. 63, 89.

³⁴ See, for example, BCPSS IEP/Child Study Teams Decision-Making Guide, 2002, p. 162.

³⁵ Nancy L. Waldron and James McLeskey, “The Effects of an Inclusive School program on Students with Mild and Severe learning Disabilities,” *Exceptional Children*, Vol. 64, No. 3, pp. 395-405 (Waldron and McLeskey), p. 403.

³⁶ Deshler, p. 105.

³⁷ Barbara D. Bateman and Cynthia M. Herr, *Writing Measurable IEP Goals and Objectives* (Verona, Wis: IEP Resources, 2003), p. 52.

³⁸ 34 CFR 300.26b(3).

³⁹ U.S. Department of Education, “New IDEA Regulations – Discussion and Changes (from the Analysis of Comments), Appendix A to Part 300, Discipline Q&A, and Potential Benefit/Cost Analysis,” March 12, 1999 (64 FR 12552). See also *Board of Education v. Michael M.*, 95 F. Supp. 600 (S. D. W. Va. 2000).

⁴⁰ COMAR 13A.05.01.03B(63).

⁴¹ Maryland State Department of Education, “Placement Determination of School Age Students with Disabilities, 6-21 years old, in the Least Restrictive Environment,” Technical Assistance Bulletin 9A, March 2003, p. 4.

- ⁵⁷ Maryland State Department of Education audit (Monitoring for Continuous Improvement and Results), June 3, 2004, p. 51; BCPSS Inclusion Evaluations I and II; Report on the Final Evaluation of the City-State Partnership, Westat, Dec, 3, 2001, pp. 66-67. See also Still Getting It Wrong, pp. 31-32. Almost all of the factors that impede instruction in inclusion settings apply to instruction in self-contained classrooms. An additional problem in both inclusion and self-contained settings is the requirement that students be taught at “grade level” rather than instructional level. For example, a student reading at a second grade level but “socially promoted” to the fifth grade is supposed to be taught the fifth grade curriculum; however, even with accommodations, this is often a barrier to effective instruction.
- ⁵⁸ *Vaughn G.*, Consent Order Approving Ultimate Measurable Outcomes, May 5, 2000. Little comparable effort has gone into a critical analysis of the quality of IEPs and instruction in inclusion settings. The BCPSS Inclusion Evaluations I, II and III are limited exceptions to the neglect. The *Vaughn G.* panel made candid, valuable findings and recommendations, among them the need for instructional models that go beyond generic good practices. BCPSS Inclusion Evaluation II, p. 34. Still, the panel has not probed deeply in any of the three studies into the unlawful and ineffective practices documented in this report, including the absence in IEPs of specific, research-based instructional programs and methods. In addition, a consultant to BCPSS, Stanley Zwebach, a psychologist, conducted in recent years a series of evaluations intended to assess the extent to which psychological and educational IEP assessments complied with professional standards; the standards called for examining the presence of “appropriate and relevant educational/instructional recommendations,” but there is no evidence in the consultant’s reports that the issues discussed in this report were considered.
- ⁵⁹ Deshler, p. 105. See also Waldron and McLesky, p. 403.
- ⁶⁰ Shaywitz, p. 282.
- ⁶¹ Maryland State Department of Education and Maryland Coalition for Inclusive Education, “Instructional Accommodations,” Fall 2000 (MSDE Instructional Accommodations) (pages are unnumbered). Accommodations do not substantially change the instructional level, the content or the performance criteria, as “modifications” do. Test accommodations were briefly discussed earlier in this report.
- ⁶² See, for example, MSDE Instructional Accommodations and BCPSS Developing Quality IEPs Training Module, pp. 57-61. The BCPSS IEP form Part II: Annual Goals and Objectives has a place for “instructional accommodations/modifications required to meet this goal,” but in practice accommodations appear to be listed routinely without close, individualized attention.
- ⁶³ BCPSS Developing Quality IEPs, p. 53. BCPSS Inclusion Evaluation II, p. 36.
- ⁶⁴ BCPSS Inclusion Evaluation II, pp. 36-37. BCPSS’s performance in this area remains poor. BCPSS Inclusion Evaluation III, p. 37. See also Still Getting It Wrong, p. 34.
- ⁶⁵ *Vaughn G.* “Special Master’s Final Report on Remedial Recommendations...for Outcome #8,” Feb. 14, 2003, p. 15.
- ⁶⁶ BCPSS IEP/CST Guide, pp. 102-103; BCPSS SOPM, p. 8-7.
- ⁶⁷ See generally Scott F. Johnson, “Reexamining *Rowley*: A New Focus in Special Education Law,” *The Beacon*, Fall 2003 (www.harborhouselaw.com/articles/Rowley.reexamine.Johnson.htm) (Johnson); Joyce O. Eckram and Eliza J. McArthur, “Is the *Rowley* Standard Dead? From Access to Results,” 5 *UC Davis J. Juv. L & Pol’y* 1999 (Summer 2001) (UC Davis Law Journal); Special Education Law and Litigation Treatise; Tyce Palmaffy, “The Evolution of the Federal Role,” *Rethinking Special Education* (Palmaffy), pp. 9-12.
- ⁶⁸ 458 U.S. 176 (1982).
- ⁶⁹ Daniel J. Losen and Kevin G. Welner, “Legal Challenges to Inappropriate and Inadequate Special Education for Minority Children,” in Daniel J. Losen & Gray Orfield, eds., *Racial Inequity in Special Education* (Harvard Education Press, 2002), pp. 167-194 (Losen and Welner), p. 185. See also: Johnson; Ellen A. Callegary, “The IDEA’s Promised Unfulfilled: A Second Look at Special Education & Related Services for Children with Mental Health Needs After *Garret F.*” *Journal of Health Care Law & Policy*, vol. 5, no. 1, 2002 (Callegary); Leslie Seid Margolis, “The Provision of School Health Services to Students with Disabilities,” *Journal of Health Care Law & Policy*, vol. 5, no. 1, 2002.
- ⁷⁰ *Hall v. The Vance County Board of Education*, 774 F. 2d 629, 635 (4th Cir. 1985). See also the Fourth Circuit Court of Appeals decision *Carter v. Florence County School District Four*, 950 F. 2d

