

Students with Disabilities Can Succeed !
How the Baltimore City Public Schools Are
Transforming Special Education

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PREFACE AND ACKNOWLEDGEMENTS

The One Year Plus policy described in this report has the potential to breathe new life into “special education” for students with disabilities. In recent decades, many waves of K-12 education reform – including the No Child Left Behind Act, charter schools, alternative teacher recruitment paths, tougher teacher evaluations, better data to drive instruction, and a stronger research base for “reading by nine” – have produced trickle-down gains for students with disabilities. But special education, despite its lofty ideals, remains not nearly special enough.

It will come as a surprise to most readers, including educators, that the overwhelming majority of students with disabilities have the cognitive capacity to succeed at much higher levels than they do --- if they are unshackled from low expectations and receive the “specially designed instruction” and other supports due them under federal law. But this hasn’t happened.

I have seen up close and personal the vast gap between the promise of special education and the heartbreakingly poor academic performance of students with disabilities. Over the past 15 years, I have been a pro bono advocate for about 175 students with disabilities, author of three prior reports on special education published by the Abell Foundation, a member of the Baltimore City school board (where I became chief architect of the One Year Plus policy described in the report), and a community education advocate.

The One Year Plus policy should be a national model. Michael H. Yudin, U.S. Department of Education Acting Assistant Secretary for Special Education and Rehabilitative Services, has stated that One Year Plus is well aligned with the Department’s high priority effort to shift from procedural compliance to accountability for academic outcomes.

True, One Year Plus is in the early stages of implementation. Uncertainties and obstacles lie ahead. But as detailed in the report, the policy recognizes that a large majority of students with disabilities have the legal (as well as moral) right to services that enable them to meet state academic standards. *The issue for Baltimore and the nation is not if but when, and how the right will be fulfilled.*

Moreover, there are promising signs that the policy will succeed. Early monitoring reports and anecdotal evidence of improved student outcomes, while hardly conclusive, are encouraging. National experts believe that academic outcomes should, if One Year Plus is well implemented, significantly rise.

I am deeply indebted to numerous national and local experts who critiqued in detail or generally reviewed a draft of the report. They include: Kathleen Boundy, Donald Deshler, Silvia DeRuvo, Laura Doherty, Jennifer Dull, Daniela Fairchild, Sue Gamm, Martha Goodman, Carol Ann Baglin-Heath, Edward Kame'enui, Susan Lattimore, Leslie Margolis, Maura McInerney, James Mclesky, Richard Peterson, Rachel Quenomoen, David Schimmel, David Stone, and Amanda VanDerHeyden.

Needless to say, these reviewers did not agree with all parts of the report. But there was common recognition that the One Year Plus policy was groundbreaking and conceptually sound, and offered important lessons to be learned.

The One Year Plus policy could never have happened without the bold leadership of the Baltimore schools CEO Andres Alonso. His tenure ended in June 2013, but the Baltimore school board and top administrators are committed to its effective implementation.

Two final notes. One, this report is dedicated to the countless educators in public schools in Baltimore and across the U.S. who work tirelessly and often thanklessly on behalf of students with disabilities. Like the students they serve, teachers and other service providers on the frontlines deserve much more support than they get.

And last but hardly least, I thank the Abell Foundation for its sustained commitment to reforms that challenge conventional wisdom and improve the education of disadvantaged children.

Hopefully readers of the report will want to advocate in their own ways for One Year Plus-like reform across the country. Children with disabilities are waiting for us to fulfill their right to and their potential for educational success.

EXECUTIVE SUMMARY/INTRODUCTION

To borrow from Mark Twain's quip about the weather, everyone complains that special education focuses too much on procedural compliance and too little on academic achievement, but no one does much about it.

The Baltimore City Public Schools are a trailblazing exception. Under the leadership of Andres A. Alonso, a former special education teacher who resigned in June 2013 after serving six years as CEO, the Baltimore schools have created a national model that raises the bar dramatically for the academic progress that students with disabilities are *expected* to achieve.

The model is the "One Year Plus" policy that went into effect system-wide in the 2012-2013 school year. Under the policy, students who are not severely cognitively disabled have a right to special education services *that will enable them to meet state academic standards*.

This report examines how One Year Plus works and the two foundations on which the policy is built. First, contrary to conventional perceptions, the large majority of students with disabilities have the cognitive ability to achieve state academic standards. Second, under federal and state laws, these students are legally entitled to specially designed instruction and other supportive services that will enable them, notwithstanding their disabilities, to actually achieve the standards. Both of these foundations are misunderstood or ignored by policymakers, parents, advocates and even the most dedicated educators.

The consequence is the extremely low academic achievement of students with disabilities. Nationally, the number of students with disabilities scoring at proficiency on state tests is 30 to 40 percent lower than their non-disabled peers.¹ Most revealing, students in the largest category of disabilities – those identified as having a "Specific Learning Disability" (LD) such as dyslexia – have cognitive abilities that range from low average to above average. Yet, national data show that in high school at least one fifth of them are reading at five or more grade levels below their enrolled grade level, and close to half are three or more grades below. Students with LD are on average 3.4 years behind their enrolled grade level in reading and 3.2 years behind in math.² In addition, students with disabilities drop out at about twice the rate of their non-disabled peers.³

Moreover, the achievement gap is much larger than it looks because the test scores and progress of students with disabilities are misrepresented and inflated. As detailed later in this report, this deception occurs in various ways, some above-board, some not.

Low expectations and the wide range of legally-recognized disabilities

The dismal academic achievement of students with disabilities may not seem surprising. Why should we expect students with disabilities to meet the same academic standards as non-disabled peers? Isn't the performance gap to be expected?

The answers, as analyzed in Part I of the report, require an understanding of the wide range of legally-recognized disabilities under the federal Individuals with Disabilities Education Act (IDEA). In particular, educators have not sufficiently distinguished between students with severe cognitive disabilities, who in general are not able to meet the same academic standards as non-disabled peers, and students who are not severely cognitively disabled and are able to meet the standards with the right supports.

The line between them is difficult to draw and generates controversy. What is clear, though, is that students with the most severe disabilities are the public face of special education. Their disabilities tend to be physically visible, arousing instant recognition and empathy --- for example students in brace-crutches or with Down syndrome.

Yet, the public prominence of the most severe disabilities masks a big surprise: *Students with the most severe disabilities comprise only about 20 percent of all students with disabilities.*⁴ The National Center on Educational Outcomes, the leading research organization on accountability for the achievement of students with disabilities, concludes, *"The vast majority of special education students (80-85 percent) can meet the same achievement standards as other students if they are given specially designed instruction, appropriate access, supports and accommodations, as required by IDEA."*⁵ (italics added)

These facts show the fallacy of the low expectations that become self-fulfilling prophecies of academic failure. The higher standards for success embedded in federal law and the One Year Plus policy are sound and attainable, as numerous national experts attest. For example:

- “One Year Plus is right on target! Our research shows that the students under the policy CAN meet the 1 + year expectation.”

Donald Deshler, Professor of Special Education, Director of Center for Research on Learning, University of Kansas.

- “The Baltimore City schools have an important story to tell. The One Year Plus policy should be highlighted nationally as a promising path to raising expectations and academic achievement for all students with disabilities.”

Rachel Quenemoen, National Center and State Collaborative Project Director at the National Center on Educational Outcomes.

- “Baltimore’s One Year Plus policy is a step ahead of the nation in raising and meeting expectations for students with disabilities. School systems nationwide should consider similar policy steps. Now the burden is on schools, school boards and educators of all ranks to operationalize such a policy using rigorous evidence-based instruction that will enable all students (including those who have been identified with severe cognitive disabilities, if appropriate) to achieve One Year Plus goals and meet state standards.”

Edward Kame’enui, first commissioner of the National Center for Special Education Research in the Institute of Education Sciences and now professor and director of the Center on Teaching and Learning, University of Oregon.

- “I very much respect what you have undertaken in Baltimore. In fact, I wish I were working in the city so I could witness the implementation and changes evolving as a

result of the One Year Plus policy. It is an exciting development and [the city school system] deserves a lot of credit for moving this initiative forward through professional development, monitoring and oversight, leadership and will power.”

Kathleen B. Boundy, Co-Director of the Center for Law and Education in Wash. DC and Boston.

- “The One Year policy is an important initiative that raises the bar for services for students with disabilities and has the potential to lead to improvements in their academic performance.”

Sue Gamm, former head of special education in Chicago, top official in the U.S. Department of Education, and member of the national Urban Special Education Leadership Collaborative.

The legal right to special education services that enable students with disabilities to meet state academic standards

The vast majority of students with disabilities not only have the cognitive ability to meet state academic standards. As discussed in Part II of the report, they are legally entitled to the special education services that will enable them to meet the standards. Yet this legal right is denied nationwide.

Practice varies from state to state, from school district to school district and from school to school. But in general, school systems across the country apply a low, minimalist standard for how much progress students with disabilities should be enabled and expected to achieve under IDEA and other federal laws. This standard is typically expressed in terms of “some benefit” that is “meaningful.” However, these terms are obviously vague, and school systems have seized upon them to minimize their responsibilities.

In general the practice is for students with disabilities to receive Individualized Education Program (IEP) “Goals” that call, at best, for twelve months academic growth in basic skills like

reading and mathematics over the twelve months period of the IEP. For example, an IEP might provide that Johnny who is reading at a 2.5 grade level will progress to a 3.5 grade level. But often IEP Goals don't provide any numerical specification. Too often, the Goals simply say that Johnny will progress or improve but don't say by how much. Moreover, the Goals are viewed as "aspirations," not "expectations," so when students fail to attain the Goals, no alarm goes off, and there are no consequences. Students with disabilities fall farther and farther behind, and little, if anything, is done to review and revise instructional services.

Part II of the report describes how these practices violate IDEA, court decisions, the No Child Left Behind Act and the provisions in most states for "Standards-based IEPs." Part III analyzes the major reasons the violations have evolved and endured. These include: the preoccupation with procedural compliance at the expense of a focus on academic instruction; the tendency to blame the victims (low-income children and families) rather than lack of adequate instruction for low achievement; false representation and inflation of student progress; and lack of resources for necessary services.

The framework and implementation challenges of the One Year Plus policy

The One Year Plus policy seeks to remedy the low expectations and legal violations that result in the unfulfilled promises of special education. The policy provides:

- IEPs for students who are on a diploma track (that is, who are not severely cognitively disabled) should contain Goals for at least twelve months (*one year*) academic progress over the twelve months covered by the IEP; and
- When there is a large gap between the student's enrolled grade level and actual level of performance (for example, a student who is in 6th grade and reading at a 3rd grade level, a gap of three years), the Goals should ordinarily express the expectation of twelve months progress *plus* a reasonable reduction in the gap (for example, 15-18 months progress); and

- Exceptions to the One Year Plus policy must be based on compelling individualized circumstances that are documented by the IEP Team; and
- IEP Services⁶ must be *reasonably calculated* to enable the student to achieve the Goals. IEPs are not a guarantee that the Goals will be met. Students differ and IEPs must be individualized. But the IEP Services should reflect research and the professional judgment of the school's IEP Team that the Goals will be achieved if the student's circumstances – including the nature of the disability and attendance – do not change significantly, and the IEP is effectively implemented.

Consider the example of Johnny, who has a Specific Learning Disability such as dyslexia. He might be reading at 2nd grade level though enrolled in the 5th grade, a common gap nationwide. Under the One Year Plus policy his IEP might call for Goals and Services that are expected to enable him to achieve 15 or 18 months progress in reading over one school year. The gap would be reduced and Johnny would move closer to meeting state standards for reading.

Two limitations on the scope of the policy must be noted. First, students with disabilities are not entitled to services that maximize their potential. State standards that these students should be expected to meet represent a floor, not a ceiling, for academic proficiency. Federal, state and local policies should address how to maximize the potential of all students, disabled as well as non-disabled, but IDEA does not go that far.

