

< The Vaughn G. Consent Decree >

Baltimore, MD

A Leadership Briefing Paper
March 2004

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< Introduction >

In 1984, the Maryland Disabilities Law Center (MDLC) filed a class action, Vaughn G. et al., v. Mayor and City Council, et al., on behalf of students with disabilities in the Baltimore City Public School System (BCPSS). The lawsuit alleged that BCPSS had failed to conduct assessments for thousands of children referred for evaluation for special education services and implement individual educational plans within the timelines prescribed by the Individuals with Disabilities Education Act (IDEA). The case was settled in 1988 with a consent decree requiring BCPSS to comply with all relevant state and federal laws. This first consent decree was followed by a series of others as BCPSS continued to fail to meet the requirements of the consent agreement (MDLC, 2003).

Based on the evidence of the last fourteen years, the initial Vaughn G. consent decree opened a "Pandora's Box". Both the consent decree and the judge overseeing

its implementation, Federal District Court Judge Marvin J. Garbis, became entangled in city, state, and school district politics. Problems with the implementation of the consent agreement contributed to the resignation of a Baltimore superintendent and the transfer of authority over special education from the district to the mayor of Baltimore. This ongoing legal wrangling caught the attention of the Maryland legislature and eventually contributed to legislation replacing Baltimore's elected school board with a board appointed by the mayor and the Governor of Maryland. In 1999, more than ten years after the initial settlement, Judge Garbis issued an order forcing the parties in the case to develop disengagement standards that could lead to the end of court oversight.

< The Consent Decrees >

The 1988 consent decree focused on referrals, evaluations, the placement of newly identified and existing students, and the provision of services within the timelines required by federal and state law. Three years later, the district had still not met these requirements. In 1991, the state superintendent became involved, threatening to withhold \$36 million in state and \$7 million in federal special education funding from BCPSS because of the district's lack of compliance with state special education law. Though the district renewed its commitment to meet compliance targets, one year later it had made little progress. The plaintiffs returned to court and the district entered into a new consent agreement.

The 1992 agreement required BCPSS to create a computer tracking system to measure compliance with evaluation and service timelines and provide compensatory services for children with disabilities who had not received services. It also provided for the use of contractual employees for educational and other related services and created interim timelines for assessments, parent notification, etc. Under this consent decree, the plaintiffs could continue to petition the court for enforcement of the settlement. The court also appointed a monitor to assess the district's compliance with the consent decree.

By 1994, the district was still not in compliance with state mandates or the consent decree. This prompted the plaintiffs to once again return to court. The district admitted to widespread failures in its special education programs and agreed to yet another consent agreement with quarterly reports to measure progress in meeting compliance targets. As part of this settlement, the Maryland State Department of Education became a co-defendant in Vaughn G.

One aspect of this 1994 agreement, presided over by District Court Judge Alexander Harvey II, was a highly detailed, long-range compliance plan. The five-year plan included six areas of objectives that moved beyond a special education focus into most aspects of the Baltimore district's education system. These included inclusion, personnel, instruction, communication, finance, and compliance. Each of these areas contained a series of individual objectives. Many of these objectives were highly subjective and difficult to measure, raising concerns about the ability of the school district to implement the agreement and eventually disengage from it (Long Range Compliance Plan, 1998).

Another aspect of the plan was the establishment of an independent management oversight team. The members of this team included the state superintendent, Nancy Grasmick, the city superintendent, Walter G. Amprey, and Mark Mlawer of the

Maryland Disability Law Center (MDLC), counsel for the Vaughn G. plaintiffs. The team had the authority to review all BCPSS staffing decisions above the rank of teacher. Any member of the team could ask the court to review any of Superintendent Amprey's appointments (Gately, July 1994; Engram, July 1994).

This team began to have difficulty coordinating its efforts because of the participants' conflicting interests. When Grasmick and Mlawer interviewed key members of Superintendent Amprey's planned administrative reorganization, he argued that the two had usurped his authority in staffing decisions (Bowler, July 1994). A few months later, in November, the relationship between the court and the superintendent also began to deteriorate. When the superintendent failed to meet the first quarterly report deadline because of computer problems, Judge Garbis cited him for civil contempt. The judge ordered the district to pay \$100 per day and threatened to cite the superintendent for criminal contempt if he failed to meet the next timeline. Judge Garbis also appointed an outside computer expert to advise the court on the district's special education tracking system (Baltimore Sun, November 1994; Schnaiberg, November 1994).