156, 160 (4th Cir. 1991) affirmed by the Supreme Court in the Carter decision cited below; and UC Davis Law Journal, p. 3.

⁷¹ *Rowley*, p. 202.

⁷² *Rowley*, p. 202.

⁷³ *Rowley*, p. 205, footnote 28: “When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit.”

⁷⁴ *Florence County School District Four v. Shannon Carter*, 510 U.S. 7 (1993).

⁷⁵ *Carter*, p. 11. Fourth Circuit Court of Appeals decisions are emphasized in this report because that is the federal Circuit Court of Appeals that includes Baltimore City and Maryland.

⁷⁶ 950 F.2d at 160.

⁷⁷ 950 F.2d at 160.

⁷⁸ 774 F.2d 629 (4th Cir. 1985).

⁷⁹ *Vance*, p. 636.

⁸⁰ 45 F. Supp. 2d 500, 504 (1999).

⁸¹ *Andes*, p. 636. In *Andes*, Judge Andre Davis, in what he characterized as a very close call, upheld the Administrative Law Judge’s denial of a nonpublic placement for a student with dyslexia, even though employing the more-than-trivial progress standard. But the student had been in a private school for virtually his first eight years at private expense. The student had “bright average intellectual potential” and was an “average reader.” There was no evidence of any emotional or behavior problem. The parent just wanted the Worcester County school system to pay for the nonpublic placement.

⁸² *Rowley*, p. 192.

⁸³ *Rowley*, p. 194.

⁸⁴ The most prominent recent decision was decided just months ago, *AB v. Lawson*, arising out of Anne Arundel County in Maryland. In affirming in effect the decision of an Administrative Law Judge denying a nonpublic placement for an LD child, the Fourth Circuit Court of Appeals emphasized the narrow “some educational benefit” standard in *Rowley* and repeated several times that IDEA does not require a “potential-maximizing education.” The evidence showed that the student was performing average or above average academically in public school – i.e., meeting the grade to grade and more-than-trivial standards. The issue was the parent’s desire, contrary to *Rowley*, to maximize the student’s potential. 354 F.3d 315 (4th Cir. 2004).