Second, the One Year Plus policy does not mean that the needs of severely cognitively disabled students – those who are not directly covered by the policy – are being sufficiently addressed. Still, the policy establishes a framework for raising their academic and functional performance levels.

Notwithstanding these limitations, One Year Plus is a powerful, unprecedented leap forward. The obvious task ahead is to overcome the numerous obstacles in the way of effective implementation. Part IV of the report identifies and analyzes them. They are an almost perfect storm of the overall failings of K-12 public schools compounded by the complexities of special education.

They begin with the education fact-of-life that most students who are not severely cognitively disabled would not require special education services if their learning problems were effectively addressed prior to referral to special education. But that is a huge “if.” For many reasons, including lack of funding and highly skilled teachers, school systems across the country do not provide sufficient early interventions that can prevent or mitigate learning difficulties. As a result, special education is left overburdened and under-supported. Under current, seemingly perverse, education laws, non-disabled students do not have the same “right” to intervention services as students with disabilities do.⁷

At the same time, special education itself – the process of identifying and enabling students to overcome a wide spectrum of educational disabilities – has its own set of complex, interwoven obstacles as detailed in this report. Part IV details how Baltimore is trying to confront them.

Resources are a big one. What resources to improve the quality and quantity of services – for example, better training for teachers and smaller pupil-teacher ratios for intensive interventions – will be needed? And are those resources available, especially in financially-strapped school districts?

But money is only part of the problem. Beyond that lie many policy and practice questions pertaining to how IEPs are developed and implemented. Some of these issues reflect confusion or unclear practices in the IEP process that exist nationwide and existed in Baltimore prior to One Year Plus. Other issues arise under the heightened requirements of the One Year Plus framework. Among them:

- What exceptions to One Year Plus should be allowed?
- What is a reasonable reduction in the gap between the student’s performance level and enrolled grade level?
- How do IEP Teams strike the right balance between proper use of accommodations and enabling a student to achieve independent proficiency in foundational skills, especially in reading?

Teachers as a whole are caring and committed; yet transforming the deep-rooted special education culture of low expectations will be a steep, slow climb. Implementation will require a commitment to sustained “R & D.” But such an all-out effort is underway in Baltimore. Teachers are receiving extensive professional development. Parents must be given a brochure explaining their “One Year Plus” rights at each IEP Team meeting. Monitors are reviewing “compliance” with the requirements of One Year Plus. A full evaluation will be undertaken.

The politics of academic reform of special education

Can the One Year Plus model be nationally replicated? Part V concludes the report with a scan of the politics of academic reform of special education. Mainly it is a tale of political inaction. Standing in the way are not just the barriers imposed by educators themselves as revealed throughout the report. Equally forbidding are political demographics. Political support for a policy like One Year Plus, that challenges entrenched conventional wisdom and educational practices, suffers greatly because students with disabilities are disproportionately poor and minority compared to nondisabled peers. And the unmet needs of students who are not severely cognitively disabled are less visible to the general public.

Adam Urbanski, a leader in education reform, once said, “Education is not something you fix. It’s something that you make better.” That is especially true with special education. The challenges are great. Still, the One Year Plus policy can be transformative. There are encouraging signs of success. And the challenges must be overcome if as a nation we are to fulfill the rights of students with disabilities.

Hopefully, the Baltimore public schools are a model for this transformation.

PART I: LOW EXPECTATIONS AND SELF-FULFILLING PROPHECIES OF LOW ACADEMIC ACHIEVEMENT

Educators generally believe that the low academic performance of students with disabilities, including those with relatively mild disabilities, is inevitable. They fail to recognize that the great majority of these students, despite their disabilities, are cognitively able to meet the same state academic standards as other students, if they receive proper instruction and related services as required under IDEA.

U.S. secretary of education Arne Duncan has said, “No belief is more damaging in education than the misperception that children with disabilities cannot really and shouldn’t be challenged to reach the same high standards as all children.”⁸ As earlier noted, the National Center on Educational Outcomes (NCEO) recently reported: “The vast majority of special education students (80-85 percent) can meet the same achievement standards as other students if they are given specially designed instruction, appropriate access, supports and accommodations, as required by IDEA.”⁹

In testimony before the U.S. Commission on Civil Rights, Rachel F. Quenemoen, a senior scientist at NCEO, pointed out:

“You have probably heard protests from every corner that expecting students with disabilities to achieve at high levels is unrealistic. *** [But] “The literature on student achievement is deep and strong – what teachers expect is typically what students do. 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. ***

We have a colleague at NCEO, Dr. Kevin McGrew, who is one of the authors of the Woodcock-Johnson III tests of achievement. *** He has found, ‘It is not possible to predict which children will be in the upper half of the achievement distribution based on any given level of general intelligence. For most children ... (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.’ *** I am afraid that students with disabilities have been facing systematic and institutionalized low expectations for so long that these low expectations are internalized even by their advocates.” (emphases in the original written testimony)¹⁰

Other experts express similar views. For example, law professor Richard Peterson writes that despite the No Child Left Behind Act (NCLB) and amendments over the years to IDEA, “the pervading culture of *low expectations* and the values and practices by which it is sustained, continue to infect the roots of [reform] efforts.” (italics in the original)¹¹

This culture – the “soft bigotry” of low expectations – is particularly disastrous for students who have educational disabilities *and* are poor and minority. But it won’t change until its basic origins are uprooted and overcome. Among them and discussed next are: lack of understanding of the range of disabilities and capabilities among students with legally-recognized disabilities; lack of knowledge of research-based best practices for identification and treatment of disabilities; the tendency of educators to blame the victims (that is, students and their parents) for low performance; and false representation and inflation of students’ progress.

Lack of understanding of the range of capabilities among students with legally-recognized disabilities

Time after time in IEP meetings in which I represented students, school staff objected strenuously to the idea that students with even mild disabilities had the cognitive capacity – and therefore the legal right – to IEPs that enabled them to achieve grade level standards. Typical remarks: “He’s got a learning disability so you can’t expect that.” Or “you’re forgetting she has a disability.”

This attitude exists nationwide. In testimony before the U.S. Congress, Martha L. Thurlow, director of NCEO, said, “I so often hear educators say something like: “How can you expect special education students to perform well on tests? If they could do that, they wouldn’t be in special education.”¹²

But is this ivory-towered, wishful thinking on the part of those who aren't in the classroom trenches? Don't the higher expectations in the One Year Plus policy defy common sense? Doesn't the term "disability" in and of itself imply a lesser ability? Why shouldn't educators, parents and policymakers think: How can *any* students with legally-recognized disabilities be expected to meet the same academic standards as non-disabled students?

The answers lie foremost in an understanding of the wide range of legally-recognized disabilities under IDEA. The large majority of students with disabilities, around 80 percent, have, for example, learning disabilities like dyslexia, speech and language impairments and attention deficit disorders. These disabilities are often referred to as "mild." The other 20 percent have disabilities that are generally perceived as more "severe," like intellectual limitations, some kinds of autism and mental illness, and multiple handicaps.¹³ But a division between "mild" and "severe" disabilities is too simple. Educational disabilities and the severity of their impact lie along a continuum.

This continuum makes it difficult for educators to draw a line between those students with disabilities who are able to meet, with the right supports, the same academic standards as non-disabled peers, and other students with disabilities who cannot be expected to meet the same standards. Disability classifications are not educationally and medically precise. Within each classification, there are countless variables in students' individual mental, psychological and physical conditions. It is extremely hard to develop standards and practices which can be applied uniformly to disabled students across the board – for example, accountability standards (including One Year Plus), high school graduation requirements, and "accommodations" in test-taking.

Still, special education laws (and the individualized needs of students with disabilities) require that distinctions be drawn and applied. While NCLB provides that all states and school districts must be held accountable for ensuring that all students, including all students with disabilities, are held to the same academic standards, NCLB regulations draw a distinction and allow states to develop alternate assessments based on less-demanding alternate academic achievement standards for students "with the most significant cognitive disabilities."¹⁴ And there is a vast mix (and muddle) of state graduation options across the states that attempt to account

for differences in disabilities.¹⁵ Typically, though, students with the most significant cognitive disabilities, who take alternative assessments, are placed on a track to receive a less-demanding certificate of completion rather than a regular diploma upon completion of twelfth grade.

In this context, the architects of Baltimore’s One Year Plus policy chose to apply the policy to “students who are on a diploma track (that is, who are severely cognitively disabled).” This policy choice is imperfect but necessary, and like other elements of the policy, it must be closely monitored. At the same time, the Baltimore school system must make equivalent efforts to raise expectations and the academic and functional performance levels of students who are on non-diploma, certificate-of-completion tracks.

A related misconception about the right of students with disabilities to meet state academic standards is the prevalent belief by educators that if a student is able to meet grade-level standards, the student should not qualify for special education. Yet, federal regulations under IDEA spell out that IEPs should be “available to any individual with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”¹⁶ Obviously, the student’s ability to meet grade level standards may have been made possible by IEP Services, including “accommodations,” and the student is likely to regress if the services are withdrawn.

Lack of knowledge of research-based best practices for identification and treatment of disabilities, especially in reading

Another fundamental reason for teachers’ low expectations lies in their failure to know and accept research-based best instructional practices for identification and treatment of struggling learners.¹⁷ Teachers have learned little in teachers’ colleges or on the job about the effectiveness of various programs, including interventions for reading difficulties. This constitutes a violation of the IDEA mandate that special education services should be “based on peer-reviewed research to the extent practicable.”¹⁸ As a result, IEP Teams are unable to determine what IEP Services are *reasonably calculated* to enable students to achieve IEP Goals.

The starting point for knowledge of best instructional practices for students with disabilities is not, however, within special education itself. The majority of students who are not severely cognitively disabled would not require special education if they received timely, adequate interventions as their learning problems emerged.¹⁹ That is the premise and promise of the framework of “Response to Intervention” (RTI).

Simply stated, RTI provides a progressive series of interventions, usually in three tiers. Tier One is the core instructional program for all students, including assessments to detect and diagnose the problems of students who are not making sufficient progress. Tier Two affords additional instruction for those students in small groups, either within the general education classroom or in a pull-out setting. Students who are still struggling, despite Tier Two interventions, then receive Tier Three extra instruction, usually tutoring in a smaller pull-out group.

School systems vary somewhat in their RTI structures. Sometimes Tier III is pre-referral to special education, and sometimes it is IEP services for students found eligible for special education. Either way, special education is supposed to come into play only after prior RTI interventions have not been successful.²⁰

No one disputes the basic principles and indispensable value of RTI. But RTI has barely been implemented in urban school systems, mainly because of lack of skilled teachers and the funds to pay for extra small-group and tutoring instruction. Despite reams written about how RTI should be done, there are few written reports showing that it has been done on any scale, and virtually no data showing its effectiveness.²¹ Consequently, more often than not, IEPs are less the RTI tier of last resort and more a combination of the services that should have been provided in Tiers Two and Three.

It is beyond the scope of this report to review best instructional practices for core Tier One instruction and the wide range of best instructional interventions for Tiers Two and Three and IEPs. Suffice to say, there is no exact body of research proof of best interventions. Yet a lot more is known about them than is applied in special education.

Another problem is that many school systems and teachers don’t follow the best available research. Even when IEP Team members have access to evidence-based best practices,

especially in early reading, they may ignore the research. This resistance is at least partially attributable to which side a school system or school is on in the perpetual ideological “reading wars.”

Another dynamic, as an expert in education R&D observes, is that teachers tend to think of themselves as “solo practitioners.”²² Some principals have the same view when school systems extensively decentralize decision-making authority to individual schools. Yet, in medicine, if practitioners don’t follow evidence-based practices, it’s called malpractice; in education, it’s called “professional autonomy.” Teaching should be both art and science, but veteran educators in particular tend to disregard the science part of it.²³

Blaming the victim

I have participated in hundreds of meetings with IEP Teams but I have almost never heard any Team attribute the student’s low performance to insufficient instruction. Sometimes they blame lack of resources at the school although they are afraid to say so publicly and incur the displeasure of administrators. But mainly they attribute low academic achievement to the student’s inherent disability and/or lack of home support.

