Chronology of the Vaughn G. case
Prepared by MDLC, January 2008

Vaughn G. is the ongoing systemic reform lawsuit initially filed by MDLC in the U.S. District Court of Maryland in 1984 on behalf of students with disabilities in Baltimore City. Vaughn G. was one of the students on whose behalf the case was originally filed. The case settled in 1988 with a consent decree but the agreement did not yield significant progress in the assessment and delivery of special education and related services to students with disabilities in Baltimore City. The past 20+ years have produced a long trail of court orders and consent decrees.

In 1983 MDLC filed an administrative complaint with the Maryland State Department of Education (MSDE) because the Baltimore City Public School System (BCPSS) was putting students on waiting lists for assessments and for special education services. For example, at one point 700 students were on a waiting list for psychological evaluations.

MSDE worked with BCPSS to develop a corrective action plan, but the situation did not improve.

In 1984, MDLC filed a lawsuit in Federal Court on behalf of seven students (the Plaintiffs) whose assessments were not done within the time required by law and/or whose Individual Education Plans (IEPs) were not implemented within the time required by law (30 school days.)

1988 The First Settlement

The case was settled with a consent decree. By this date, 33 individual students had joined the case. The judge chose not to certify a class action, but the consent decree is enforceable by any student who is in need of or receiving special education services from BCPSS.

The settlement had five main elements:

- A tracking system to help BCPSS with timeline compliance and to be used to produce quarterly reports to the Court and to identify students who missed services so they could get make-up services.
- BCPSS was required to contract with private providers to conduct assessments whenever BCPSS was not able to meet required timelines.
- Parents were to be given certain information to help them protect their children's rights including the due date for completions of assessments, due date for IEP implementation, names of legal services providers, information about the consent decree and how to take action if assessments or services were delayed.
- Each student who suffered a timeline violation, that is a delayed assessment or delayed IEP implementation, had to be offered "compensatory services" (one-for-one make up) for lost services. Parents who were not satisfied with the make up services offered by BCPSS could request arbitration.

- A Court Monitor who was selected jointly by BCPSS and the plaintiffs was appointed to report to the Court twice a year on the BCPSS' progress and to conduct arbitration conferences for students when requested by parents who were not satisfied with the compensatory award.

The Consent Decree was to last for three years.

1988-1992 BCPSS Fails to Meet its Obligations under the Decree

BCPSS missed all of the deadlines in the original Consent Decree. For example, during the first year that the Consent Decree was in effect, BCPSS reported that 414 IEPs for social work services were not implemented on time and 1036 IEPs for classroom instruction were not implemented on time, but BCPSS did not contract with any private social workers or teachers. Only 66 students were offered compensatory awards that year.

By 1990, BCPSS was reporting a violation rate for initial and special assessments of 49.7% and a violation rate for triennial assessments of 64%. There was a huge backlog of approximately 6600 students who were entitled to compensatory services. The Court Monitor set up a summer program for students awaiting compensatory services. It was considered successful by the parents, but unfortunately only 29% of the eligible students participated.

On behalf of the plaintiffs, MDLC intervened additional students in the case and filed motions to have the Court enforce the original orders. BCPSS tried to get the Court to remove the Monitor and eliminate the reporting requirements in the original Decree. The Court denied BCPSS' motion and ruled that the "Monitor's criticisms are fully supported by facts of record."

A month before a scheduled contempt hearing, the Mayor sent the federal judge a letter asking for an opportunity to develop a remedial plan. The judge put plaintiffs' motion on hold and gave BCPSS two months to develop a plan. The plan that BCPSS produced was so inadequate that the Judge described it as a "mere bureaucratic shuffling of the cards" and appointed a team of experts to develop a remedial plan.

1993-1994 The Management Oversight Team

BCPSS would not agree to implement the remedial plan submitted by the Court's experts in February 1993. Instead, BCPSS hired a private law firm to write another plan. On the eve of a scheduled contempt hearing, BCPSS agreed to another settlement.