Several other examples of Fourth Circuit Court of Appeals cases that are distinguishable include *Tice v. Botetourt County School Board*. There the Court upheld the denial of a nonpublic placement for an LD student, but cited *Rowley* in highlighting the “great improvement in his post-IEP performance and his successful completion of the requirements for advancing to second grade.” 908 F. 2d 1200, 2106 (4th Cir. 1990).

In *MM v. School District of Greenville County*, the Fourth Circuit reversed the district court and upheld the IEP but pointed out: “the [district] court failed to consider the actual educational progress made by MM...even though an important measure of an IEP’s success is whether the disabled child has made progress on the basis of objective criteria. See *Rowley* (observing that ‘achievement of passing marks and advancement from grade to grade’ are an ‘important factor in determining educational benefit.’)” 303 F.3d 523, 532 (2002).

There is a dearth of case law on the adequacy of services for low-income, low-IQ students with learning difficulties for obvious reasons. Parents are unaware of their rights or unable to pay steep legal fees. In addition, parents and their lawyers have been deterred by the courts’ general deference to the professional judgment of IEP teams. See Special Education Law and Litigation Treatise, p. 4; *MM v. School District*, at 6. Palmaffy comments, at 15: “There is a powerful minority of parents who know their legal rights and aren’t afraid to exercise them. But most parents are at a decided disadvantage vis-à-vis school administrators. They don’t know their rights, have little experience with the legal system, and tend to respect the decisions of professional educators.”

⁸⁵ 20 U.S.C. Sec. 1400c(4) (2000). The U.S Department of Education Office of Special Education Programs (OSEP) stated that the amendments raised “academic expectations for children” (IDEA’ 97 General Information Overview) and “The focus of IDEA changed from one that merely provided disabled children access to an education to one that improves results” (IDEA’97, Final

Regulations, An Overview). Both OSEP publications are archived information.

⁸⁶ Cited at Tindal and Fuchs, p. 2.

⁸⁷ Tara L. Eyer, Comment, "Greater Expectations: How the 1997 IDEA Amendments Raise the Basic Floor of Opportunity for Children with Disabilities," 103 *Dick. L. Rev.* 613 (Spring, 1999), p. 6.

⁸⁸ The exception is for "students with the most significant cognitive disabilities." Southern Disability Law Center, pp. 18, 21, 23, 28, 32.

⁸⁹ Southern Disability Law Center, p. 43.

⁹⁰ Executive Order No. 13227 (2001).

⁹¹ Or, as put at UC Davis Law Journal p. 4, from access to results. An analogy lies in the evolution in Maryland of the constitutional standard for school funding from basic equity/some educational benefit in the 1983 Maryland Court of Appeals decision in *Hornbeck v Somerset County*, 295 Md. 597 (1983) to adequacy/opportunity to meet the state's high academic standards in the Circuit Court for Baltimore City decision in *Bradford v. Maryland State Board of Education* (Case No.: 94340058/CE 189672, Oct. 18, 1996) and the landmark 2002 The Bridge to Excellence in Public Schools Act passed by the Maryland General Assembly, SB 856.

⁹² BCPSS letter to the author.

⁹³ *Carter*, p. 33.

⁹⁴ *Garret F.*, p. 6. See Callegary, p. 175, and Palmaffy, p. 11.

⁹⁵ *Vaughn G.*, "Special Master's Final Report on Remedial Recommendations...for Outcome #8," Feb. 14, 2003, p. 15.

⁹⁶ "No courts [two professors have written] have found that a given IEP can be opposed on the grounds that giving all similar students the same IEP would bankrupt the district." Palmaffy, p. 12. A BCPSS procedure allows schools to request additional resources. But use of the procedure is discouraged and rarely happens. Moreover, special education administrators have sometimes downplayed the need for more teachers and related services staff. A top BCPSS special education official has stated, as recorded in the minutes of the *Vaughn G.* Multi-Party Meeting held March 27, 2001: "There is not a need for more staff [to impact inclusion]...; rather, there is a need for more creative use of staff." This attitude has been reflected in other public statements and documents, especially in response to staff complaints about the excessive compliance burdens in IEP proceedings. BCPSS is not unique; see *Inclusive Education for Change*, p. 16.