In 1995, a court order prompted the district to establish The New Schools Initiative (NSI) which created publicly funded, community run charter schools to explore innovative ways to bring the school district into compliance with special education laws (Rath, March 1998). This move illustrated the district's continuing inability to meet the consent decree's compliance targets. However, at the time, the district was having serious financial problems and organizational problems that made it difficult to make progress in achieving the often nebulous targets of the consent decree.

The district's failure led MDLC to ask Judge Garbis to place BCPSS in federal receivership (Thompson & Rivera, March 1995). It also prompted two members of the management oversight committee, Grasmick and Mlawer, to recommend disciplinary sanctions against eight school officials for failing to follow the requirements of the consent decree. While Judge Garbis did not place the district in receivership, he did sharply rebuke Superintendent Amprey, ordering him to demote or suspend the eight school officials (Myers & Thompson, August 1995). Shortly after, Mayor Kurt Schmoke removed the superintendent's authority over the district's special education program and appointed Sister Kathleen Feely as the program's administrator (Engram, August 1995).

As one of Feely's first acts, she approved a contract to improve the district's computerized special education tracking system (Siegel, November 1995). However, this system and the city's special education department continued to have problems. In September 1996, Judge Garbis criticized Superintendent Amprey again for failure to bring the school system into compliance and denied the school district's request to dismiss the consent decree. Judge Garbis noted that the request to dismiss was unnecessary since the case was due to go to trial in August, at which time the court would consider whether to place the district in partial or full receivership by the state. The court also denied the district's request to spread the burden of paying the consent decree's costs to the state. By this time, the district had expended several million dollars paying the fees of both the court monitor and counsel for the plaintiffs (Thompson, December 1998).

Meanwhile, the state and the city were engaged in a fierce battle over financing for the historically under-funded Baltimore school system. In 1994, the ACLU had filed a class action lawsuit against the state (Bradford v. Maryland Board of

Education) on behalf of at-risk children in general education, asserting that a lack of state funding deprived them of an adequate education (Cipollone, 1998). This lawsuit was combined with Vaughn G. because it impacted on special education funding issues. In response, Baltimore filed lawsuit against the state seeking a revision of the state's school funding formula. The state, then, filed a third party complaint in the Bradford case seeking the total restructuring of BCPSS management. In November 1996, after various failed attempts by the governor to resolve the issue through the provision of additional funding, the parties negotiated a settlement resulting in a consent decree. The city agreed to a total restructuring of BCPSS in exchange for \$230 million in additional aid over five years (ACLU, 1996). The restructuring was called the City-State Partnership and was embodied in Senate Bill 795, signed by the governor in 1997. This bill removed mayoral and board control of the district, handing control to a nine-person board appointed by the mayor, the state superintendent, and governor. It also replaced the superintendent with a CEO. The long-range compliance plan of Vaughn G. was incorporated into the legislation (Lewis, 1997).

These dramatic changes had mixed outcomes for the district's special education programs. The ability of the school district to identify and place students had improved but, as a consequence, by 1998 almost 18% of the city's students were in special education, at the time, the second-highest percentage in the nation for a large urban school district; 60% were in segregated placements, compared to only 40% for the state of Maryland (Price, Bowie, & Henderson, September, 1998). The district had the highest per pupil special education spending in the state and the lowest per pupil general education spending. The highly complex 77-page long-range compliance plan had morphed into a large number of sub plans. Media reports revealed that the compensatory awards for missed services required by earlier consent agreements had led to millions of dollars in waste, including improper awards such as televisions, games and vacations (Hettleman, October 1998).

In September 1998, counsel for the plaintiffs returned to court charging that little had changed. They asked that the school district be held in contempt and fined millions of dollars for noncompliance. They asked for control over personnel matters, the power to oversee contracts between the district and teachers union, and demanded that three top administrators be fired.

District officials objected to these demands, noting that a recent audit revealed fewer compliance violations and substantial reductions in compensatory awards. They successfully appealed to the court to replace long-time monitor Felicity Lowell with a new monitor. They also asked to rewrite the long-range plan, noting its complexity and the lack of measurable outcomes.