This is particularly evident in the failure to properly identify and instruct the large number of students whom I call “invisible dyslexics.”²⁴ Starting in the crucial early grades, teachers tend to associate difficulties in reading with family poverty and IQ, rather than to learning delays and phonological processing problems. In their minds, dyslexia is typically a disability found in students with high IQ, most from upper income families who can afford to have dyslexia diagnosed by private experts.

Another excuse frequently put forth by IEP Teams is that students are unmotivated. We do our best, Team members say, but Johnny or Tyasha just doesn’t want to learn or just won’t try hard enough. This mindset of course overlooks many alternative explanations for what teachers misdiagnose as the students’ “fault.” Abundant literature ties so-called lack of motivation to students’ “fear of failure” or “learned helplessness” caused by their lack of academic success. As

one writer has put it: “Much research has been done over the years on motivating children with LD or ADHD. It tells us that the main reasons these children withdraw mentally from school is fear of failure, frustration with inconsistent performance, lack of understanding the school, emotional problems, anger or desire for attention – even negative attention.”²⁵ Another author observes, “struggling readers may begin to internalize their lack of reading ability and develop learned helplessness ... They maybe become unmotivated as learners and fall into what [preeminent reading expert Joseph K. Torgesen] calls a ‘devastating downward spiral.’”²⁶

Dr. Galen Alessi, a professor of psychology, surveyed 50 school psychologists who reported evaluating on average about 120 students during the year covered by the survey. Asked in how many reports they concluded that the child’s learning problems were mainly due to curriculum, the psychologists’ answer was “usually none.” Asked in how many reports the referring problem was due primarily to inappropriate teaching practices, “The answer also was none.” Further, Dr. Alessi asked the school psychologists how many of their reports “concluded that child factors were primarily responsible for the referred problem. The answer was 100%.” Dr. Alessi satirically summarized: “These 5,000 positive findings uncovered the true weak link in the educational process in these districts: the children themselves. If only these districts had better functioning children with a few more supportive parents, there would be no educational difficulties.”²⁷

Dr. Alessi put the findings in the context of the ethical burdens on school psychologists: “school psychologists will increasingly face the burden of deciding whether they work for the schools or for the children, in cases where the interests clash.”²⁸ The surveyed psychologists admitted “that informal school policy (or ‘school culture’) dictates that conclusions be limited to child and family factors.”²⁹

The results from Dr. Alessi’s survey are a devastating indictment of the tendency in special education to blame the victim, while ignoring systemic weaknesses in instruction. Obviously, individual teachers, psychologists and other providers of special education services care deeply about their students and don’t see it that way. But they themselves are victims, like children and parents, of the pervasive culture of low expectations described in this report.

PART II: THE RIGHT TO MEET STATE ACADEMIC STANDARDS

IDEA provides that students with disabilities are entitled to a “free appropriate public education.”³⁰ But what exactly does this mean? What level of achievement is “appropriate”?

I have asked this question of innumerable administrators and teachers. Suppose Tyesha is in 6th grade, has a Specific Learning Disability, and is reading at a third grade level: where should her reading Goals be set? In other words, how much progress should be expected on her IEP? Sometimes the answer is one year’s progress in reading. But that is almost always qualified by teachers’ statements to the effect that the Goals represent aspirations, not expectations. Teachers hedge, saying things like “no one can say ... there are too many unknowns,” or “we’ll do the best we can and see how far Tyesha gets.”

A guide put out by the National Association of Special Education Teachers frames the question: “What challenging, yet attainable, goal can we expect the student to meet by the end of [the] IEP period?”³¹ Yet putting the question that way – like the typical answer, “we’ll do the best we can and see where Johnny gets” – avoids the basic issue. Lost in policy debates and IEP Team discussions about where to set IEP Goals is the fundamental relationship between IEP Goals and IEP Services: *Goals that are “challenging, yet attainable” depend upon the quality of Services. The better the Services, the more progress that can be expected. In other words, Goals and Services are interdependent.* This interdependency undergirds the One Year Plus policy.

Consider another analogy in the practice of medicine. No one would dispute that a patient’s ability to progress towards recovery from an illness or injury ordinarily depends upon research-based medical treatment. It’s medical malpractice if doctors don’t provide that treatment. Yet, in special education policy and practice, the relationship between a student receiving research-based treatment for educational disabilities and the student’s academic needs is often ignored.

An informal memorandum by Baltimore school officials prior to the development of the One Year Plus policy tied Goals and likely progress to the student’s disability and cognitive ability. For a student with a Specific Learning Disability and low average cognitive ability, the memorandum said, “the IEP team may determine that the student will be able to make 6 months’

growth in a year.”³² Officials added that, even if Goals were set for one year’s progress, much less progress – as little as four months in several cases – were the IEP Teams’ actual expectations. *The intensity and quality of Services were never factored in.*

These low expectations, as earlier explored, prevail for many reasons. A major one is that a policy vacuum exists. Court decisions are confusing or misunderstood, and federal and state educational agencies have failed to define or otherwise regulate expectations for the academic progress of students with disabilities under IDEA. Absent clear mandates or even guidelines, school systems nationwide – as in Baltimore prior to One Year Plus – evolved a low minimalist standard under which almost any academic progress, even for students with relatively mild disabilities, is regarded as “appropriate.”

The outcomes are disastrous for students with disabilities. Even students who are not severely cognitively disabled achieve far below their cognitive potential. They fall rapidly behind in meeting state standards in the early grades in reading, mathematics and writing and fall farther behind each year. As this happens, it is not too far-fetched to say that school systems sometimes drive kids crazy. Many frustrated students try to cover up by acting out and other misbehaviors. Some students morph from having learning disabilities to having “emotional disturbances” as well. They drop out in alarming numbers.³³ Their futures are devastated.

Nonetheless, school systems generally accept these outcomes as unavoidable. The education establishment sets a very low bar for its own accountability. Educators tend to believe that they are doing their best with the resources at hand; that the students receive “some benefit,” and that they are doing all that “the law” requires.

But are school systems acting as “the law” requires? Clearly not, as evidenced by explicit statutory mandates, legal precedent and legislative intent.

Court decisions

This report is not a treatise on the multitude of conflicting and hazy court decisions addressing the legal standard for the academic progress of students with disabilities. Voluminous decisions and law review articles can be found,³⁴ but the only certainty is that the current lack of

clarity originated in the landmark Supreme Court decision, *Board of Education v. Rowley*, decided in 1982.³⁵ That decision was the first to construe the basic provisions of the predecessor law to IDEA (the Education for All Handicapped Children Act of 1975), and has been cited endlessly. But almost invariably, the Court's meaning has been profoundly misunderstood.

Most judges, attorneys and even children's advocates are stuck on language in the Court's ruling that federal law guarantees only access to a "basic floor of opportunity" and "some educational benefit;" that it does not require that schools "maximize the potential" of such students. But what is missed is the Court's additional language that points out the narrow limit of the decision. In Amy Rowley's case, the school system was not obligated to provide the services sought by her parents because, though Amy was hearing impaired, she was performing "better than the average student in her class and is advancing easily from grade to grade."³⁶ She was, in effect, attaining the standards set for all children in the general curriculum.

The importance of the "advancing easily from grade to grade" criterion is usually ignored, even though the Court in the *Rowley* case later expanded on it. The Court stated that IEP 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."³⁷ The "passing marks" standard, the Court said, was "one important factor in determining educational benefit."³⁸

Yet, school systems – if they pay attention to it at all – have found numerous ways to get around the "passing marks ... passing from grade to grade" factor. Report card grades and IEP progress reports are almost always inflated, and students are given passing grades even when their actual proficiency is several years below grade level. The latter – known as "social promotion" – prevents students (many of whom have been held back one or more times in the same grade) from being in classrooms where they are much older than their classmates. While laudable in theory, it masks lack of proper instruction and progress. Moreover, as will be discussed in a later section, school systems also give students special assistance – known as "accommodations" and "program modifications" – that can be misused and vastly inflate grades on report cards and scores on state tests.

Some courts have seen through these deceptions, stating that the passing marks and advancement from grade to grade factor is not met by "social promotions," or heavy reliance on "accommodations, or subjective teacher evaluations not supported by objective testing."³⁹ But school officials pay little heed. They fear an uproar if the truth were known about the very low performance level of most students with disabilities, especially those who are not severely cognitively disabled.

IDEA, NCLB and "standards-based IEPs"

Beyond judicial precedents, there is unmistakable legislative intent that the practice of minimalist goals and the tolerance of low achievement violate the letter and spirit of federal and state laws. In amendments to IDEA in 1997, Congress noted that implementation "has been impeded by low expectations *** Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by ... having high expectations for such children"⁴⁰ But nothing much changed. Congress lamented the continuing failure of school systems to raise expectations and performance, and in amendments to IDEA in 2004, stated that students with disabilities, under federal law, must receive "specially designed instruction...to ensure access of the child to the general education curriculum, *so that the child can meet the education standards ...that apply to all children.*" (italics added)⁴¹

NCLB is even more explicit in mandating that students with disabilities be held to the same academic standards as their non-disabled peers and be given full opportunity to meet those standards. All students, except for a limited number of students with the most severe cognitive disabilities, must take the same state tests as their peers, their test scores must be separately reported, and states and local districts are supposed to be held equally accountable for the performance of students with and without disabilities.⁴² A manual on testing of students with disabilities under NCLB, published by the Council of Chief State School Officers, states that "Step 1" in the process is "Expect Students with Disabilities to Achieve Grade-Level Academic Content Standards."⁴³

Another unmistakable indicator of what should be a higher standard for the expected academic progress of students with disabilities is built in to the adoption by most states of

requirements for “standards-based IEPs.” As defined by the National Association of State Directors of Special Education, standards-based IEPs “contain goals aligned with, and chosen to facilitate the student’s achievement of state grade-level academic standards.” States vary in their approaches but standards-based IEPs generally point towards “goals that designate the necessary learning – the specially designed instruction – that will lead to the student’s attaining the [state] standards”⁴⁴

Two experts in special education law and civil rights summarized their view of the proper standard: 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.*” (italics in original)⁴⁵

The authors of a recent law review article stated it this way: “Where achievement of passing marks and advancement from grade to grade were the markers at the time Rowley was decided, attainment of state educational standards must now become the measure in this era of standards-based reform.”⁴⁶

Yet that is not happening.⁴⁷ To the contrary, while current school reform movements “importantly emphasize higher expectations... this national effort fails to dismantle an enduring school culture that overlooks the capabilities of far too many children and continues to fall back on the sorting of children for different (and often inferior) educational trajectories.”⁴⁸ This national failure results in students with disabilities, including students with relatively mild disabilities, being left out and left behind.

Why do school systems nationwide violate the law and resist recognition of a higher standard for the academic achievement of students with disabilities? The primary reasons follow.

PART III: DENIAL OF THE RIGHT TO MEET STATE ACADEMIC STANDARDS

Part I analyzed the low expectations that that are a paramount cause of the low performance of students with disabilities. But there are other significant reasons why students with disabilities are denied the legal right to services that would enable them to meet state academic standards. This Part analyzes them.

The focus on procedural compliance at the expense of academic instruction and achievement

In one sense, the resistance to the proper standard for academic achievement of students with disabilities is hard to fathom since there has been prolonged class action litigation over special education in many urban school districts across the country.⁴⁹ Yet, the class action lawsuits have focused almost exclusively on the procedural rights of students under IDEA while ignoring whether students are substantively benefiting as they should from special education instruction and other services.