⁹⁷ BCPSS' attention in recent years has been almost exclusively on compliance with procedural requirements. Funding for special education instruction has not been a part of BCPSS's "remedy plans" setting forth priority budget items. *Still Getting It Wrong*, p. 36.

⁹⁸ CFR 300.343 (c).

⁹⁹ CFR 300.347 (a) (2).

¹⁰⁰ IEP/Child Study Teams Decision Making Guide, p. 103.

¹⁰¹ CFR 300.347 (a) (7ii).

¹⁰² BCPSS SOPM 8-11(7/00). See also BCPSS SOPM 8-19: "The IEP team meets periodically but not less than annually to review and revise a student's IEP." BCPSS is in "partial compliance" with Ultimate Measurable Outcome #15 under *Vaughn G.* which requires "[parents to be] provided information regarding their child's progress toward the annual goal and the extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year (OSEMC Standard 1091)." But even full compliance with the OSEMC standard does not mean that the rate of progress is assessed in any measurable depth, or that lack of progress triggers IEP revisions.

¹⁰³ The progress codes are: "Mastered Goal," "Making Progress," "Making Progress with Support," "Maintaining Skill," "Not Assessed this marking period," and "No Progress." But BCPSS report card guidelines state nothing about tying marks to measurable objectives. BCPSS SOPM, Appendix 16, "Report Cards for Students with Disabilities."

¹⁰⁴ "Special Master's Final Report on Achievement of Outcome #8 Benchmarks and Activities," Feb. 14, 2003, p.11. As one special educator said in my presence in an IEP meeting, "What's the use of holding periodic meetings when there's no progress? We know we won't get extra staff to help the children."

¹⁰⁵ See the academic achievement data in this report and the national research on reading difficulties in *The Invisible Dyslexics*.

¹⁰⁶ Hochschild, p. 138. See also Waldron and McLesky, p. 150. I know of no data on point, but BCPSS should examine the frequent observation by special educators that many children with learning

disabilities deteriorate to the point of meeting the eligibility criteria for Emotional Disturbance (ED).

¹⁰⁷ Brent Staples, "How the Clip 'N Snip's Owner Changed Special Education," *The New York Times*, Jan. 5, 2002. See also Montgomery County Pub. Sch. 31 IDELR 251, 262 (1999): the Administrative Law Judge found that the "child's emotional problems become more understandable... [i]n light of the failure [of the school system] to provide services." See also Shaywitz, p. 7.

¹⁰⁸ See Pamela Darr Wright, "The Blame Game! Are School Problems the Kids' Fault?," Wrightslaw, <http://www.wrightslaw.com/advoc/articles/ALESSII.html> See also Callegary, p. 182.

¹⁰⁹ See generally *The Invisible Dyslexics*.

¹¹⁰ *The Invisible Dyslexics*.

¹¹¹ Catherine E. Snow, et al., *Preventing Reading Difficulties in Young Children* (Washington, DC: National Academy Press, 1998), p. 91. Shaywitz, in her new book, aims "to bridge the enormous chasm that exists between what we are learning in the laboratory and what is being applied in the classroom." Shaywitz, p. 6.

¹¹² BCPSS letter to the author, pp. 5, 6.

¹¹³ See, e.g., BCPSS Inclusion Evaluation II, p. 34. In the last few months, BCPSS administrators have alluded, without full details, to a couple of small pilot projects that incorporate research-based practices; still, there has not been recognition or public discussion about the systemwide inappropriateness and inadequacy of instruction as detailed in this report.

¹¹⁴ BCPSS has for several years touted STEPS as the cornerstone of its training of general and special education teachers. But STEPS primarily consists of generic good teaching practices, and is no substitute for research-based instructional programs and practices. See *Still Getting It Wrong*, p. 34. I was present at a meeting on June 11, 2003 when a high-level special education administrator showed community representatives a video and reinforced the video's message strongly and erroneously implying that STEPS enables many if not all special education students to achieve success. BCPSS Video, STEPS For Instructing Diverse Learners (undated).