The April 4, 1994 agreement set up the Management Oversight Team (the MOT), made up of the City Superintendent, Dr. Amprey, a representative of the plaintiffs, and the State Superintendent, Dr. Grasmick. The State agreed to be joined as a defendant in the case. The agreement gave the MOT the authority to "make, review

and direct" all matters affecting special education compliance. The agreement allowed the Plaintiffs or the State to seek Court review of proposed actions or decisions by BCPSS, so that the Court could decide whether the disputed decision provided a reasonable basis for achieving increased compliance with the Consent Decree.

1994 Problems Continue and BCPSS is Found to be in Contempt of Court

BCPSS' resistance to the MOT was so great that plaintiffs had to return to Court repeatedly to enforce the MOT's access to information and to prevent BCPSS from carrying out unwise decisions until the Court had an opportunity to review them. The most controversial areas from BCPSS' point of view was personnel. The Court ruled that BCPSS had to inform the MOT before making personnel decisions "above the level of teacher." Each time plaintiffs sought Court enforcement or review, the State agreed with the plaintiffs.

As an example of the type of dispute that came before the Court during this time period, plaintiffs and the State recommended that personnel actions be taken against certain high level administrators who had failed to bring about increased compliance in their schools over an extended period of time. BCPSS refused to implement the recommendations. The Court ultimately ruled that imposing the sanctions would lead to increased compliance and directed BCPSS to demote, reprimand or suspend the administrators, (Years later the administrators succeeded in having the sanctions thrown out by a BCPSS hearing officer in a proceeding to which the plaintiffs were not parties.)

Another dispute that arose concerned the computerized tracking system. BCPSS started out using a system that could not track at all. It did not retain historical information; each new piece of information erased the prior data. After plaintiffs and the Monitor had documented the inadequacy of this system, BCPSS purchased an off-the-shelf system that was not customized adequately to carry out the required functions. When an outside expert retained by BCPSS recommended a particular type of system, BCPSS instead had its own Management Information System(MIS) department attempt to develop a system. BCPSS wanted to bring it up in all schools simultaneously. Plaintiffs and the State thought BCPSS should pilot the system in a few schools first because of reports that people in the schools were having trouble accessing the central data base, that systems were crashing, and that data was continually being lost. The judge decided to allow BCPSS to pick a date by which BCPSS thought it could produce a complete and accurate report using its own system. Dr. Amprey picked a date in October. When BCPSS failed to produce a complete and accurate report, BCPSS was found to be in contempt of Court. BCPSS brought in a new private law firm.

1995 Sister Kathleen Feeley is Appointed

Because of the continuing resistance to the MOT's involvement, plaintiffs informed BCPSS that they intended to ask the Court to appoint a receiver of special education.

Baltimore City instead appointed Sr. Kathleen Feeley, a retired college president, to be the Administrator for Special Education, reporting outside BCPSS directly to the Mayor. BCPSS admitted that it was still in substantial non-compliance with the Consent Decree and entered into another settlement, setting out Dr. Feeley's powers and agreeing to develop a comprehensive long range compliance plan.

Unfortunately, the lack of cooperation with the MOT continued after Dr. Feeley's appointment and now extended to resistance to Dr. Feeley as well. As examples of the lack of cooperation:

> The MOT, with Dr. Feeley, stopped BCPSS from contracting out the medical assistance reimbursement function, because internal BCPSS staff were able to perform the functions, thus allowing BCPSS to keep all the funds. Revenues increased dramatically and Dr. Feeley used the increased funds to hire more staff for many special education functions. However, the BCPSS financial office did not amend the budget to reflect this increased revenue. BCPSS referred to Dr. Feeley's decisions as "unfunded expenditures" in special education.
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> The MOT, with Dr. Feeley, disagreed with BCPSS' proposed appointment of a particular person to be Assistant Superintendent of Curriculum and Instruction. BCPSS had the employee move into the office and start carrying out the functions of the office, while denying that the person was "acting" in the position.