Procedural rights are essential. But there is no dispute, even among the combatants in the educational wars, about the vast wasteland of procedural paperwork that frustrates special educators and drains time and energy from attention to instruction. A recent report by the Thomas B. Fordham Institute notes, “Despite good intentions and some reform efforts, the field is still beset by a compliance-oriented mindset that values process over outcomes.”⁵⁰ As one attorney puts it, despite the substantive rights conferred under IDEA, “IDEA is still a twentieth-century input -rights-driven law, not a twenty-first- century output - or results-driven law.”⁵¹

Baltimore’s experience is an apt illustration. Class-action litigation in Baltimore – known as the Vaughn G. case – began in 1984 and did not end until 2012. The original complaints were the failure of the school system to meet mandated timelines for assessments to determine student eligibility for special education and implementation of IEPs. But as I wrote in a report on the

Vaughn G. litigation in 2002, the case became a paperwork nightmare for teachers and students long after the schools were in reasonable compliance on the original violations.⁵²

There are several reasons why it will be hard for litigators and educators to shake the procedural compliance habit. The first is that procedural issues are well defined and within the comfort zone of attorneys and judges. Legal practitioners have little to no training or research-based knowledge related to substantive teaching and learning, including the research on instruction for struggling readers. As a result, they accept low expectations as true and neglect academic outcomes. In fairness, however, attorneys, judges and even advocates know little about appropriate expectations and teaching and learning of students with disabilities because, as later discussed, educators fail to offer clear guidance.

Beyond the tunnel vision of lawyers and judges, the worst perpetrators of the purely compliance mentality are federal and state special education regulators. Federal officials are most to blame because their ineffective regulations and monitoring monopolize compliance activities in the states. Regulators at all governmental levels have been virtually oblivious to the necessity for evaluations of the quality of instruction and student outcomes. Recently, the U.S. Department of Education (USED) made “a pledge to focus more on how special education students are faring, rather than almost exclusively concentrating on whether states are technically upholding” IDEA.⁵³ Hopefully, as mentioned later, USED officials will step up and follow through on the pledge.

Another overriding reason why procedural compliance rather than substantive academic achievement dominates legal and policy debates is the inertia of educators themselves. It is hard to tell which is the chicken and which is the egg between the low expectations that educators harbor for students with disabilities and educators’ own lack of training and knowledge of research-based best instructional practices. Administrators and teachers – if they understood more about the cognitive capacities of most students with disabilities and instructional best practices for them – would push academic issues more to the forefront.

As it is, too many educators use compliance paperwork as an alibi for their inaction on instructional reform. Yes, there is much too much paperwork and there are too many compliance “special education police” who waste time and money that could be better spent on teaching.

Nonetheless, the compliance burden is not nearly as insurmountable as parents and IEP Teams are led to believe. There is ample opportunity for smart, bold policymakers and administrators to undertake initiatives like Baltimore's One Year Plus policy. Education policy analyst Frederick M. Hess has exposed the education establishment's "culture of can't," that is, educators' tendency to blame outside forces for their problems. He points out how school officials have more power than they choose to exercise.⁵⁴ Special education proves the point.

The purpose of this analysis is not to give all compliance monitoring a bad name. Rather it is to highlight that special education compliance monitoring must change gears from procedural standards to the development, implementation and enforcement of proper IEP goals and services that will produce improved educational outcomes. As a top-level federal official commented, "Where we put our emphasis is what improves. We've seen this across many of our compliance indicators [and] we've got to pay more attention to student outcomes."⁵⁵

False representation and inflation of student progress

Another barrier to public understanding and outcry over the low academic performance of students with disabilities is that educators routinely misrepresent and exaggerate student proficiency. It may be hard to imagine, but actual student performance levels are even worse than they appear in the data cited earlier. The misrepresentation occurs in numerous ways, among them: the misuse of "accommodations" and "modifications," student retentions in grade, "social promotions," and out-and-out cheating.

Accommodating failure

Many areas of special education law and practice are murky and vexing. But none more so than "accommodations" and "modifications." Accommodations are provisions in IEPs for special assistance that are intended to level the playing field, enabling students with disabilities to have "access" to the same curriculum as non-disabled peers and to make progress in that curriculum.⁵⁶ Further, "appropriate accommodations" are necessary to enable students with disabilities to demonstrate their true ability on tests despite their disabilities.⁵⁷

Proper accommodations vary.⁵⁸ The most common is “read-aloud,” also known as “verbatim reading,” in which all or selected portions of lessons or tests are read to a student with disabilities who meets certain guidelines (the guidelines are discussed later). Another accommodation, almost always included in IEPs, is “extended time.” Other frequent accommodations are a calculator if a student’s disability affects mathematics calculation, and a “scribe” if a student’s learning disability impedes written expression or the student’s physical disability restricts the motor process of writing.

For example, suppose Gregory is in the 9th grade with a Specific Learning Disability and reading skills at a fourth grade level. The read-aloud accommodation would enable him to have “access to the general curriculum” and earn passing grades in his high school literature, science, mathematics and social studies courses. Without this accommodation, he would be unable to understand the textbooks and other materials in these courses and have no chance of passing. Nonetheless, accommodations are not supposed to lower the standards that Gregory is expected to achieve.

In addition to accommodations, federal regulations require that students with disabilities receive appropriate “supplementary aids and services” and “program modifications.”⁵⁹ Supplementary aids and services usually go hand in hand with accommodations, and are also not supposed to lower the standards that students with disabilities should be expected to achieve. The Baltimore school system provides IEP Teams with a long checklist of examples of supplementary aids and services. Many are classroom pieties such as “Check for understanding,” “Paraphrase questions and instruction,” and “Encourage student to ask for assistance when needed.” To this extent, supplementary aids and services can be viewed as instructional techniques that good teachers might employ with any student, disabled or not.

On the other hand, program modifications are supposed to be different from accommodations (and, by implication supplementary aids and services). As stated in the *Accommodations Manual* published by The Council of Chief State School Officers, “Accommodations do not reduce learning expectations. They provide access. However, modifications or alterations refer to practices that change, lower, or reduce learning expectations.”⁶⁰

In effect, the purpose of proper modifications is to adapt curriculum standards so that students who are severely cognitively disabled can “access” academic content and achieve the standards but at a lower level of expectations. Modifications are also properly incorporated in alternative assessments for severely cognitively disabled students who are on a track to earn a non-diploma, graduation certificate. The *CCSSO Accommodations Manual* gives these examples of proper modifications: “Requiring a student to learn less material; “Reducing assignments and assessments so a student only needs to complete the easiest problems or items;” “Revising assignments or assessments to make them easier (e.g. crossing out half of the response choices on a multiple-choice test;” and “Giving a student hints or clues to correct responses on assignments and tests.”⁶¹

Clearly then, modifications may be appropriate for students who are severely cognitively disabled, but are generally inappropriate for other students with disabilities. But the distinction is frequently lost. A scholar in the field observes, “There may be confusion on the [IEP] team about issues such as when to use accommodations, and the difference between an accommodation and a modification.”⁶²

The Baltimore checklist for supplementary aids and services illustrates how program modifications are an open invitation to abuse. Included on the list, for instance, are “Altered/modified assignments,” “Modified content,” “Modified grading system,” and “Revise format of tests (i.e. fewer questions, fill in the blanks).” Yet, the Baltimore school system provides no clear guidance that limits use of such program modifications to students who are severely cognitively disabled. As a result, improper program modifications are often found in IEPs of other students with disabilities, vastly inflating the students’ actual proficiency.

Teachers are tempted to cross the line for several reasons. They may not have been trained to truly understand correct usage. They care deeply about their students and want to enable them somehow to achieve passing grades. An attorney for public school systems in Massachusetts puts it this way: “Sometimes ... ‘accommodations’ are actually modifications that lower expectations and standards and just help students pass and get through school.”⁶³

And, sad but true, teachers – aided and abetted by administrators – face the pressure to purposely overuse them to inflate progress and make themselves , their school and their school district look good on IEP progress reports, state tests and NCLB accountability provisions.

The deception of parents and policymakers about actual student progress (that is, lack of progress) is not the worst of it. Improper accommodations, supplementary aids and services, and program modifications conceal deep deficits in foundational reading, mathematics and writing skills. Necessary intervention services are delayed or denied altogether. I have represented many students with relatively mild disabilities who received the read-aloud accommodation and modified content *as early as the first and second grades*. That as a general rule is far too soon to put a struggling young reader on crutches that will almost surely impede later development of independent skills. “An expert in special education observes, “What is ‘special’ about reading to a youngster who should learn to read? Or providing a calculator, instead of teaching her ‘number facts’?”⁶⁴

The bottom line is that vast majority of students with disabilities don’t receive the “specially designed instruction” required by IDEA that would enable them to *independently* meet state standards for the foundational skills of reading, mathematics and writing. And students who receive read-aloud accommodations are increasing nationally.⁶⁵

The confusion about and abuse of accommodations and modifications will be hard to stem. It is in part attributable to the loose language found in the morass of federal regulations. The regulations draw no distinction between their proper and improper use.⁶⁶

More will be written on this later when the report focuses on implementation challenges posed by One Year Plus. The purpose is not to downplay the appropriateness of proper accommodations, including read-aloud. But a major dilemma is how IEP Teams should strike the right balance between their proper use and enabling the student to achieve *independent* proficiency?

Student retention in grade and “social promotions”

Many if not most students with disabilities have been retained in grade at least once, that is, not promoted from one grade to the next. In my experience representing over 150 students with disabilities, more than half have been retained.⁶⁷ Suppose Tyesha has been retained once and her chronological age, not enrolled grade level, is used to measure progress; her deficiency in reading – which may appear to be three years based on her being enrolled in the fifth grade and reading at a second grade level – is actually four years.

An even larger factor is “social promotion” that occurs when students with disabilities (as well as many non-disabled peers) are promoted from one grade to the next despite their inability to meet state standards or otherwise legitimately earn passing grades. Given the large gap between their performance and enrolled grade levels, this happens routinely for most students with disabilities. And it obviously compounds the misrepresentation of actual student progress and proficiency.

Cheating

On the day I write this, a front page story in the New York Times is headlined “Ex-Schools Chief in Atlanta Is Indicted in Testing Scandal.”⁶⁸ But that’s hardly new news. The scandal of cheating on test scores has been spreading across many cities and states for many years.⁶⁹ Its contagion is driven by the high-stakes testing under state accountability laws and the No Child Left Behind Act. As earlier noted, school districts, schools and individual principals and teachers (especially under the new wave of teacher evaluations) are subject to intense pressure to improve test scores of all students, and many top administrators adopt a “don’t ask, don’t tell” attitude about testing practices.

So in one sense, there’s nothing special about the vast amount of cheating in special education. But, in other respects, the frequency and negative impact are greater.

One is that cheating, by exaggerating academic progress, covers up – like inappropriate accommodations, program modifications, retention in grade and social promotions – the inadequacies of IEPs and special education services. Two, there are more opportunities for

cheating because many students with disabilities are tested individually or in small groups outside of the general classroom where they receive accommodations like read-aloud and extended time. In such a secluded setting, it is easier to give students improper help that goes beyond proper use of accommodations. I have often been told that this happens sometimes.

Many school districts are making strong efforts to prevent cheating, none more so than Baltimore which had its own scandal several years ago⁷⁰ Nonetheless, as a result of all the temptations and opportunities, it is very difficult to prevent.

Lack of resources for legally mandated services

Money is not all that matters in school reform, including reforms to raise academic outcomes of students with disabilities. School budgets can be more efficiently spent. And if learning difficulties are prevented or remediated in early grades, many later costs, including special education, could be greatly reduced. Yet, it is inescapable that prevention and intervention will cost more money, whether for effective pre-referral “Response to Intervention” models or for special education itself. Intensive instructional interventions, particularly tutoring, and teacher training, including classroom coaching of reading teachers, are expensive. What is also a certainty is that urban school systems like Baltimore lack the necessary funding.

As a result, the purest truism in special education is that IEP Teams tailor services to fit school budgets and the workloads of existing staff, not the needs of students. Many individual school members of the Team have told me privately, and in some instances tearfully, that they were afraid to ask for the resources needed because of fear that their jobs or chance for promotions would be threatened.

Yet, lack of money is not a valid legal excuse. The Supreme Court has made clear that school districts must bear the cost of fulfilling IDEA mandates.⁷¹ Nonetheless, financially-strapped educators nationwide routinely ignore the law. They say the money simply isn’t there. And others – federal and state regulators, administrative hearing officers and judges – acquiesce

because of implicit or explicit acknowledgement of the realpolitik of limited public school funding.