Consent decree fatigue and prodding from Judge Garbis pushed the parties to simplify the long-range compliance plan and create a new plan with clearer objectives and consequences for noncompliance (A.P., October 1998). The implementation plan for 1998-99 introduced a number of measurable outcomes and outcomes that considered the school's district capacity and made the plan more data-oriented. The plan for 1999-2000 specified 41 specific outcomes in a broad range of areas including IEP goal progress, diploma/drop-out rates, % of students in LRE, quality of assessments, etc.

In late 1999, Judge Garbis ordered both sides to complete a disengagement agreement by a May 1, 2000 deadline. Judge Garbis also asked U.S. Circuit Court Judge David Tatel to mediate between the two sides. From January to April 2000,

the parties engaged in intensive negotiations. A panel of three well-known experts, Thomas Hehir, former director of OSEP, Douglas Fuchs of Vanderbilt, and Hopfengardner Warren, a researcher at the Research Triangle Institute in North Carolina, reviewed the available data on Baltimore's special education program and set the goals and outcome levels for the plan. According to Hehir, the panel's goal was to set measurable and achievable goals with high expectations.

On May 1, the plaintiffs and the district agreed to the three-year disengagement plan, raising the possibility for the first time in 16 years of an end to the Vaughn G. consent decree (Sack, May 2000).

< Outcomes - Current Status >

The May 2000 consent decree replaced the 41 goals of the 1999-2000 implementation plan with 15 disengagement standards with 2-3 year timelines. The long-range compliance plan was itself replaced with a memo of understanding based on these standards. Though this consent agreement includes some of the compliance-oriented targets so prevalent in previous consent decrees, the focus of these disengagement goals is on clearly identifiable and measurable goals. Three-year, "substantial compliance" standards set targets for outcomes but also consider the district's progress towards an outcome, the effectiveness of its institutional mechanisms, and student achievement. These standards include:

==> Increase in the rate of school completion for students with disabilities from 50% to 57.2%

==> Increase in high school graduation rate for students with disabilities from 32% to 41.6%

==> Equivalent rates of participation (18%) for students with disabilities in vocational education

==> 58.8% of students with disabilities will receive IEP services in general education or combined programs (resource room)

==> Within three years, 80% of newly identified students will receive services in regular education or combined programs

==> No more than 2% of students with interruptions in IEP services

Two-year disengagement standards require full compliance. Once the court has determined that the school district is in compliance with one of these standards, the district is relieved of further obligation for it under the consent agreement. Failure to achieve a two-year standard can result in a court order requiring the district to use additional resources or provide extra time. These standards include:

==> 100% compliance with IDEA discipline requirements for suspensions and expulsions

==> 95% evaluation meetings conducted within timelines required by state and federal law

==> 95% implementation of IEPS with no school dropping below 88%

==> 100% of parent complaints resolved within 45 days (Westat, 2002; Vaughn G. v. Mayor and City Council of Baltimore, 1999)

This plan shifted the accountability for improvement in special education compliance and services from the BCPSS central office to individual school sites. It used a strong, self-monitoring system including quarterly reports of outcome data and mid-year and year-end compliance reports. It also established an accountability system that aimed corrective actions at the school-site level (BCPSS & the Urban School Collaborative, 2002).

In September 2001, BCPSS prepared a compliance report showing substantial progress toward the disengagement targets. The number of students receiving special education services had dropped, nearly all assessments and placements were within the prescribed timelines, referrals had decreased 10% over three years, and 49% of children with disabilities were in regular education or combined classes. The district, as part of its Master Plan, also outlined yearly district-wide and school-based initiatives such as requiring the district to implement school-based inclusion plans to help meet the new goals (BCPSS Master Plan II, 2002).