The lack of cooperation was such that in November, 1995, plaintiffs filed a motion asking the Court to appoint a receiver. The federal judge decided that the receivership motion should be heard with the State Court case challenging the adequacy of education in Baltimore City that had been filed by Baltimore City and the ACLU. Accordingly, plaintiffs' attorneys participated in the pre-trial discovery in the State case for a year.

1996 The Compensatory Remedy is Modified and the City/State Partnership is Established

Two issues that were unique to the special education case went ahead to a hearing in federal court. Plaintiffs and the State asked the Court to appoint the State to be the receiver of information gathering and reporting functions of BCPSS. The judge declined to appoint a receiver and instead accepted BCPSS' promise to bring in outside consultants and develop a system that would be functional by the start of the 1996-97 school year.

Plaintiffs also asked the Court to transfer the compensatory remedy to the Court Monitor. Because of the way BCPSS was operating the program, fewer than half of the eligible students were getting a remedy. BCPSS was offering only before or after school make up services, which many students felt to be a punishment. BCPSS did not tell parents that free transportation was available; some students were offered summer programs, based on when BCPSS processed their cases, others were not; some students got goods such as encyclopedias, based on their parents' persistence. Notices were repeatedly sent to

incorrect addresses. The remedy was being offered in a manner that was arbitrary and unfair and was not accomplishing what it was supposed to do, which was to try to make the student whole for what s/he lost; and to make sure BCPSS did not benefit by failing to provide the service in the first place. The judge ruled in favor of the plaintiffs and eventually transferred control over the compensatory remedy to the Court Monitor. The Court ordered BCPSS to pay fines for each case that was not transferred to the compensatory services office in a timely manner.

The tracking system was not functional at the start of the 1996-97 school year.

In October, 1996, the parties agreed and the Court adopted goals and objectives of the long-range compliance plan for special education. However, BCPSS was having so much difficulty developing measurable outcomes and timelines that an outside expert was brought in to assist.

In November, 1996, the receivership motion was settled as part of the federal/state court settlement that set up the City/State Partnership. Under the Partnership, a New Board of School Commissioners was appointed by the Mayor and Governor; $254 million was to be provided to BCPSS over five years; BCPSS personnel and financial systems was to be separated from the City's; and a Parent and Community Advisory Board (PCAB) was established. Three members of the PCAB represent the special education plaintiffs. The MOT was eliminated, and, at the City's insistence, plaintiffs' attorneys agreed to appoint a new plaintiffs' representative. A new Special Master was appointed to report to the Court on the extent of BCPSS' progress. The original Monitor continued to oversee the compensatory remedy. All other orders in the special education case remained in effect. BCPSS was required to give plaintiffs advance notice of matters that affect special education, and plaintiffs can still take disputes to the Court.

1997 The Compensatory Awards Office is Transformed and the Complete Long Range Compliance Plan is Adopted by the Court

The New Board of School Commissioners assumed office in June, 1997. Most of the actions required in the Long Range Compliance Plan that were to have taken place at the start of the 1997-98 school year did not occur. The tracking system was not functional at the start of the 1997-98 school year.

1998 Court Monitor Leaves. BCPSS assumes control of Compensatory Awards Office, negotiations over Long Range Compliance Plan continue.

A Consent Order was issued requiring BCPSS to take certain actions over the summer in an attempt to recoup lost ground. As an example, BCPSS was supposed to have had guidance counselors in place at 5 high schools at the start of the 1997-98 school year to work with students with disabilities in an attempt to prevent them from dropping out of school. Under the recent order, the counselors were to locate students with disabilities who dropped out of the five schools during this school year and were to attempt to

develop transition plans that would get the students to continue their education. The tracking system was not fully functional. BCPSS reported 623 timeline violations during the first three months of 1998.

1998-2000 Negotiations Continue that Result in an Order in May 2000 Containing the Ultimate Measurable Outcomes (UMOs).