Putting aside budget constraints, the extent of the costs of One Year Plus cannot be estimated, given the absence, so far, of data and experience. No doubt there will be some offset: better services up front will save costs of remediation in later years. Still, the near-term costs may be significant, and this is a largely unspoken, major reason why the education establishment and policymakers avoid the kind of reform that Baltimore is undertaking. To the great credit of former Baltimore CEO Alonso, the availability of resources has not deterred implementation of One Year Plus, as discussed next.

PART IV: BALTIMORE'S IMPLEMENTATION OF ONE YEAR PLUS

It is easy to see that the Baltimore One Year Plus policy, if implemented as intended, raises the current bar dramatically for IEP Goals and Services and student performance. To recap the essentials:

- IEPs for students who are on a diploma track (that is, who are not severely cognitively disabled) should contain Goals for at least twelve months (*one year*) progress over the twelve months covered by the IEP; and
- When there is a large gap between the student's enrolled grade level and actual level of performance, the Goals should ordinarily express the expectation of twelve months progress *plus* a reasonable reduction in the gap; and
- IEP Services must be *reasonably calculated* to enable the student to achieve the Goals. IEPs are not a guarantee that the Goals will be met. But the instructional and supportive Services should reflect research and the professional judgment of the school's educators that the Goals will be achieved if the student's circumstances – including the nature of the disability, attendance and effort – do not change significantly and the IEP is implemented effectively.

Of course formidable implementation issues and tasks loom ahead. There is no national experience with policies and practices that seek to assure opportunity for twelve months, much less "One Year Plus," growth. The big test for the Baltimore school system is to do what public school bureaucracies generally don't do: match the zeal for innovation with sustained attention to and capacity for effective implementation.

Implementation of the One Year Plus policy is especially daunting because it is such a far-reaching departure from conventional thinking and practice. Still there are grounds for hope that

Baltimore recognizes the R&D process necessary to produce sustainable improvement over many years. An infrastructure to manage that process is taking shape. It includes staff training, monitoring, evaluation, and an advisory panel of advocates and school officials that meets regularly to frame concerns and search for solutions to implementation issues as they arise. Further, a parent brochure outlining One Year Plus must be provided and explained to parents at all IEP meetings.

Staff training has been extensive. It began with summer workshops in 2012 for all special education teachers including a “One Year Plus Best Practice Guide” that spells out the basic policy components. Other essential members of IEP Teams – such as psychologists, social workers and speech/language pathologists – have received training also. And throughout the 2012-2013 school year, there were monthly training sessions for IEP Team coordinators from each school in which implementation concerns and questions were highlighted and discussed. Right off the bat, several basic operational issues came to the fore, and guidance followed. (The most important of these are examined later in this section.)

As crucial as training is, it is no substitute for monitoring to assess the fidelity and effectiveness of implementation. Accordingly, Baltimore has pioneered what might be called substantive (compared to procedural) compliance monitoring. In the current first stage, a monitoring team composed of special education and instructional experts reviews a sample of 20 IEPs each month, focused on students in the elementary grades who are on a diploma track.

The results so far show that IEP Teams are improving in their understanding and development of One Year Plus Goals. Implementation has been slower, however, in Team determinations of appropriate Services. IEPs are not supposed to pass muster if the monitors merely find that the IEP Teams addressed (checked off) in some way the determination of Services. Monitors must look further and determine whether in fact, based on research and professional judgment, the Services seem truly calculated to enable the student to meet the Goals.

The bottom line, of course, is whether students actually achieve their Goals and progress as they should towards academic success. To that end, the Baltimore outcomes evaluation is a simple construct: to measure the actual academic growth from year to year.⁷² The work in

progress on this is to assure reliable apples-to-apples data measures. Student data from sophisticated literacy assessments are being incorporated into present levels of performance on the IEP, and used in the determination of Goals and to measure periodic and year-to-year progress.⁷³

A significant sample of IEPs with year-to-year comparable data will not be available probably until mid-to-late 2014. In the meantime, evidence so far is encouraging. The monthly monitoring, while not scientifically reliable, indicates that most students are achieving One Year Plus Goals and most of the balance are achieving about one year's progress. Anecdotal reports from advocates are also promising, including my extensive personal experience. The One Year Plus policy was not rolled out system-wide until 2012-2013, but over a three-year period, I represented in IEP meetings at least 30 students who received One Year Plus IEPs. Of these, about 40 percent achieved the Goals and another 30-40 percent made significantly more progress than they had been making previously. Where Goals were not achieved, IEP Teams were forced back to the table to review the IEPs and revise Services.

It is very difficult to pinpoint now the exact reasons why academic outcomes have risen significantly so far. No doubt the Hawthorne effect and higher expectations have played a part. So has the professional development of staff, system-wide steps to improve core instruction, and more research-based and intense intervention services. A future evaluation and further implementation experience will provide detailed analyses.

The balance of this Part of the report identifies several basic implementation issues that have arisen. They are a roadmap of potential trouble spots and lessons learned so far.

Reasonable calculation of Goals

The One Year Plus policy confronts head-on the nationwide practice in which Goals for progress are generally regarded as *aspirations*, when they should be *expectations*. The distinction is crucial. School staff who write IEPs (parents are encouraged to participate as members of IEP Teams but school staff retain firm control over final decisions) typically say, "we're hoping that

Johnny will reach the Goals but there's no guarantee ... each child is different ... there are too many unknowns to predict what will happen.”

That's true but only partially. No guarantees are possible. There are many variables that range from the student's attendance to a change in the nature of the disability. Moreover, education research cannot pinpoint the exact effectiveness of any particular intervention services on any particular child. Nonetheless, the law and logic require that the IEP Team make a *reasonable calculation* of how much progress can be expected, subject to revision if there is any significant change in the student's circumstances. Otherwise it is impossible to hold the school accountable for any specific amount of progress, or lack of progress, and parents are left in the dark.

Under the One Year Plus policy, the reasonable calculation should be based on research where possible and the Team's professional experience and judgment. As a practical matter, IEP Goals and Services are interdependent. How much progress a student is likely to achieve depends on the quality and quantity of the Services, including the instructional program, intensity (frequency, duration and teacher-student ratio), and teacher qualifications.

What is a reasonable one-year reduction in the gap between the student's present level of performance and enrolled grade level?

In other words, under the One Year Plus policy, how much “Plus” is required? The short answer is that there is no fixed formula, but certain guidelines apply. Suppose Jennifer is in the 6th grade and reading at a 2nd grade level: the gap is four years. How much of a reduction in the gap can be reasonably expected over 12 months? Or stated another way, how much expected progress should the Goals reflect: 15 months? 18 months? 24 months? Or what?

The starting point for IEP Teams in determining a reasonable reduction is to recognize the “I” in IEP: the IEP must be individualized and IEP Teams should exercise professional judgment based on the student's individual needs. Within this context, the Baltimore Practice Guide lays out a series of factors to be considered.

Among them are the student's age and academic history including enrolled grade level and any retention(s), and the size of the gap between present level of performance and enrolled grade

level. IEPs should be written to remediate and close gaps in basic foundational skills of reading, mathematics and written language in the earliest grade(s) possible, taking into account practical limits on the amount of academic pressure that can be placed on the student.

Although not yet incorporated in the Baltimore guidelines, IEP Teams should consider more use of summer programs, including Extended School Year under IDEA, in order to accelerate progress. Summer time can also help to solve the practical problem in finding time for remediation of reading and other basic skills in the regular school year curriculum and schedule, especially in middle and high schools. Before and after school and Saturday instructional times should also be considered.

The BCPS Practice Guide does make explicit that, in determining what is a reasonable reduction in the gap, IEP Teams should be guided by the needs of the student and not be bound by the current resources of the school. IEP Teams must request central administration to provide additional funding/staff as needed, and central administration must send the message that such requests will not reflect adversely on the school.

While IEPs are individualized, experience so far indicates that when students are one or more years behind their assigned grade levels in reading and/or math, Goals tend to call for 1.25 to 1.5 years of progress during the twelve-month period of the IEP.

What exceptions to One Year Plus should be allowed?

The expectations of student success under the One Year Plus policy also cannot negate the individualized “I” in IEP. Therefore, in effect, the One Year Plus policy is a presumptive requirement. That means that the elements of the policy must be adhered to unless exceptions are based on compelling circumstances which are documented by IEP Teams.

Ideally IEP Teams should be given the latitude to determine justifiable exceptions. In early implementation, one example of a compelling exception arose when a student had large gaps in

reading and math. The IEP Team decided to limit the math Goals in order to place the highest priority on reading which is the most important foundational skill.

But strict caution is required. The Baltimore experience shows that in some instances IEP Teams seek inappropriate exceptions based almost wholly on the nature of the disability, or what several IEP Teams erroneously called a “unique” combination of disabilities. The Teams were usually referring to students with the common profile of a low-average IQ, Specific Learning Disability and sometimes ADHD.

This is, in a sense, the moment of truth for the One Year Plus policy. On the one hand, as we have seen, IEP Teams generally have unjustifiably low expectations of students with such disabilities. In their experience, the students have not reached or come close to reaching their cognitive potential and meeting academic standards. So IEP Teams tend to think that the One Year Plus policy calls for lots of exceptions.

On the other hand, the One Year Plus policy is based on legislative and judicial underpinnings for the “right to meet state academic standards.” As we have seen, the great majority of students with disabilities with profiles that include low-average IQs have the cognitive capacity to meet state standards if they receive appropriate instruction. Better services will produce better academic outcomes. Therefore, the task of IEP Teams is to increase Services, not decrease Goals or seek exceptions, when students with common disabilities or combinations of disabilities falter. Wholesale exceptions for such students would violate IDEA and undermine the One Year Plus policy.

Still, the issue of exceptions is an ongoing concern and will be a focus of implementation monitoring and follow-up training. Are further guidelines necessary? If exceptions appear to be overused, consideration might be given to requiring supervisory approval for them above the school principal.

How should IEP Teams strike the right balance between proper use of accommodations and enabling a student to achieve independent proficiency in foundational skills, especially reading?

To what extent does a student truly meet IEP Goals if the student needs accommodations, particularly read-aloud, to meet the Goals? This question arose at the outset of implementation of the One Year Plus policy, and is crucial in assessing actual student progress towards IEP Goals, even if the One Year Policy didn't exist. Yet, it is almost never discussed in practice or literature. Rather, it vanishes in the fog of confusion that surrounds accommodations, as earlier examined, and the overlooked difference between what might be called “foundational skills” Goals and “access to content” Goals.

Access to content Goals fulfill the IDEA mandate that students with disabilities have “access to the general curriculum” and be enabled to pass core academic courses, notwithstanding the usual gap between the student's grade level performance in foundational skills (reading, mathematics and written language) and the student's enrolled grade level. Suppose Tyesha, who has a Specific Learning Disability, is in the 7th grade but reading only at a 3rd grade level. She needs accommodations such as read-aloud to be able to access – that is, understand – 7th grade literature, mathematics, science and social studies coursework.

At the same time under One Year Plus, she is entitled to foundational skills Goals which express the expectation that she will progress, for example, 18 months in foundational reading to mid-4th grade level.

The general national practice, including Baltimore prior to One Year Plus, is for foundational Goals to be written explicitly on IEPs and set, regardless of the gap, at the student's enrolled grade level. At the same time, access Goals are assumed and unwritten. However, it is really the access Goals – and the extensive reliance on accommodations like read-aloud – that are dominant in teaching, particularly as students move up the grade ladder (usually via “social promotion”) to middle and high schools. In the upper grades, the emphasis shifts from elementary school direct instruction in foundational skills to courses in literature, higher math, science and social studies. For these higher level courses, most students with disabilities are accommodations-dependent.