Data over the period from 1999-2002 confirm that the school district had made steady and sometimes dramatic progress towards meeting both the two-year and three-year standards. For example, by June 2002, the district had moved beyond the disengagement standard of 58.8% for placing students with disabilities in the least restrictive environment for two consecutive years. Similarly, for two years it had met the standard for placing newly identified students in their neighborhood schools by a wide margin (95.9% vs. a standard of 80%). It had been similarly successful in meeting two-year standards for holding evaluation meetings on time at a 95% rate system-wide and reducing service interruptions below 2%. However, it continued to have difficulty meeting the standards requiring full compliance with IDEA in suspensions and expulsions and resolving all parent complaints within 45 days (BCPSS, 2002). Noting difficulties achieving compliance with these standards, the district's 2002-2003 implementation plan contains a series of detailed steps to achieve these outcomes including additional training, reviews of data, and improvements to the data collection system (BCPSS, 2002).

Despite the district's considerable progress on most of the standards of the consent agreement, some observers continued to criticize the consent decree as overly focused on compliance issues and centralized responses at the expense of programmatic changes such as integration with regular education (Hettleman, 2002). Events in 2002 appeared to confirm some of the pessimism of these critics. In March, the special master criticized the district for a failed attempt to update its computerized special education tracking system. Judge Garbis warned district CEO Carmen Russo and the manager of the district's computer system that they could be held in contempt and jailed if they did not fix the problems. In October, when the district informed the judge that it had still not fixed the problem, he questioned the management ability of school leaders and the willingness of the district to meet the requirements of the consent decree (White, October 2002). He then gave them a one-month deadline to fix the major problems. While they succeeded in meeting these targets, as the special master noted in her November report, this progress was partial and the system remained "in process."

< Conclusion >

Based on the evidence of the last fourteen years, one might suspect that the Vaughn G. could continue to be "in process" for several years past the targets envisioned in the disengagement goals. While the hopes raised by the 2000 consent agreement have been confirmed by the strong efforts of the school district to meet the disengagement standards, they have been tempered by the continued conflict between BCPSS managers and the district court. These conflicts, the expenditure of vast sums of money, and a focus on procedural compliance are the current legacy of the Vaughn G. consent decree. Whether the recent evidence of a series of improvements in BCPSS's special education program and outcomes for student with disabilities overturns that legacy and leads to the eventual disengagement of the court remains to be seen.

< Bibliography >

American Civil Liberties Union. (1996). Press release: Bradford v. Maryland State Board of Education Summary of Settlement. Baltimore, MD: Author. Retrieved on January 20, 2003 from <http://archive.aclu.org/news/n121296a.html>.

Associated Press. (1998, September 26). Baltimore school chief takes a cautious approach to fixing special ed. Associated Press.

Associated Press. (1998, October 10). Judge says he won't rubber stamp Baltimore special education settlement. Associated Press.

Associated Press. (1998, December 2). School, state, plaintiffs submit special education plan. Associated Press.

Associated Press. (1998, December 5). Baltimore school officials agree to changes for disabled students. Associated Press.

Associated Press. (2000, May 2). Judge focuses Baltimore lawsuit on pupils' progress. Associated Press.

Baltimore Sun. (1994, November 11). Editorial: Amprey in contempt of court. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Baltimore Sun. (1995, August 19). Editorial: The micromanagers. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Baltimore Sun. (2000, May 2). City ends 16-year struggle over special education. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Baltimore City Public School System. (1998). Long-range compliance plan for special education: Coded and annotated version. Baltimore: Author.

Baltimore City Public School System. (2002). The BCPSS school year 2002-03 implementation plan. Baltimore: Author.

Baltimore City Public School System. (2001). Division of special education and

student support services disengagement outcomes report: Executive summary.
Baltimore: Author.

Baltimore City Public School System, & The Urban School Collaborative (2001).
Transforming a lawsuit. Baltimore: Author.

Baltimore City Public School System. (2002). Now is the time: Annual report: 2001.
Baltimore, MD: Author. Retrieved on January 12, 2003 from
http://www.bcps.k12.md.us/About/Annual_Report/.

Baltimore City Public School System. (2002). BCPSS master plan II: Objective 3 -
comply fully with federal and state laws governing the education of students with
disabilities. Baltimore, MD: Author. Retrieved on December 19, 2002 from
http://www.bcps.k12.md.us/School_Board/PDF/mp2_masterplan_obj3.pdf.