These focused upon the specific areas that BCPSS needed to improve upon in order to disengage from the Court process. Among other things, the UMOs addressed timeline compliance; increasing high school completion rates for students with disabilities; increasing inclusion and the delivery of IEP services in inclusive settings; complying with laws in the discipline process; reducing interruptions in IEP services; drop-out prevention; and IEP progress reports.

2000-2008 Negotiations Continue, Violations Continue, Court Hearings

Early in the summer of 2005 BCPSS identified problems with its delivery of related services to students with disabilities and acknowledged that some staff had not complied with long-standing compensatory award procedures ordered by the Court in *Vaughn G.* to remedy interruptions in the delivery of special education and related services. This revelation prompted further investigations by the parties, including audits by the State Department of Education (MSDE) and the Special Master. In successive hearings over the summer, MDLC and the two defendants offered three alternative proposals to the Court aimed at curing the noted deficiencies within BCPSS' delivery of special education and related services. MDLC urged that the delivery of related services, and any other organizational unit within BCPSS instrumental to the delivery of special education and related services, be placed under the authority of the third party administrator – basically a receivership. MSDE asked that it be given the authority to place its own hand-picked team within the BCPSS that would work closely with BCPSS administrators to assist systemic change. BCPSS sought to contract with a corporate "turn-around specialist" and a related services contractor to remedy the deficiencies with BCPSS' delivery of special education and related services.

On August 12, 2005, the Court chose the MSDE plan of action and ordered that MSDE implement its plan to bring the special education functions of BCPSS into compliance with Court Orders, IDEA, and the Ultimate Measurable Outcomes. The Court also ordered the parties to develop a proposal for the delivery of nearly 100,000 hours of compensatory services to students who had incurred interruptions during the 2004-05 school year.

The BCPSS appealed the Court's order to the 4th Circuit Court of Appeal and the case was diverted to mediation for several months between November 2005 – April 2006. On the eve of submitting its brief the BCPSS withdrew the appeal in mid-April.

The appeal notwithstanding, in December 2005 the parties reached agreement on a detailed compensatory services order. Deadlines were set in a supplemental Order issued by the Court later in December 2005. The Orders required, among other things, that BCPSS provide over 92,000 hours of compensatory services to over 8,000 students denied some of their related services in school year 2004-2005, hold new IEP meetings for certain students no later than May 15, 2006, provided for summer school to be used to provide compensatory services for some students, and required the school district to report on its provision of compensatory services to the Court and parties.

BCPSS never fully complied with the December 2005 orders. As of the end of December 2006 roughly 40% of services were not provided because parents were said to have refused the services or failed to affirmatively consent. But even where consent was provided all the required hours had not been provided. In April 2007, defendants in the case, BCPSS and MSDE, asked the Court to allow them to substitute tutoring for related services because BCPSS said they didn't have people to provide related services, such as speech and occupational therapy, but had tutors. This formal request to the Court followed a series of letters sent to students' parents asking that they consent to tutoring to which many parents either failed to respond or responded stating that they wanted related services, not tutoring. After a hearing in which plaintiffs opposed defendants' request, the Court granted defendants' motion. The Court accepted BCPSS' representation that they had the tutors and explained that it was better for the students to get tutoring than to get nothing.

While BCPSS told the Court that they could and would provide most of the tutoring by the end of school year 2006-2007, the tutoring was not provided as promised. BCPSS has since told us that the vendors who were supposed to provide the private tutors who BCPSS told the Court would provide the tutoring failed to produce. While many of the hours had been provided by the end of December 2007, six months after BCPSS said the tutoring would be completed, about 40% of the hours were not provided because parents were said to have refused services or not responded to requests for consent.

Compensatory services is just one of several important issues in the Vaughn G. case. Each year, pursuant to an earlier court order, the parties must come up with an implementation plan to help bring BCPSS into compliance with all the Ultimate Measurable Outcomes mainly focusing upon BCPSS' plan to improve in these areas: inclusion, disciplinary practices, high school completion and graduation rates for students with disabilities, and interruptions in IEP services. During the summer of 2007 the parties developed an extensive Implementation Plan for school year 2007-2008.