As this is happening, foundational Goals are overlooked, and the gap between foundational skill levels and enrolled grade level usually widens. Remedial instruction in foundational skills, including reading, is catch-as-catch-can beyond elementary schools.⁷⁴ In middle and high schools, teachers lack the time in the schedule and the expertise for the “specially designed [remedial] instruction” required under IDEA. Even with maximum use of accommodations and social promotions, teachers have their hands full trying to get students, who are far behind academically, to remain motivated and to keep up with the coursework necessary for a high school diploma. The dropout rate of students with disabilities is terribly high, but many of the students still hang in and graduate.⁷⁵

Under these difficult circumstances, IEP Teams lose sight of the foundational Goals and the need to reduce the gap in foundational skills. Or they think, erroneously, that students *are* meeting the standards for the foundational skills through the accommodations and improper program modifications. Either way, educators are ignoring the basic right of students who are not severely cognitively disabled to achieve foundational skills *more or less* independently.

The words “more or less” are used advisedly. They try to capture the uncertainty about the balance to be struck between the use of proper accommodations and the student’s independent proficiency in foundational skills. A pre-eminent scientist in the field, Daniel Koretz, professor of education at Harvard University, writes that determining appropriate accommodations “turns out to be an extraordinarily difficult question.”⁷⁶ He finds that “There is not a great deal of [research], some of it is not very good, and it leaves many of the most important questions unanswered.”⁷⁷ He adds:

“Although some states have produced carefully written and informative guidelines, they are insufficient to identify the appropriate accommodations for many students. For one thing, such guidelines are markedly inconsistent from state to state, and there are even cases in which one state explicitly permits an accommodation that another explicitly prohibits.”⁷⁸

The most astonishing evidence of state-to-state inconsistencies is that the percentage of students with disabilities using accommodations on statewide reading tests varies among states from less than 10 percent to 90 percent.⁷⁹

A full analysis of the various possible accommodations is beyond the scope of this report. However, the read-aloud accommodation is particularly important and complex. The issue is clearest when applied to tests of students' reading skills, including reading comprehension. When, for example, a student with dyslexia takes a reading test, Dr. Koretz writes:

“His dyslexia impedes his ability to read the test well, but his reading proficiency is precisely what we are trying to gauge by testing him. *** You could read the test to him or present it on tape, thus circumventing the dyslexia, but this would fundamentally change what the test measures. It would no longer measure ‘the ability to decode and infer the meaning of printed text’ as commonly presented. It would measure something else, perhaps ‘the ability to understand and draw inferences from oral speech.’ If you were an employer looking to fill a position that required substantial reading, which score would you consider a more valid basis for evaluating this student: the score obtained under standard conditions, where the student had to read the text, or the score obtained with this accommodation, which required only that the student comprehend oral speech?”⁸⁰

The read-aloud accommodation is not allowed at all on the tests administered by the National Assessment of Educational Progress (NAEP), known as the gold standard national report card.⁸¹

Fortunately, the movement towards Common Core State Standards and aligned common assessments in a large majority of states is triggering impressive attempts to provide workable guidelines. A consortium of states is working through The Partnership for Assessment of Readiness for College and Careers (PARCC) to develop assessments, and an extensive public process is underway to determine appropriate accommodations policies, beginning with read-aloud and calculators.⁸²

Still, there are knotty questions as to the proper uses of the read-aloud accommodation. A PARCC background paper notes: “Reading is an essential part of being college and career ready,

yet what is meant by ‘reading’ ... is debated. This debate permeates what happens in instruction and how assessments are designed to measure students’ reading skills.”⁸³ Still, the PARCC recommendations head in the right direction. They require the student to be a virtual non-reader and be receiving “ongoing, research-based interventions” that address reading deficits in order to qualify for the read-aloud accommodation. At the same time, the Center on Law and Education warns that accommodations should not be denied to students who properly need them.⁸⁴

The Common Core State Standards themselves point to what I call “the right to read independently.” The standards state: for Reading (K-5), while there are no separate reading comprehension standards, fluency requires students to be able to “*Read* with sufficient accuracy and fluency to support comprehension;” and for grades 6-12, students must be able to “*Read* and comprehend complex literary and informational texts *independently* and proficiently.” (italics added)

The right to read independently is also recognized in some court opinions which hold that social promotion and overuse of accommodations do not satisfy the legal requirement for appropriate instruction and progress under IDEA.⁸⁵ Baltimore has adopted in practice the “right to read independently” criterion, and review of proper use of it and other accommodations, including a math calculator in meeting math calculation and problem-solving Goals, is underway.

Lack of resources

One Year Plus policy states unequivocally that in determining services under the IEP, IEP Teams must be guided by the needs of the student and not be bound by the current resources of the school. That’s what IDEA requires.⁸⁶ But since IEPs under One Year Plus may increase the instructional services that the student receives, how can budget-constrained schools pull this off?

It’s too soon to tell. Baltimore school system administrators believe that the impact of instructional initiatives across general and special education – selection of instructional programs, training, better use of data, closer alignment of instruction with state standards (including the onset of Common Core State Standards), and more push for the use of

instructional best practices – will be relatively low-cost and high-payoff. Whether this is enough, whether extra funds will be needed to pay for more intensive instructional interventions, will be determined as IEPs and outcomes are monitored and evaluated.

At this point, BCPS has not budgeted additional funds. Dr. Alonso, during his tenure as CEO through June 2013, was willing to risk future budget implications to try to fulfill, without further delay, the rights of students with disabilities.

PART V: THE POLITICS OF SPECIAL EDUCATION REFORM

What will it take for the One Year Plus policy to become a national model and for school systems across the country to fulfill the letter and spirit of IDEA and raise the academic outcomes of students with disabilities? This report maps many mountains of resistance to be conquered: misunderstanding of the proper legal standard for progress; low expectations; teachers' lack of knowledge of effective interventions; the preoccupation with procedural compliance at the expense of academic instruction; and false representation and inflation of student progress.

What's more, there is another huge obstacle to be overcome: the political powerlessness of families of students with disabilities.⁸⁷ Students from lower economic families are more likely to be found eligible for special education services than students from middle class-and-up families.⁸⁸ Political factors impede reform of all aspects of K-12 public education, especially the struggle for equal educational opportunity. But the disadvantages caused by poverty and minority status are compounded for students who have educational disabilities as well.

The lack of enforcement of IDEA is proof. Low-income families are generally unable to take advantage of the provisions of IDEA intended to empower families to enforce the law. On paper, parental engagement and enforcement rights appear strong. Parents are supposed to receive extensive information and participate fully as members of IEP Teams. They can file complaints and try to trigger investigations by local, state and federal officials. And they can appeal Team decisions through administrative hearings and lawsuits. Yet, only relatively affluent parents have the practical means to employ these safeguards.

To begin with, almost all parents, poor or not, lack the knowledge and know-how to challenge the technical evaluations, instructional services and progress reports presented by educators at IEP meetings. Moreover, teachers and other Team members tend not to like it when their professional judgment is questioned. Sometimes they become defensive or hostile when parents dispute the Team's assertions. A parent's best chance to get over these hurdles is with the

assistance of an attorney, but legal representation is expensive and almost never available free of charge, even for the lowest-income families.

For upper-income parents, the story is different.⁸⁹ The attorneys they hire, usually assisted by pricey private educational experts, often put school systems on the defensive. Litigation by parents frequently makes media headlines. Often, the publicity involves students with disabilities who receive nonpublic placements – that is, expensive private schooling paid for with public funds – after parents, through their attorneys, contend that the school system cannot meet the students’ needs in the public schools. Less publicized but also frequent are efforts by well-off parents, with or without attorneys, to obtain IEP-like accommodations so their child will gain an advantage in college admission and other testing. Sometimes school districts settle weak claims under pressure, seeking to avoid the expense and possible bad publicity from litigation.

Of course, the shortcomings of special education cross economic class boundaries. Many of the students who benefit from parental and legal firepower are clearly deserving. But the some are not, at considerable detriment to the reform movement. An article in the satirical publication *The Onion* was headlined, “Parents of Nasal Learners Demand Odor-Based Curriculum.”⁹⁰ It spoofed overreaching, implicitly wealthy, parents, but had a whiff of truth in it.

The negative fallout from the unequal exercise of parental rights under IDEA takes many forms. The most damaging consequence is inequality of educational opportunity itself: the rich get richer and the poor get poorer in special education services. In addition, the privileged status of affluent families breeds resentment that distracts attention from and stiffens resistance to systemic reform. And when affluent parents can wangle individual remedies, they have less incentive to participate, much less play a leadership role, in political efforts to lobby local administrators and school boards for systemic change. A potent political force is diluted or lost altogether.

Federal and state regulators and legislators are also spared political pressure. Another reason why low standards and low performance persist is because legal enforcement of IDEA, beyond technical compliance with procedural safeguards, is extremely weak. Federal and state departments of education have done little if anything to monitor the quality of IEPs and student academic outcomes, or to address the adequacy of funding for necessary services.

The inaction at the federal level is particularly damaging. The history of K-12 education in the U.S. shows that bold reform leadership is more likely to come from political leaders than an education establishment which is defensive and resists accountability. Among political players, the White House and Congress are more likely than state officeholders to spark reform.⁹¹ Prime examples are IDEA and the provisions of NCLB that seek to hold schools accountable for the academic failure of students with disabilities: these federal laws seek to remedy state and local failures to address the needs of students with disabilities. Witness too the recent aggressive education policies undertaken by President Barack Obama, including the Race to the Top initiative.

The current U.S. Department of Education secretary Arne Duncan, arguably the most proactive and effective person to hold that office, would seem a natural to champion raising the standard for the academic success of students with disabilities. Recently that has begun to happen. The Office of Special Education (OSEP) has undertaken a “Results-Driven Accountability” initiative and “is currently rethinking its accountability system in order to shift the balance from a system focused primarily on compliance to one that puts more emphasis on results.”⁹² Acting Assistant Secretary Michael H. Yudin recently indicated that One Year Plus should be disseminated as a “best practices” approach towards such results-driven accountability.⁹³

USED almost certainly has the authority to issue regulations that could be a special education game-changer.⁹⁴ Moreover, future reauthorizations of NCLB and IDEA offer opportunities to require clearer accountability for academic outcomes.

States could step up too. As noted by a legal scholar, state compliance monitoring “could be expanded to include a role for affirmative compliance investigations into the quality of [appropriate services] provided in poor children’s IEPs.”⁹⁵ A recent class action lawsuit in California could get the ball rolling. Parents charged the California Department of Education with failing to monitor and enforce IDEA (and associated state laws), including a lack of “focus on improving educational results for all children with disabilities” The Department moved to dismiss the suit, but the U.S. District Court held that the parents’ allegations, if proven true, state

a sufficient cause of action.⁹⁶ The case has a long way to go, but it may bring to light the regulatory inaction that has made a mockery of substantive enforcement of IDEA.

On other fronts, national special education advocacy groups could stimulate and agitate for more awareness and action, but so far they haven't. Their activities sometimes divide along disability lines, and they sometimes compete for scarce political attention and resources. Also largely missing in action are national foundations and think tanks which often lead the national charge for education reform; they have neglected special education in general and academic reform under IDEA in particular.⁹⁷

Hopefully, Baltimore's One Year Plus policy will be a catalyst and model for reform. The appropriate substantive legal standard – the right of students to meet state academic standards – must be established. Monitoring of the right – of the quality of instruction and academic outcomes under IEPs – must work its way into federal and state regulatory protocols.

By whatever means, policy reform at national, state and local levels is imperative. The great majority of students with disabilities are being shortchanged of their legal and moral right to an education that will more truly level the playing field.

The Baltimore City public schools are facing up to this urgent challenge. Educators and public officials nationwide should be doing no less.

Endnotes

¹ *Has Progress Been Made in Raising Achievement for Students with Disabilities?*, Center on Education Policy, Wash. D.C. (2009), pp. 13-14.

² Candace Cortiella, *The State of Learning Disabilities*, National Center for Learning Disabilities, New York, NY (2011), p. 15.

³ David R. Johnson et al., “Diploma Options, Graduation Requirements, and Exit Exams for Youth with Disabilities: 2011 National Study,” National Center on Educational Outcomes, Technical Report 62, Minneapolis, MN (2012).