¹¹⁵ Southern Disability Law Center, p. 7.

¹¹⁶ Rachel F. Quenemoen, National Center on Educational Outcomes, written comments presented to the United States Commission on Civil Rights, Feb. 6, 2003 (Quenemoen).

¹¹⁷ Callegary, p. 176. See generally: Daniel J. Losen and Kevin G. Welner, "Disabling Discrimination in Our Public Schools," *Harvard Civil Rights-Civil Liberties Law Review*, vol. 36, no. 2, S2001, pp. 407-460, at p. 421. Hochschild, p. 139. The classification of learning disabled itself "sometimes may create lower expectations in teachers." Louise Spear-Swerling, "The Trouble with 'Reading Disability,'" *Learning Disabilities OnLine*, www.ldonline.org/ld_indepth/reading/swerling.html, March 20, 2003.

¹¹⁸ Quenemoen.

¹¹⁹ These attitudes are reinforced by BCPSS computer programs that are far off the mark in their IQ-driven predictions of expected achievement levels of students with learning difficulties.

¹²⁰ In BCPSS, the determination of IEP goals/expectations appears to be a muddle of conflicting practices. Until recently, IEP teams usually set as goals one year's grade-level progress over twelve months. For example, John, a fourth grader, will improve his reading from a first-grade level to a second-grade level. But recently, some IEP teams appear to be eliminating a numerical, measurable goal; the goal is now written to say only that John "will improve in reading," without saying how much measurable improvement should be expected. (IEP quarterly "objectives" still have some measurable elements, but the objectives do not add up to the kind of grade-level goals that are the clearest measure of progress.) The new practice appears to be at least in part a reaction to the fact that BCPSS has lost appeals from IEP team decisions on the grounds that students have not achieved measurable goals. But of course, BCPSS should elevate the quality of instruction, not lower the goals and try to circumvent legal requirements for "measurable goals" and accountability for ineffective instruction. BCPSS has refused to respond so far to questions about the apparent change in practice. Ironically, IEP teams sometimes attempt to justify low goals by saying that they protect the student from emotional damage if the goals are not met. But this is a rationalization. Students seem little aware of goals. Their demoralization and emotional meltdown comes from falling farther behind their peers and grade level.

¹²¹ The Bridge to Excellence in Public Schools Act passed by the Maryland General Assembly, SB 856

(2002). Also, BPCSS can realize appreciable cost savings in special education by reducing excessive paperwork and procedural compliance. Still Getting It Wrong.

¹²² Still Getting It Wrong.

¹²³ Hochschild, p. 137; Eighteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, Ch. 3.

¹²⁴ For example, parents of students with LD and speech and language disabilities are less likely to attend IEP meetings than parents of students with other disabilities. The Advocacy Institute, "Students with Learning Disabilities: A National Review," June 2002, (www.advocacyinstitute.org/resources/LD_Review_02.pdf). See generally: Losen and Welner, p. 173; Palmaffy, p. 15; Peter Sacks, "A Nation at Risk," *The Nation* (book review), Nov. 18, 2002, p. 32; Yilu Zhao, "Rich Disabled Pupils Go to Private Schools at Public Expense, Levy says," *New York Times*, April 17, 2002.

¹²⁵ At a meeting of the CityWide Special Education Advocacy Project, Sept. 10, 2003, as recorded in the minutes of the meeting, an official of the Baltimore Teachers Union recounted that teachers are "intimidated and afraid to speak out [and] to honestly describe what is lacking and what students need."

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 dropout 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. He has written two other reports published by The Abell Foundation: "The Invisible Dyslexics: How Public School Systems in Baltimore and Elsewhere Discriminate Against Poor Children in the Diagnosis and Treatment of Early Reading Difficulties" (2003) and "Still Getting It Wrong: The Continuing Failure of Special Education in the Baltimore City Public Schools" (2002). His other recent work includes studies for the city schools on student promotion policy and "reading by nine." In 1986, he helped to initiate the "Success for All" school reform program.

Mr. Hettleman 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.

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