Bowler, M. (1994, July 31). Amprey-Grasmick tensions simmer. Baltimore Sun.
Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Bowler, M. (1995, August 22). 11-year-old special education dispute unresolved.
Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Bowler, M. (1996, September 13). City efforts to dismiss special ed. order fail.
Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Cipollone, D. W. (1998). Gambling on a settlement: The Baltimore city schools
adequacy litigation. *Journal of Education Finance*, 24 (1), 87-107.

Engram, S. (1994, July 10). When special isn't. Baltimore Sun. Retrieved on
January 22, 2002 from <http://nl.newsbank.com>.

Engram, S. (1995, August 20). Holding Amprey accountable. Baltimore Sun. Retrieved
on January 25, 2002 from <http://nl.newsbank.com>.

Gately, G. (1994, April 5). City agrees to reforms in the education of the
disabled. Baltimore Sun. Retrieved on January 22, 2002 from
<http://nl.newsbank.com>.

Gately, G. (1994, July 6). More clout sought for special education team. Baltimore
Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Gately, G. (1994, July 7). Judge restricts Amprey's staffing power. Baltimore Sun.
Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Hettleman, K. R. (2002). Still getting it wrong: The continuing failure of special
education in the Baltimore city public schools. Baltimore, MD: Abell Foundation.
Retrieved on January 13, 2003 from
http://www.abell.org/pubsitems/ed_getting_it_wrong.pdf.

Hettleman, K. (1998, October 9) ...and end calls for retesting in favor of fine-
tuning reform. Baltimore Sun. Retrieved on January 22, 2002 from
<http://nl.newsbank.com>.

Larson, E. (1997, October 26). Where does the money go?: How in one American city,
Baltimore, a big school system managed to spend millions of dollars on bureaucracy

and dubious special programs - but all too little on kids. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Lewis, A. (1997). State takeovers of failing urban schools: ECS conference highlights. Denver, CO: Education Commission of the States. Retrieved on June 16, 2002 from <http://www.ecs.org/clearinghouse/13/95/1395.htm>.

Maryland Disability Law Center. (2003). Student with disabilities in the Baltimore city public schools. Baltimore, MD: Author. Retrieved on December 5, 2002 from <http://www.mdldbaltimore.org/worddocs/VGFlyer.doc>.

Myers, M., & Thompson, J. (1995, August 17). Amprey rebuked. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Niedowski, E., & Bowler, M. (2002, March 27). Judge warns school chief. Baltimore Sun. Retrieved on January 25, 2002 from <http://nl.newsbank.com>.

Price, D. M., Bowie, L., & Henderson, S. (1998, September 21). Millions spent, but these kids still can't read: good intentions, lavish spending and never-ending litigation haven't produced results for city special-ed students. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Price, D. M., Bowie, L., & Henderson, S. (1998, September 20). Special ed: A decade of bloat and failure in city schools: City students often enter special education as illiterates - and stay that way. Meanwhile, the programs rolls-royce price tag leaves the cupboard bare for regular kids. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Rath, M. (1998, March 3). Board prepared to OK new set of new schools. Baltimore City Paper Online. Retrieved on January 15, 2002 from <http://www.citypaper.com/1998-02-25/mobs.html>.

Sack, J. L. (2000, May 10). New settlement in Baltimore spec. ed. case brings hope. Education Week on the Web. Retrieved on January 26, 2002 from <http://www.edweek.org>.

Schnaiberg, L. (1994, November 16). Baltimore chief in contempt over spec.-ed. reports. Education Week, 14(11), 3.

Schnaiberg, L. (1995, September 13). Baltimore seeks plan to end spec.-ed. suit. Education Week, 15(2), 5.

Siegel, E. (1995, November 16). Computer contract to track city's special ed students ok'd. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Thompson, J., & Rivera, J. (1995, March 16). U.S. control of special-ed. threatened. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

White, T. (2002, October 5). Judge assails school leaders. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

White, T. (2002, October 12). U.S. judge gives city schools 'final chance' to meet

order. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

White, T. (2002, November 18). City schools try to meet court order: Substantial stride made on special ed. computers. Baltimore Sun. Retrieved on January 22, 2002 from <http://nl.newsbank.com>.

Westat. (2001). Report on the final evaluation of the city-state partnership. Rockville, MD: Author. Retrieved on January 5, 2003 from http://www.bcps.k12.md.us/School_Board/Westat_Report.asp.