⁴ For a breakdown of students in disability categories, see Janie Scull and Amber M. Winkler, “Shifting Trends in Special Education,” Thomas B. Fordham Institute, Wash. D.C. 2011, p. 5.

⁵ Martha L. Thurlow et al., “Meeting the Needs of Special Education Students: Recommendations for the Race to the Top Consortia and States,” National Center on Education Outcomes, Minneapolis, MN (2011), p. 5.

⁶ As used throughout this report, IEP “Services” include accommodations, supplemental aids and services, instruction and related services like speech and language and counseling.

⁷ Improvements in instruction for students with disabilities can be a bellwether and proving ground for effective interventions for all students who struggle to achieve academic proficiency. Many students who are not found eligible for special education, especially struggling readers, require the same interventions as students with disabilities.

⁸ Arne Duncan, “Fulfilling the Promise of IDEA,” U. S. Department of Education, Nov. 18, 2010.

<http://www.ed.gov/news/speeches/fulfilling-promise-idea-remarks-35th-anniversary-individuals-disabilities-act>, last accessed Feb. 4, 2013.

⁹ Thurlow et al., *supra*, p. 5.

¹⁰ Rachel F. Quenemoen, “Civil Rights, No Child Left Behind, Assessments, Accountability, and Students with Disabilities,” Written Comments, United States Commission on Civil Rights, February 6, 2003, p. 4.

¹¹ Richard Peterson, “The persistence of low expectations in special education law viewed through the lens of therapeutic jurisprudence,” *International Journal of Law and Psychiatry*, 2010, Nov.-Dec., 33(5-6), 375-97. doi:10.1016/j.ijlp.2010.09.009, p. 11.

¹² Martha L. Thurlow, Testimony before the Committee on Education and the Workforce, U.S. House of Representatives, March 3, 2004,

<http://archives.republicans.edlabor.house.gov/archive/hearings/108th/fc/nclb030304/thurlow.htm>, p. 2.

¹³ Scull and Winkler, *supra*.

¹⁴ 34 CFR 200.1 (d). Students with the “most significant cognitive disabilities” are not defined under IDEA or NCLB. Those intended to be covered are students whose “cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.” Eric D. Lomax and Ann Lordeman, “The Education of Students with Disabilities: Alignment Between the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act,” Congressional Research Service, Wash. D.C., October 31, 2011, p. 5. States have the latitude to determine which students qualify, but federal regulations place a one percent cap on the number of students taking the alternate assessments whose scores can be counted for purposes of state accountability under NCLB. For more background, see Nirvi Shah, “States Curb Exemptions on Testing,” *Education Week*, May 11, 2011. Researchers and advocates point out that students who have intellectual limitations (formerly called mental retardation) may still be shortchanged by the lesser standards. Due to misidentification and poor services and supports, students who were labeled with intellectual limitations may sometimes show higher intellectual functioning once we unlock them from specific disability barriers. See also Quenemoen, *supra*.

¹⁵ Johnson et al., *supra*.

¹⁶ CFR 300.101(c).

¹⁷ The discussion of research-based instructional interventions is not dependent on whether students receive their interventions in an inclusion (general education), pullout or self-contained special education placement. As often said, a placement is not a program. It is the intervention program – such elements as the materials, frequency and duration, student-teacher ratio and teacher quality – that matters more than the placement.

¹⁸ CFR 300.320 (a) (4).

¹⁹ Douglas Fuchs et al., “The ‘Blurring’ of Special Education in a New Continuum of General Education Placements and Services,” *Exceptional Children*, Vol. 76, No. 3, pp. 301-323 (2010), pp. 303, 307. And see citations on RTI in the next footnote.

²⁰ See for example: the web site of The RTI Network, presented by the National Center on Learning Disabilities, <http://www.rtinetwork.org/>; “Response to Intervention’s Promise and Pitfalls,” *Education Week Special Report*, March 2, 2011; Fuchs et al, supra; and Baltimore City Public Schools Guidance, Tiered Academic Interventions (undated and unpublished). Under IDEA, students should not be determined to be eligible under the Specific Learning Disability classification unless they have received prior appropriate “learning experiences and instruction.” CFR 300.309 (a) (1). This mandate is typically ignored.

²¹ See for example the numerous publications of: the Florida Center for Reading Research (<http://www.fcrr.org/>); the U. S. Department of Education Institute for Education Sciences, What Works Clearinghouse (<http://ies.ed.gov/ncee/wwc/>); and the Best Evidence Encyclopedia,(BEE) created by the Johns Hopkins University School of Education’s Center for Data-Driven Reform in Education (bestevidence.org). See also: Jack M. Fletcher, et al., *Learning Disabilities: From Identification to Intervention* (NY: The Guilford Press, 2007); Sally Shaywitz, *Overcoming Dyslexia: A New and Complete Science-Based Program for Reading Problems at Any Level* (NY: Knopf, 2003); Barbara R. Forman ed., *Preventing and Remediating Reading Difficulties: Bringing Science to Scale* (Baltimore: York Press, 2003); and Richard Allington, *What Really Matters in Response to Intervention* (Boston: Pearson, 2009).

²² Richard F. Elmore, “Getting to Scale with Good Educational Practice,” *Harvard Educational Review*, vol. 66, no. 1 (Spring 1996): pp. 1-26 at p. 20.

²³ For more insight into educators as solo practitioners, see Kalman R. Hettelman, *It’s the Classroom, Stupid: A Plan to Save America’s Schoolchildren* (Lanham, Md: Lexington Books, 2010), Ch. 11.

²⁴ Kalman R. Hettelman, “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. (2003).

²⁵ Robbie Fanning, “Fostering Motivation in Kids With Learning and Attention Problems,” <http://www.greatschools.org/special-education/support/816-motivating-kids-learning-attention-problems.gs>, last accessed Apr. 8, 2013.

²⁶ Bryan Goodwin, “Reading: The Core Skill,” *Educational Leadership*, Vol. 69, No. 6, March 2012, pp. 80-81 at p. 81.

²⁷ Dr. Alessi’s study is highlighted in an excellent article, Pamela Darr Wright, “The Blame Game! Are School Problems the Kids’ Fault?” <http://www.wrightslaw.com/blog/?tag=galen-alessi>. The quotes above are from the article, p. 3. A link to the full study is <http://www.wrightslaw.com/advoc/articles/alessi.article.pdf>

²⁸ Wright, supra, p. 6.

²⁹ Wright, supra, p. 5.

³⁰ 20 U.S.C. Secs. 1400-1482.

³¹ National Association of Special Education Teachers, “IEP Components – Annual Goals,” <http://www.naset.org/3347.0.html>, last accessed Feb. 3, 2013.

³² I received the memorandum in 2006 when I was a member of the Baltimore school board.

³³ Johnson et al., supra.

³⁴ A sampling of articles: Mark C. Weber, “Common-Law Interpretation of Appropriate Education: The Road Not Taken in Rowley,” *Journal of Law & Education*, Vol. 41, Jan. 2012; Amy J. Goetz, Tammy L. Pust and Atlee Reilly, “The Devolution of the Rowley Standard in the Eighth Circuit: Protecting the right to a free and appropriate public education by advocating for standards-based-IEPs,” 34 *Hamline L. Rev.* 503 (2011); Perry A. Zirkel, “Have the Amendments to the Individuals with Disabilities Education Act Razed *Rowley* and Raised the Substantive Standard for ‘Free Appropriate Public Education’,” *Journal of the National Association of Administrative Law Judiciary*, Fall 2008, pp. 396-418.

³⁵ *Board of Education v. Rowley*, 458 U.S. 176 (1982).

³⁶ *Rowley*, p. 202.

³⁷ *Rowley*, p. 204.

³⁸ *Rowley*, p. 202.

³⁹ The *Rowley* court itself noted, “We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a ‘free appropriate public education.’” *Rowley*, p. 203, n. 25. A national study found that “Teachers report that 94 percent of students with learning disabilities

receive some type of accommodation or support to enhance their school performance *** Almost one-third (30 percent) have general education teachers who modify grading criteria for students with learning disabilities. *** Many youth with learning disabilities do not fare nearly as well on academic assessments as they do on course grades.” National Center for Special Education Research, Institute of Education Sciences, “Facts from NLTS2 (National Longitudinal Transition Study 2), July 2006, p. 5

Because of the importance of the bona fide passing marks criteria, several examples of court decisions on this point follow.

Houston ISD v. V.P., 582 F.3d 576 (5th Cir. 2009), p. 590: “although [the student] did not do well the first or second semester of her first-grade year, her grades improved near the end of the year *only because* the teacher started modifying more work product for her, including giving her fewer test items. Without these modifications, the teacher stated, V.P. could not have done work on the curriculum level with the non-disabled students in her class and could not have made these passing grades.” (italics in original)

Hall v. Vance, 774 F.2d 629 (4th Cir. 1985), p. 635. The school system contended “that James’ academic progress, as measured by his grade promotions and tests scores, evinces education benefit...under *Rowley*...We disagree. Although the *Rowley* Court considered Amy Rowley’s promotions in determining that she had been afforded a FAPE, the Court...recognized that promotions were a fallible measure of education benefit....The district court did not err in discounting James’ promotions in light of the school’s policy of social promotion and James’ tests scores and independent evaluations....”

Montgomery Township Board of Education v. S.C., 135 Fed. Appx. 534 (3rd Cir. 2005), slip opinion, p. 3: “The District Court did not err in finding that D.C.’s paper record...overstated his actual progress. There is evidence that, in order to boost D.C.’s self-esteem, his previous grades were based largely on his effort, rather than his achievements....D.C.’s third-grade teacher had also allowed a high degree of informal accommodation of his disabilities....”

D.S. ex rel. D.S. v. Bayonne Bd. of Ed., 602 F. 3d 553 (3rd Cir. 2010), p. 568: “we think it is clear that a court should not place conclusive significance on special education classroom scores, a conclusion that we believe is reinforced by the circumstance that, as here, there may be a disconnect between a school’s assessment of a student in a special education setting and his achievements in that setting and the student’s achievement in standardized testing.”

J. L. v. Mercer Island School District, 2006 WL 3628033 (W.D. Wash), p 6 : “Employing accommodation and other compensatory strategies without increasing a student’s skill level does not represent compliance with the IDEA; it is not sufficient to simply ‘escort’ an educationally challenged student through the school system.” Reversed and remanded on other grounds, *J. L. v. Mercer Island School District*, 575 F. 3d 1025 (9th Cir. 2009).

⁴⁰ Peterson, *supra*, p. 2.

⁴¹ 34 CFR 300.39(a)(3)ii.

⁴² No Child Left Behind Act of 2001, Pub. L. No. 105-17.

⁴³ Sandra J. Thompson et al., *Accommodations Manual, How to Select, Administer, and Evaluate Use of Accommodations for Instruction and Assessment of Students with Disabilities* (The Council of Chief State School Officers, Washington, DC: 2d ed., August 2005) (hereafter CCSSO Accommodations Manual), p. 10.

⁴⁴ Eileen Ahearn, *Standards-Based IEPs: Implementation Update*, Forum Brief Policy Analysis (NASDE, Alexandria, Va., 2010), pp. 1, 2.

⁴⁵ 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, at p. 185.

⁴⁶ Goetz et al., *supra*, p. 530. Adoption of the Common Core State Standards in most states will reinforce a higher post-Rowley standard. Maureen A. Macfarlane, “The Shifting Floor of Educational Opportunity: The Impact of Education Reform on Rowley,” 41 *J.L. & Educ.* 45, 2012, 45—69.

⁴⁷ For a review of court decisions and legal commentary on a higher post-Rowley standard, see the articles cited in footnote 34 of this report. Professor Zirkel points out that while a number of legal commentators have supported a higher standard, most courts have not bought into it. Zirkel, *supra*. However, none of the cases cited by him appear to take into account, in addition to IDEA and NCLB, the Rowley passing grade factor or the requirements for standards-based-IEPs. The same holds true for the decision of the 9th Circuit Court of Appeals in *J. L. v. Mercer Island*, *supra*. Also worth noting is Professor Zirkel’s suggestion that the requirements under NCLB for “scientifically based research” and IDEA for “peer-reviewed research” might serve to raise the conventional Rowley minimal benefit interpretation.

⁴⁸ Psychologist Rhoda Weinstein as quoted at Peterson, *supra*, p. 11.

⁴⁹ Among them (in addition to Baltimore): New York, Boston, Chicago, Los Angeles, and Milwaukee .

⁵⁰ Scull and Winkler, *supra*, p. 2.

⁵¹ Miriam Kurtzig Freedman, “Special Education: Its Ethical Dilemmas, Entitlement Status, and Suggested Systemic Reforms,” http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/79_1/Freedman.pdf, p. 8, last accessed June 12, 2013.

⁵² 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. Early on, the court was supposed to track reductions in the gap in achievement between students with disabilities and non-disabled peers; but this did not occur. In addition, there were several peripheral attempts to review substantive instruction and outcomes. One involved “inclusion”: the court established what were in effect quotas requiring students with disabilities to be educated more frequently in classrooms with their non-disabled peers. Inclusion is a worthwhile goal. But while inclusion greatly increased, there was never any review to determine if the inclusion services raised academic outcomes. Second, there was extensive analysis to determine whether students were actually receiving the services on their IEPs. But there was never any inquiry whether the services delivered were making a significant difference.

⁵³ Nirvi Shah, “Feds Pledge More Focus on Outcomes for Students with Disabilities,” Education Week Blog, http://blogs.edweek.org/edweek/speced/2012/07/federal_special_education_offi_2.html, accessed Mar. 18, 2013.

⁵⁴ Frederick M. Hess and Whitney Downs, “Combatting the ‘Culture of Can’t,’” *Education Next*, Spring 2013, pp. 30-35.

⁵⁵ Shah, *supra*.

⁵⁶ 34 C.F.R. 300.26(b)(3); 34 C.F.R. 300.347(a)(2). A good primer on accommodations is Joanne Karger and Charles Hitchcock, “Access to the General Curriculum for Students with Disabilities: A Brief Legal Interpretation,” National Center on Accessible Instructional Materials, Wakefield, MA, 2003.

⁵⁷ Under NCLB, all students must take standardized tests, with “reasonable adaptations and accommodations for students with disabilities...necessary to measure the academic achievement of such students relative to state academic content and state student academic achievement standards.” CCSSO Accommodations Manual, p. 9.

⁵⁸ See for example, Maryland State Department of Education, “Maryland Accommodations Manual,” July 2, 2012.

⁵⁹ CFR 300.320 a (4).

⁶⁰ CCSSO Accommodations Manual, p. 9.

⁶¹ CCSSO Accommodations Manual, p. 9.

⁶² Meagan Karvonen, “Developing Standards-Based IEPs that Promote Effective Instruction,” in Jamal Abedi, et al., *Considerations for the Alternate Assessment based on Modified Achievement Standards (AA-MAS)* (New York Comprehensive Center in collaboration with the New York Education Dept.: July, 2009), p. 75.

<http://www.cehd.umn.edu/nceo/AAMAS/AAMASwhitePaper.pdf>, last accessed Feb. 19, 2013.

⁶³ Freedman, *supra*, p. 13. See also Karger and Hitchcock, *supra*, p. 5.

⁶⁴ Freedman, *supra*, p. 13.

⁶⁵ Daniel Weiner and Martha Thurlow, “Creating PARCC Reading Assessments,”

<http://parconline.org/sites/parcc/files/PARCCAccessibleReadingAssessmentsPaperFINAL.pdf>, p. 1, last accessed Apr. 18, 2013.

⁶⁶ See for example: CFR Sections 300.320, 300.305, 300.323, 300.324.

⁶⁷ I have not found any data that disaggregates the retention rates of students with disabilities and non-disabled peers.

⁶⁸ Michael Winerip, “Ex-Schools Chief in Atlanta Is Indicted in Testing Scandal,” *New York Times*, March 30, 2013, p. A1.

⁶⁹ Associated Press, “Suspicious test scores across U.S. raise questions of cheating,” *Washington Post*, March 25, 2012, p. A11; Greg Toppo, “Schools marred by testing scandals in 2011,” *USA Today*, Dec. 29, 2011, <http://usatoday30.usatoday.com/news/education/story/2011-12-29/schools-test-scandal/52274708/1>, last accessed March 30, 2013.

⁷⁰ Erica Green, “City schools to continue heightened testing security,” *Baltimore Sun*, March 4, 2012.

⁷¹ *Cedar Rapids Community School District v. Garrett F.*, 526 U.S. 66 (1999); *Florence County School District Four v. Shannon Carter*, 510 U.S. 7 (1993). The issue of cost has been contentious in cases involving the determination of the most appropriate classroom placement for students with disabilities. Ashley Oliver, “Should Special Education Have a Price Tag? A New Reasonable Standard for Cost,” 83 *Denv. U. L. Rev.* 763-791 (2005-2006). But the substantive right to meet state academic standards is a more fundamental matter that should be part of the “significant financial burden on States and school districts that participate in IDEA,” as stated by the Supreme Court in *Florence County School District Four v. Shannon Carter*, 510 U.S. 7 (1993), p. 15.

⁷² Additional funding would be required for a more intricate evaluation of the fidelity of implementation and other integral factors.

⁷³ The apples-to-apples problem in measuring progress predated the One Year Plus policy. In recognition of the current practical difficulty in being precise in such measurements, the Baltimore practice under One Year Plus is to state present levels of performance and Goals as early-, mid-, or late- any particular grade level. But more precision should result from more experience with current literacy and other assessments.

⁷⁴ For rare exposure of the lack of remedial interventions, see court findings in the special education class action lawsuit in Chicago. Illinois State Board of Education: Ninth Identification of District-wide Findings for the Chicago Public Schools, “Corey H. District-Wide Findings – 2008-09 School Year,” pp. 27-29.

⁷⁵ Johnson et al., *supra*.

⁷⁶ Daniel Koretz, *Measuring Up: What Educational Testing Really Tells Us* (Cambridge, MA, Harvard University Press, 2008 (hereafter Koretz), p. 288.

⁷⁷ Koretz, *supra*, p. 301.

⁷⁸ Koretz, *supra*, p. 300.

⁷⁹ National Center on Educational Outcomes, “Developing Common Accommodations Policies: Discussion Points for Consortia,” NCEO Brief, May 2011. On the 2011 NAEP tests, Maryland included 31 percent of students with disabilities on the 4th grade reading test while others states included as many as 90 percent. Nirvi Shah, “Fed Agencies Spar Over NAEP for Special Populations,” *Education Week*, Aug. 21, 2012.

⁸⁰ Koretz, *supra*, p. 297.

⁸¹ Shah, “Fed Agencies Spar Over NAEP for Special Populations,” *supra*.

⁸² PARCC Draft Accommodations Manual, <http://www.parconline.org/parcc-releases-draft-accommodations-manual-public-comment>, last accessed Apr. 18, 2013.

⁸³ David Wiener and Martha Thurlow, “Creating PARCC Reading Assessments,” http://www.parconline.org/sites/parcc/files/PARCCAccessibleReadingAssessmentsPaperFINAL_0.pdf, last accessed Apr. 22, 2013.

⁸⁴ For illuminating comments on the PARCC recommendations, see Kathleen Boundy and Paul Weckstein, Co-Directors, Center for Law and Education, “Follow-up Comments on Special Access Accommodations for Students with Disabilities,” Apr. 15, 2013.

⁸⁵ See footnote 39. Also see *Evans v. Board of Education*, 930 F. Supp. 83 (S.D. NY, 1996), p. 102: the school system’s failure to provide the student “with the tools to become, for an example, an independent reader is alone an important reason why the District’s IEP does not provide an appropriate education.”

⁸⁶ See earlier discussion of “Lack of Resources” at p. 33 of this report.

⁸⁷ See generally: Elisa Hyman et al., “How IDEA Fails Families without Means: Cause and Corrections From the Frontlines of Special Education,” *Journal of Gender, Social Policy & the Law*, Vol. 20, Issue 1 (2011); Eloise Pasachoff, “Special Education, Poverty, and the Limits of Private Enforcement,” 86 *Notre Dame Law Review*, 1413 (Aug. 2011); Joanne Karger, “A New Perspective on Schaffer v. West,” *UC Davis Journal of Juvenile Law & Policy*, Vol. 12, No. 1, Winter 2008, 133-231.

⁸⁸ Hyman, supra, p. 113; Karger, supra, p. 20; Pasachoff, supra, p. 1432.

⁸⁹ Hyman, supra; Pasachoff, supra; Megan McArdle, “Our Special-Ed System Favors the Rich (and Romney Has a Plan to Fix it),” *The Atlantic*, June, 2012, <http://www.theatlantic.com/business/archive/2012/06/our-special-ed-system-favors-the-rich-and-romney-has-a-plan-to-fix-it/257949/>, last accessed April 2, 2013.

⁹⁰ <http://www.theonion.com/articles/parents-of-nasal-learners-demand-odorbased-curricu,396/>, last accessed April 2, 2013.

⁹¹ I have expanded on this premise elsewhere. Hettleman, *It’s the Classroom, Stupid*, supra.

⁹² Office of Special Education Program’s Results Driven Accountability Home Page, <http://www2.ed.gov/about/offices/list/osers/osep/rda/index.html>.

⁹³ The statement was made at a meeting to discuss One Year Plus at USED on August 12, 2013. Attending the meeting in addition to Mr. Yudin were: Ruth Ryder, Director of USED Office of Special Education Programs; Sonja Brookins Santelises, Chief Academic Officer of the Baltimore public schools; Candace Cortiella, Director, The Advocacy Institute; and the author of this report.

⁹⁴ Hyman, supra, pp. 47-49: See also Scott Goldschmidt, “Comment: A New IDEA for Special Education Law: Resolving the ‘Appropriate’ Education Benefit Circuit Split and Ensuring a Meaningful Education for Students with Disabilities,” 60 *Cath. U. L. Rev.* 749-777 (2011), p. 762.

⁹⁵ Pasachoff, supra, p. 1473.

⁹⁶ *Morgan Hill Concerned Parents Assoc. v. California Department of Education*, E.D. Calif., Mar. 29, 2013 (2013 WL 1326301).

⁹⁷ An exception is the Thomas B. Fordham Institute. Insightful articles exploring a variety of avenues for special education reform are found in Chester E. Finn, Jr., et al., “Rethinking Special Education for a New Century,” Thomas B. Fordham Foundation and the Progressive Policy Institute, Wash. D.C., 2001. Recently Fordham published two reports that analyzed mainly fiscal issues. Neither, however, addressed whether students with disabilities were receiving appropriate services. Nathan Levenson, “Boosting the Quality and Efficiency of Special Education,” Thomas B. Fordham Institute, Wash. D.C. 2012; Scull and Winkler, supra. Also noteworthy is the general push by conservative groups for special education vouchers.

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 has served twice as a member of the Baltimore City school board. In his last term, 2005-2008, he was the chief architect of the One Year Plus policy described in this report. He has also been executive assistant and deputy mayor for mayors of Baltimore City, and an education consultant to the Baltimore City school system and various community organizations and foundations.

In the field of special education, he has represented pro bono over 150 students with disabilities, mainly in Baltimore City but also in other Maryland school districts. He has written three prior reports related to special education published by The Abell Foundation: “The Road to Nowhere: The Illusion and Broken Promises of Special Education in the Baltimore City and Other Public School Systems” (2004); “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); “Still Getting It Wrong: The Continuing Failure of Special Education in the Baltimore City Public Schools” (2002).

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

He is the author of the book *It's the Classroom, Stupid – A Plan to Save America's Schoolchildren* (Rowman & Littlefield, 2010). His other publications include many articles on education in the Baltimore Sun, Washington Post, Education Week and The Nation.

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